

The CFSP within the institutional architecture: the role of the European Parliament

*Leif Rumrich**

Preface

The “Common Foreign and Security Policy” (CFSP) can be looked at with quiet different political preferences. Historical, theoretical, instrumental and institutional are to be named as exemplary links to CFSP.

In preventing to cover all possible political scenarios in relation to CFSP with an unsatisfying perfunctorily overview, this essay covers the CFSP within the institutional architecture by discussing the role of the European Parliament (EP).

The power of the (EP) has always been a reliable indicator for the progress of European integration. Leaving the focus of mutual policy-making in the economic sphere to rather political cooperation did support the development of the EP from a rather non-important institutional body to a representation of European citizens.

The process of the EP-power-enlargement however is not finished yet and therefore underlines the policy-areas that still remain intergovernmental and still put the EP in a more observatory position. Herefore the CFSP has to be named as an example. Since the current CFSP-status of the EP once applied to other policy-areas, too, **this essay will primarily tackle the question, if the CFSP is a policy-area that still remains intergovernmental and therefore puts the EP in a weak and with political instruments under-equipped position.**

Since the political system of the European Union (EU) has a “sui generis” character, the EP is often compared to its counterparts, the national parliaments, in the Member States. In most cases this analysis is done to be able to explain the political system of the EU, but often fails due to unique circumstances. The field of foreign and security policy however provides a sufficient basis for such a comparison, since the national parliaments are hindered from a full participation, too.

Hence **this essay secondly puts a deepening focus on the answering of the question, if the EP is limited in its impact on foreign and security policy due to the same reasons national parliaments are: the securing of a traditional political domain.** In doing so, the political system of the Federal Republic of Germany will mainly serve as a source for comparison, especially through its jurisdiction of its Federal Constitutional Court (The Bundesverfassungsgericht).

I. CFSP at a Glance

1. Historical Background

Before examining the role of the EP within the CFSP of the EU, a brief information about the CFSP is necessary to build a valid basis for the discussion of the topic.

* Leif Rumrich, LL.B., M.E.S.

The CFSP is the successor of the European political cooperation (EPC), which was first introduced in 1970 as a response to the Davignon report, which is named after the president of a committee formed by the Council of the European Communities to discuss the future of the foreign policy of the European Economic Community (EEC). The report recommended that whenever possible Member States should try to coordinate their policies on international problems. This idea was approved by all six member governments and led to a rather informal cooperation. The EPC received a formalised status with the Single European Act (SEA) with effect from 1987 and realigned the objectives of the failed Fouchet Plan, which was introduced in the early 1960s and aimed at the consultation among Member States in foreign policy matters¹.

With adopting Titel V² in the Maastricht Treaty³ the CFSP was replacing the EPC by forming the second of the three pillars⁴ of the EU. The Treaty of Amsterdam⁵ did substantiate the decision-making procedures and instruments of CFSP in 1999⁶.

2. Objectives and Characteristics

The objectives of the CFSP are to be found in Art. 11 TEU: a) safeguard the common values and fundamental interests of the Union, b) strengthen the security of the Union, c) preserve peace and strengthen international security, d) promote international cooperation and e) develop democracy and the rule of law, including human rights.

One of the main characteristics of the CFSP embedding second pillar of the EU is its intergovernmental alignment, which is completely different to the traditional pillars of the Community, such as the single market and trade policy that are addressed in the first pillar. Basically, the decision-making reflects a difference and underlines the disparity between the supranational first and the almost strictly intergovernmental second pillar, because the CFSP asks the Member States to have consensus instead of a majority vote. Since the amendment of Titel V TEU through the Amsterdam Treaty, only two cases are known, where qualified majority is sufficient within CFSP: a) for decisions applying a common strategy defined by the European Council and b) for any decisions implementing a joint action or common position already adopted by the Council.

Because of the dominance of the intergovernmental orientation of CFSP, the EP is lacking a competence, which could be compared to other policy-areas of the EU, where the EP has developed a mayor influence trough the co-decision procedure (Art. 251 TEC). Hence the EP's influence in CFSP is not comparable to policy-areas such as the internal market or environment.

¹ The Fouchet Plan itself was an answer to the the failed Pleven Plan (1950) which aimed to create an integrated European army under mutual command. The consequentially Treaty establishing the European Defence Community (EDC) was rejected by the French National Assembly in 1954.

² In the Treaty on the European Union (TEU) Title V contains the provisions on a Common Foreign and Security Policy (Art. 11-28).

³ The Maastricht Treaty was signed on 7 February 1992 and entered into force on 1 November 1993.

⁴ The first pillar (European Communities) stands for economic, social and environmental policies, the third pillar (Police and Judicial Co-operation in Criminal Matters) stands for cooperation in the fight against crime.

⁵ The Amsterdam Treaty, was signed on October 2, 1997, and entered into force on May 1, 1999.

⁶ The with the Treaty of Maastricht introduced instruments "common positions" and "joint actions" where extended with "common strategies", "decision-making", "The High Representative for the CFSP", "the policy planning and early warning unit" and "the European Security and Defence Policy" (ESDP). Since this essay deals with the institutional character of the CFSP the instruments are just being named for reasons of completeness.

II. The EP's role within CFSP

1. Historical Summary

As already said, the EP has indeed competences in several political fields of the EU. But if one looks at the history of the EP, a development of these competences has to be looked closer at. The Treaty of Paris⁷, establishing the European Coal and Steel Community formed a "Common Assembly", which first met in Strasbourg 1952 and consisted of representatives from the national parliaments⁸. This institution was limited to an advisory function and no decision-making power. The Treaties of Rome, establishing the EEC and the European Atomic Energy Community (Euratom)⁹ changed the name from "Common Assembly" to "European Parliamentary Assembly" but failed to equip this institution with more relevant powers. The powerless position did furthermore not change, when the institution named itself "European Parliament" in 1958¹⁰.

The EP first gained an entry-point of political impact, when the financing of the European Communities was to be defined new. The decision of changing the budgetary system from a simple contribution of the Member States to own financial resources in 1970 called for democratic control¹¹. In conclusion, the EP gained a budgetary control¹² for the non-obligatory expenditures¹³ and could elevate its importance through the first direct election in 1979.

Beginning with its budgetary control, the EP developed from a consulted to an obligatory informed institution, which became finally part of European integration. This process first started with the SEA and continued with the amending Treaties of Maastricht (1993), Amsterdam (1999) and Nice (2001) and placed the EP in a powerful position mainly when it comes to EU's first-pillar policies.

2. The EP and the Second Pillar of the EU

When it comes to the second pillar of the EU, one has to get a completely different picture. Art. 21 TEU is a clear example for the exclusion of the EP within CFSP: "The Presidency shall consult the European Parliament on the main aspects and the basic choices of common and security policy and shall ensure that the views of the European Parliament are duly taken into consideration."

⁷ The Treaty of Paris was signed on 18 April 1951, entered into force on 23 July 1952 and expired on 23 July 2002.

⁸ Judge, David/Earnshaw, David: *The European Parliament*, (Palgrave Macmillan, Houndmills, 2003) p. 30.

⁹ Both treaties were signed in March 1957 and entered into force on 1 January 1958.

¹⁰ Grunauer, Alexander: *Demokratie und Legitimation - Die Achillesferse der Europäischen Union - Eine Studie zum Europäischen Parlament*, (Druckerei der Universität Zürich, Zürich, 2002) p. 5.

¹¹ Suski, Birgit: *Das Europäische Parlament - Volksvertretung ohne Volk und Macht?*, (Duncker & Humblot, Berlin, 1996) p. 145.

¹² Müller-Graff, Peter-Christian: *Die Direktwahl des europäischen Parlamentes*, (J.C.B. Mohr Siebeck, Tübingen, 1977), p. 35.

¹³ Non-obligatory expenditures are not strictly defined by the treaties, e.g. structural fund money and administrative expenditures, whereas obligatory expenditures comply directly with the EU's regulatory framework, e.g., contributions to the common agricultural policy.

It can be stated that the political competency of the EP, which has been acquired in other policy-areas and make the EP become an arbitrate legislative element are ignored within CFSP.

The CFSP is more designed to keep the EP out of the second pillar and puts it into a position of a consulted body, which can be compared to its status in 1952.

To avoid inaccuracy one has to divide between CFSP and foreign action within the first pillar, where the EP has full legislative equal rights¹⁴.

When it comes to CFSP and the second pillar, the exertion of influence of the EP is more indirect than direct. Although the EP is not to be called a major institutional player within CFSP¹⁵, it disposes of several channels of influence in foreign policy sphere, which is linked to the EU¹⁶.

3. The AFET-Committee

One of the major tools the EP holds to extend its role of a consulted institution with a more influential notion is the committee of foreign affairs (AFET¹⁷). The first look at the internet-presentation of the AFET points out its self-conception: "The Committee (AFET) is responsible for 1. the common foreign and security policy (CFSP)." The second look allows to see that the self-conception of the AFET is not only limited to paroles but indeed offers content. The AFET deals with all relevant foreign-policy issues, which are related to the EU. The emphasis of the work rests on reports.

For example, in 2006 topics like "improving EU-US relations in the framework of a Transatlantic Partnership Agreement¹⁸" or "the enhanced cooperation between the European Union and Latin America¹⁹," have been discussed expatiated. Looking closer at the list of reports, one has to analyse that the variety of topics is deeply linked to current challenges of the EU's foreign policy²⁰.

Secondly, most of the reports are based on an own-initiative. This means that the AFET draws up a report and submits a motion for a resolution to Parliament on a subject on which it was neither consulted nor requested for. The exercising of this right does not evolve from a treaty, but from the rules of procedure of the EP (Art. 45)²¹.

¹⁴ For instance in the field of development cooperation (Titel XX, Art. 179 I TEC); see also: Art. Art. 300 III TEC (EP-competence with regard to important international agreements, in particular association agreements).

¹⁵ Wessels, Wolfgang: Die Europäische Union als Ordnungshüter; in: Kaiser, Karl/ Schwarz, Hans-Peter (eds.) unter Mitarbeit von Berggötz, Sven Olaf/Holtrup, Petra: Weltpolitik im neuen Jahrhundert; (Bundeszentrale für politische Bildung, Bonn, 2000) p. 585.

¹⁶ Gütt, Tilmann: Die Gemeinsame Außen- und Sicherheitspolitik und ihre Bedeutung für die Europäische Union – Rechtspersönlichkeit und Rechtsnatur der EU: (Herbert Utz Verlag, München, 2003) p.88.

¹⁷ AFET is the short-form for "affaires étrangères".

¹⁸ A6-0173/2006 final, Rapporteur: Elmar Brok,

<http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//NONSGML+REPORT+A6-2006-0173+0+DOC+PDF+V0//EN&L=EN&LEVEL=1&NAV=S&LSTDOC=Y>

¹⁹ A6-0047/2006 final, Rapporteur: Jose Ignacio Salafranca Sanchez-Neyra,

<http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//NONSGML+REPORT+A6-2006-0047+0+DOC+PDF+V0//EN&L=EN&LEVEL=1&NAV=S&LSTDOC=Y>

²⁰ A list of all recent reports is to be found via:

<http://www.europarl.europa.eu/activities/expert/committees/reports.do?WS=10&SV=0&language=EN>

²¹ The current rules of procedure of the EP (16th edition - February 2006) can be found via: http://www.europarl.europa.eu/omk/sipade3?SAME_LEVEL=1&LEVEL=2&NAV=X&DETAIL=&PUBREF=-//EP//TEXT+RULES-EP+20060213+TOC+DOC+XML+V0//EN

Although these reports are not binding for the work of the council²², they nevertheless have the chance of being reflected on. Most importantly, the reports are accessible easily on the websites of the EP²³ and the AFET²⁴ for the public and especially for the media.

Furthermore the AFET-reports are an open source for the secretariat of the Council, the Commission and the national foreign departments. Measuring the impact is quiet complicated, if at all possible. If something is measurable besides the number of reports, it is the number of high-profile visits to the AFET. Within the election period 1999-2004 over 54 visits of national foreign- and defence ministers are recorded. The High Representative visited the AFET ten times, the then-external relations commissioner Chris Patten 22 times, 44 high representatives from third countries and numerous representatives of international organisations such as NATO and the UN.

The visits contain political consultation on request or on basis of Art. 21 TEU. Although the EP is informed about bygone processes, the regularity of consultations does not allow a straight division of ex post information and simple hearing of the EP. Since political processes are normally taking a longer period of time, the EP has the opportunity to deliver information ex ante and has a chance to promote political input, which ideally leads to a political discourse²⁵. Therefore the EP is able to outgrow its assigned role of a weak institution within CFSP, by providing an efficient forum CFSP matters.

In addition the TEU provides with Art. 21 II a questioning right for the EP, which is used frequently and also adds the opportunity of delivering recommendations to the Council²⁶.

The AFET also sends out delegations to third countries. Although their statements are not binding for other EU-institutions, the delegations are linked to the EU and are therefore closely viewed in their actions. Press conferences and mutual meetings with counterparts in different countries and/or organisations do reflect on the executives²⁷.

4. The Budget as Loophole of EP-Influence?

As already worked out, the rise of political power of the EP is strongly linked to the EU-budget. But when it comes to finances, the CFSP-budget is rather small-sized if compared to the EU-budget in total. Although the agreed CFSP-budget for the year 2006 with near

²² Lalone, Nathaniel (2005): Accountability in the EU's Common Foreign and Security Policy: Lessons from the Common Commercial Policy; in: Barbé, Esther/Herranz, Anna: The Role of Parliaments in European Foreign Policy - Debating on accountability and legitimacy; http://selene.uab.es/_cs_iuee/catala/obs/working_ocasionals_archivos/Parlament/Chapter%20%20sense%20pagines_.pdf; p.3.

²³ <http://www.europarl.europa.eu/activities/expert/reports.do?language=EN>

²⁴ http://www.europarl.europa.eu/committees/afet_home_en.htm

²⁵ Thym, Daniel (2005): Parlamentsfreier Raum? Die Rolle des Europäischen Parlaments in der Gemeinsamen Außen- und Sicherheitspolitik; www.whi-berlin.de/EPinderGASP.htm p. 6.

²⁶ Regelsberger, Elfriede: Die Gemeinsame Außen- und Sicherheitspolitik der EU (GASP), (Nomos Verlag, Baden-Baden, 2004), p. 39.

²⁷ For more information on the effect of EP-delegations consult: Herranz, Anna (2005): The Inter-parliamentary Delegations of the European Parliament: National and European Priorities at Work; in: Barbé, Esther/Herranz, Anna: The Role of Parliaments in European Foreign Policy - Debating on accountability and legitimacy; http://selene.uab.es/_cs_iuee/catala/obs/working_ocasionals_archivos/Parlament/Chapter5%20sense%20pagines_.pdf.

120 million €²⁸ is an advance to recent years (e.g. 2004: around 60 million €), the total EU-budget of 121 billion €²⁹ in 2006 speaks for itself.

Art. 28 II TEU defines that all administrative expenditures within CFSP are to be charged to the budget of the European Communities. Art. 28 III TEU clearly states that expenditures of military operations are not to be charged to the budget of the European Communities, but to the budget of the Member States.

In principle, this means that the EP has influence in setting the amount of CFSP-budget due to Art. 272 TEC, since CFSP-expenditures are defined as non-obligatory³⁰.

Furthermore the EP, the Council and the Commission signed an interinstitutional agreement in May 1999 on budgetary discipline and improvement of the budgetary procedure. Within this document it is adhered that “with regard to the operational expenditure of the CFSP, the institutions will endeavour to secure each year, by means of the conciliation procedure, an agreement on the amount to be charged to the Community budget and on the distribution of this amount between the articles of the CFSP budget chapter (observation and organisation of elections, prevention of conflicts, financial aid to the enlargement process, urgent actions, etc.)...whenever it adopts a decision in the field of CFSP entailing expenditure, the Council will immediately send the European Parliament an estimate of the costs envisaged...”.

The interinstitutional agreement itself shows, that the EP is an integrated institution within the CFSP-budget. But the limitation to non-obligatory expenditures, the rather small budget-amount and the remaining importance of the budgets of Member States relativise the EP’s impact immediately.

5. Foreign and Security Policy: An Exclusive Field of the Executive?

Hitherto the collected facts almost stigmatize the EP with a weak status within CFSP. The question is, if this is to be explained with the sui generis role the EP has, or if the characteristics of the area of foreign and security policy itself is the reason for this scenario. To find an answer to this question, a closer look at an exemplary regulation of a Member State is helpful. For instance the constitution (Grundgesetz) of the Federal Republic of Germany defines in Art. 59 II that the parliament (Bundestag) has to ratify treaties within public international law and army-missions that are not within the NATO alliance territory. The Federal Constitutional Court (The Bundesverfassungsgericht) however lays down in its jurisdiction, that every action, which is not covered by Art. 59 II is within the competence of the executive³¹.

An imbalance of power between the executive and the Bundestag is the obvious conclusion and shows, that the EP and the Bundestag both have a comparable standing within foreign and security policy. However, this does not mean, that the power of either EP or the Bundestag is acceptable. The short-comparison simply shows that the field of foreign and security policy traditionally has to be labelled as a political field of the executive.³²

²⁸ http://eur-lex.europa.eu/LexUriServ/site/de/oj/2006/l_078/l_07820060315de16221630.pdf

²⁹ http://ec.europa.eu/budget/library/publications/budget_in_fig/dep_eu_budg_2006_dep.pdf

³⁰ Gütt, Tilmann: Die Gemeinsame Außen- und Sicherheitspolitik und ihre Bedeutung für die Europäische Union – Rechtspersönlichkeit und Rechtsnatur der EU: (Herbert Utz Verlag, München, 2003), p. 88.

³¹ BVerGE 90, 286 (357).

³² Thym, Daniel: Parlamentsfreier Raum? Die Rolle des Europäischen Parlaments in der Gemeinsamen Außen- und Sicherheitspolitik, (www.whi-berlin.de/EPinderGASP.htm, 2005) p. 13.

6. The Constitutional Treaty as advocate of EP's Power - Enlargement within CFSP?

Many academic scholars come to the conclusion that the constitutional treaty³³ would have been a benefit for almost every political aspect, which is linked to the EU. The Minister of Foreign Affairs, who is appointed by the Council in agreement with the Commission (Art. I-27), but nevertheless approved by the EP through its vote on the Minister's college (Art. I-26 (2)) could lead to a positive conclusion for the effect on the EP's powers based on the constitutional treaty, too.

Therefore, one has to ask, if the constitutional treaty would have promoted the influence of the EP within the CFSP. A closer look at the legal provisions is therefore necessary. Art. I-39 (6) and Art. I-40 (8) define, that the EP "shall be regulatory consulted on the main aspects and basic choices" of CFSP and "shall be kept informed on how it evolves".³⁴

The Summary of the Constitution adopted by the European Council in Brussels on 17/18 June 2004, issued by the EP delegation to the convention therefore speaks for itself, too: "The implementation of the CFSP - by unanimous European Council or Council decision, except in certain cases provided for by the Constitution or where the European Council decides otherwise - will not be subject to the ordinary legislative procedure'. The EP will ... be consulted ...".³⁵

The wording "consulted" simply means, that the constitutional treaty offers a slightly changed status quo, when it comes to parliamentary rights within CFSP.

Furthermore the EP is at risk to lose its influential position in the budgetary CFSP-system. Art. III-313 (3)³⁶ states that "the Council shall adopt a European decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of" CFSP... "and in particular for preparatory activity"... "it shall act after consulting the European Parliament". This basically means, that the EP is only to be consulted, but without any blocking right. Since this legal basis initiates a mechanism apart from EU-procedures, a parallel budgetary procedure outside the EP power-range could be the consequence and the up to now existing loophole of influence could be a subject of disappearance.

The Constitutional Treaty therefore is not to be labelled as being supportive, when it comes to the position of the EP within the CFSP-architecture.

Conclusion

Some academics might argue, that the topic of this essay is not useful. This harsh argument could arise from criticism the EP has been facing already over a long period of time. Although the EP is directly elected, it is still not comparable to national parliaments and some argue that it is just an international forum where MEPs represent pure national

³³ The full text can be viewed at via: http://europa.eu/constitution/en/1stoc1_en.htm.

³⁴ Diedrichs, Udo: The European Parliament in CFSP: More than a Marginal Player?; The International Spectator; Nr. 2/2004; p. 44.

³⁵ http://europa.eu/constitution/download/oth180604_3_en.pdf.

³⁶ Diedrichs, Udo: The European Parliament in CFSP: More than a Marginal Player?; The International Spectator; Nr. 2/2004; p. 45; wrongly refers to Art. III-215 (3), which is linked to social policy.

interests. This picture is often drawn with the statement, that Europe is lacking a truly European “demos” and a traditional party system.

Due to the possible discussion of the EP’s role within CFSP within this essay, this thesis has to be rejected. If the EP would not have the capacity of being a part of a theoretical perspective on CFSP and parliamentarism, why is it possible to discuss its possible entry points of influence and future possibilities of evolution.

If there is a distinguishing mark for the EP it is not the one of an institution standing for a lack of democracy and inabilities. It is more a definition of an institution with a great ambition to become and live a prototype of a genuine transnational democratic body.³⁷

Notwithstanding, it has to be concluded, that the EP is indeed a weak player in the intergovernmental orientated CFSP. The position could be called under-equipped but does not necessarily have an infinite character.

Like in other policy fields, the EP tries to gain gradual channels of influence – the budget being the most efficient and the endangered when thinking of Constitutional Treaty provisions.

Although one cannot compare the EP with traditional national parliaments, this essay has shown that it faces the same problems. Foreign and Security Policy still remains a domain of the executive on national and European level.

CFSP will not always remain a third second pillar issue. The Balkan-conflict, the Iraq-war and the reaction on global terror stand as examples for an inclusion into the first pillar of Community Law. Intergovernmental and therefore intransparent conferences are not the future of an integrated EU.

But the EP should not wait until on of the last traditional metiers of national sovereignty has been fallen. It should lay its focus on its possibilities of indirect power such as questioning right, delegation visits, committee meetings with negotiators and press involvement. Only a EP which articulates itself is having the chance to be heard and to be taken serious, if not empowered by clear and distinct treaty provisions.

Only with this attitude, the rather weak role of the EP within the institutional architecture of CFSP is a subject to be changed. Otherwise it will be the Member States who decide with the help of a treaty, what role the EP will play in this policy domain in the future.

³⁷ For an extensive evaluation see: Barbé, Esther/Herranz, Anna (2005): The legitimacy debate: representation of national and transnational interests in the European Parliament; in: Barbé, Esther/Herranz, Anna: The Role of Parliaments in European Foreign Policy - Debating on accountability and legitimacy; http://selene.uab.es/_cs_iuee/catala/obs/working_ocasionals_archivos/Parlament/Chapter1%20_sense%20pagines_.pdf; p.6.