

IN-DEPTH ANALYSIS

Requested by the SEDE sub-committee



The extent of the European Parliament's competence in Common Security and Defence Policy



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ABSTRACT

In recent years, security and defence policy has become one of the most burgeoning fields of European cooperation, and the war in Ukraine is further accelerating this integration dynamic. Yet, the formal role of the European Parliament (EP) has not been recalibrated to fit this new setting. Indeed, as the intergovernmental blueprint of the Common Security and Defence Policy (CSDP) remains unaltered, the EP's role is limited. In light of the rapidly growing scope of CSDP activities and initiatives, which are likely to further expand given the present geopolitical context, one might wonder whether the way in which parliamentary prerogatives set out in EU law are put into practice is compatible with the Union's general principles of democracy, sincere cooperation, and institutional balance. This in-depth analysis finds that, by virtue of the fundamental democratic principle underpinning the EU edifice, the EP undeniably has a role to play in the CSDP realm. Despite the EP's more limited involvement in relation to CSDP than to other policy fields, it cannot plausibly be construed so narrowly as to undermine the democratic principle applying to any decision-making process at the EU level – both *ex ante* and *ex post*. Respect for the right to information constitutes the very basis for both the EP's role in democratic oversight and its ability to hold the Commission, which is increasingly active in the field of defence, to account.

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1 Introduction¹

1.1 The CSDP's expansion and the question of democratic scrutiny

The war in Ukraine marks a turning point in the history of the European integration process. Never before have we witnessed such a resolve to stand together in the face of an external threat and protect the achievements of the European project by joining forces.² This moment will most certainly leave its mark on the Union's trajectory in the field of Common Security and Defence Policy (CSDP). Indeed, the Russian invasion will likely act as a catalyst for integration in European foreign affairs and defence. Even Denmark, which has so far resisted joining CSDP, is thinking about giving up its security and defence opt-out. Hence, it is reasonable to think that war in Ukraine will accelerate the EU's shift from a predominantly 'normative power'³ to a 'hard power'⁴, signs of which could already be spotted in recent years.⁵

Profound geopolitical transformations play a paramount role in this evolution.⁶ Faced with an increasingly challenging international environment – among which Russia's aggressive foreign policy and China's rapidly growing military capacity stand out – Member States demonstrate a heightened interest in CSDP, whose remit, as a result, is continuously expanding. In fact, Russia's annexation of Crimea in 2014 and its destabilisation of Donbas had already sown the seeds for a new security and defence dynamic in the EU. The combined impact of security threats from within and outside of the Union's borders, fraying relations with the US, and Brexit have led the EU to adopt a whole raft of defensive measures in the past five years. The launch of Permanent Structured Cooperation (PESCO) in 2017⁷ and the establishment of the European Defence Fund (EDF) in 2021⁸ are two prominent manifestations of this dynamic, alongside the recent call for a European Defence Union by the Commission President and the adoption of the EU's first Strategic Compass in 2022.⁹

With moves to incentivise capability development and create a single market for defence, the Community method, by which the European Parliament (hereafter EP or Parliament) and the Council of the EU (hereafter Council) act as co-legislators on a proposal submitted by the European Commission (hereafter Commission), is increasingly being applied to a field previously jealously shielded off from supranational

¹ The authors would like to express their gratitude to Lukas Schaupp for his tremendous support in drafting the study as well as in helping with drawing insights from the semi-structured interviews. Likewise, the authors would like to warmly thank Felicitas Burst and, in particular, Lukas Martin for their great research support, empirical input, and editorial assistance in the context of this study.

² See, for instance, Informal meeting of the Heads of State or Government, Versailles Declaration, 10 and 11 March 2022.

³ For a definition, see Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) 40 *Journal of Common Market Studies* 235.

⁴ For a definition of 'hard power' (in contrast to 'soft power'), see Joseph S Nye, *Soft Power: The Means to Success in World Politics* (PublicAffairs 2004) 5.

⁵ Carolyn Moser, 'Hard Power Europe?' (2020) 80 *Heidelberg Journal of International Law* 1.

⁶ See, for instance, Achilles Skordas, 'The European Union as a Post-National Realist Power' in Steven Blockmans and Panos Koutrakos (eds), *Research Handbook on the EU's Common Foreign and Security Policy* (Edward Elgar 2018). 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)).

⁷ Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States [2017] OJ L 331/57.

⁸ Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 OJ L 170/149.

⁹ Ursula von der Leyen, 'Strengthening the Soul of Our Union', State of the Union Address 2021' (Strasbourg, 15 September 2021); Council of the EU, 'A Strategic Compass for the Union', Council Doc. 7371/22 (21 March 2022).

integration dynamics by the Member States.¹⁰ This supranational dimension of the incipient European Defence Union represents a game-changer in the integration process of European defence dossiers which, so far, has followed a distinctively intergovernmental logic.¹¹ Yet, catalysed by EDF seed money drawn from the EU's Multiannual Financial Framework, the implementation of PESCO projects is generating a momentum of 'positive' European integration.¹² In institutional terms, this includes a new Directorate General for Defence Industry and Space (DG DEFIS) of the Commission, which cooperates with the High Representative (HR), who is supported by the European External Action Service (EEAS), the European Defence Agency (EDA), and the Council – each within their respective spheres of competence. In regulatory terms, this momentum is generating a fabric of soft and hard law that goes beyond the 2009 Directives on intra-EU procurement and transfers of defence-related products and deals with, among other things, export controls on dual-use goods, and the protection and development of critical technologies related to the fifth industrial revolution (cyber, artificial intelligence, etc.).¹³ These developments place the Commission – a genuinely supranational actor – at the heart of new EU defence projects.¹⁴ The same cannot be said about the EP, however.

In fact, while the EP is involved as a co-legislator in the market-oriented developments of defence (industries) at the EU level (such as the EDF), the institution's role in relation to CSDP dossiers remains very modest in comparison to any other EU policy field. This is because the CSDP is modelled on an intergovernmental blueprint – in normative and institutional terms – that puts national, instead of supranational, actors in charge of defining and conducting the policy based on distinct procedures and instruments.¹⁵ Hence, despite the significant security and defence expansion at the EU level that is likely to continue, the CSDP role of the EP has not been formally recalibrated to fit the new, far more 'Europeanised' realities, such as PESCO or the European Peace Facility (EPF).

Yet, the rapidly growing scope of CSDP activities and initiatives raises the question of whether the current law and practice regarding the competence reach of the EP is compatible with the principles of EU law, particularly democracy and institutional balance. Are the information and consultation rights of the EP fully honoured? Is the EP's advisory function effective? And how far do the EP's budgetary competences extend to new security and defence initiatives? These are only some of the questions prompted by the incremental integration of EU security and defence dossiers in relation to democratic scrutiny.

¹⁰ Steven Blockmans, 'The EU's Modular Approach to Defence Integration: An Inclusive, Ambitious and Legally Binding PESCO?' (2018) 55 *Common Market Law Review* 1785; Pierre Haroche, 'Supranationalism Strikes Back: A Neofunctionalist Account of the European Defence Fund' (2019) 26 *Journal of European Public Policy* 853.

¹¹ For a thorough study of 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).

¹² Steven Blockmans and Macchiarini Crosson, Dylan, 'PESCO: A Force for Positive Integration in EU Defence' (2021) 26 *European Foreign Affairs Review* 87.

¹³ For an in-depth legal analysis of these developments, see 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).

¹⁴ This development marks the (preliminary) end of a long-lasting struggle led by the Commission in order to 'supranationalise' certain defence dossiers (i.e. defence procurement). An account of this struggle can be found in Michael Blauburger and Moritz Weiss, "'If You Can't Beat Me, Join Me!'" How the Commission Pushed and Pulled Member States into Legislating Defence Procurement' (2013) 20 *Journal of European Public Policy* 1120.

¹⁵ An overview of CSDP actors, procedures, and instruments can be found in Panos Koutrakos, *The EU Common Security and Defence Policy* (Oxford University Press 2013).

The EP, for its part, has repeatedly stated that primary law would warrant significantly more parliamentary involvement in CSDP matters than what the current status quo offers.¹⁶ The EP has furthermore highlighted the democracy and legitimacy implications of the present situation, calling for a comprehensive implementation of primary law, in particular Article 36 TEU.¹⁷ If such statements could be corroborated in legal terms, then this would indeed expose an important gap between theory and practice.

Against this backdrop, the present in-depth analysis sets out (a) to outline the breadth and depth of the EP's democratic scrutiny in relation to CSDP deriving from Treaty provisions, secondary law, and from practice; and (b) to assess whether the current arrangements lag behind the rights and principles enshrined in primary law.

1.2 Research questions

This in-depth analysis pursues a **twofold goal**. First, it seeks to unravel the EP's prerogatives in the CSDP field according to existing legal and institutional arrangements. Secondly, it aims to understand what the EP's involvement in EU security and defence matters could or should look like to realise the full potential of democratic scrutiny over the CSDP in line with a range of the principles of EU law – notably, the principles of democracy and institutional balance.

Accordingly, the study intends to respond to **two sets of questions**, namely:

1. What is the current legal framework providing for the EP's democratic scrutiny over CSDP matters, and how has this framework come about? Which stated and implicit objectives do the Treaties contain, also in relation to security and defence matters?
2. Are there discrepancies between the stipulations and potential of the Treaties and the actual practice? If so, how can Treaty objectives and policy practice be reconciled?

1.3 Methodology

With a view to responding to these interrelated questions, the analysis rests on a research design that allows exploration of both the **law and practice of the EP's involvement in CSDP matters**. Hence, a thorough desk study of legal and para-legal sources, and their discussion and contextualisation in the academic literature, is supplemented by empirical insights gained primarily through semi-structured interviews, but also relevant statistics on EP activities.

As far as the legal and para-legal sources are concerned, the study covers EU law, relevant jurisprudence (by the Court of Justice of the EU), selected policy documents, and third-party reports. As far as the empirical material is concerned, semi-structured interviews were conducted in February and March 2022 with seven respondents affiliated with the EP, the Commission, and the EEAS. The authors tried, but were unable to talk to officials of the Council. An anonymised list of interview partners can be found in the Annex, together with a sample of the interview questions. Moreover, the analysis includes data on parliamentary practice as retrieved from the EP's (online) repository and activity reports.

¹⁶ 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)).

¹⁷ EP annual report on CSDP implementation 2021 (2021/2183(INI)); European Parliament resolution of 20 January 2021 on the implementation of the Common Security and Defence Policy – annual report 2020 (2020/2207(INI)).

2 Legal and institutional status quo regarding the EP's powers in CSDP

2.1 The legal and institutional particularities of CSDP

At the EU level, **security and defence is an integration and codification latecomer**. The Common Security and Defence Policy (initially called the European Security and Defence Policy) was only launched 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 Common Foreign and Security Policy (CFSP),¹⁸ which itself had only been added to the EU edifice some years earlier with the Treaty of Maastricht. At subsequent Council meetings in 1999 and 2000, national executives went on to create the first Brussels-based CSDP administrations and set out strategic targets in terms of capacities and activities.¹⁹ When the Treaty of Nice (which eventually codified the CSDP in EU primary law)²⁰ came into force in 2003, the first CSDP military missions and military operations were already underway in Bosnia and Herzegovina.

Almost 20 years after its inception, the **Treaty of Lisbon defined the CFSP as a 'competence' of the EU** (Article 24(1) TEU and Article 2(4) TFEU) for the first time. Since the CSDP's legal geography in the Treaties falls under the CFSP, this confirms that it is a policy that 'belongs' to the EU and is separate from the national foreign policies of the Member States.²¹ Despite the qualifying 'C' (i.e. 'Common') in the name, the CSDP is thus *not* a mere intergovernmental process between the Member States, as was the traditional view espoused in academic literature.²² This is confirmed by the obligation of loyal cooperation and solidarity on the part of the Member States, which must 'support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity' (Article 24(3) TEU). In line with Article 42(7) TEU, there is even a duty of mutual aid and assistance in the event of an armed attack. The respective competences of the EU and its Member States in matters of foreign, security, and defence policy can thus best be qualified as 'parallel competences', the actions of the Member States only being constrained by their duty of loyalty.²³

Despite this parallel exercise of competences, the **CSDP operates as an intergovernmental process controlled by the Member States**. Article 42(4) TEU, according to which CSDP decision-making is based on unanimity, is indicative of this. The possibility of qualified majority voting in the Council has never been used in this domain, not least because the *passerelle* clause on CFSP decision-making set out in Article 31 TEU is not applicable to decisions having military or defence implications (Article 31(4) TEU). This said, some decisions regarding PESCO can be taken on the basis of qualified majority voting, such as the inception of PESCO or the decision of joining or leaving PESCO (Article 46(2)-(5) TEU). Furthermore, the major strategic decisions in CSDP are taken at the level of the Heads of State and Government by the European Council, which acts by unanimity in the CFSP realm (Article 31(1) TEU). According to Article 24(1) TEU, the scope of the CSDP is potentially very wide, as it may cover 'all questions relating to the Union's

¹⁸ 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.

¹⁹ For an overview of developments, see Dijkstra (n 11) 60–67.

²⁰ Most importantly, the Political and Security Committee (PSC) was codified in primary law through Art 25 TEU (Nice).

²¹ 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 E.g. Piet Eeckhout, *EU External Relations Law* (2nd edn, Oxford University Press 2011) 166–168; Daniel Thym, 'The Intergovernmental Constitution of the EU's Foreign, Security & Defence Executive' (2011) 7 *European Constitutional Law Review* 453, 466.

²³ Marquardt (n 21).

security'. This can be explained by the nature of security and defence policy, which is governed by often unpredictable international developments.²⁴

From a legal point of view, the role of **the European Parliament in CFSP/CSDP has not significantly changed from before the Treaty of Lisbon**. Pursuant to Article 36 TEU, the High Representative of the Union for Foreign Affairs and Security Policy (hereafter HR) has the obligation to regularly inform the EP on the most important aspects of the CFSP (and thus CSDP), and to duly take into consideration the views expressed. The EP is thus only involved sideways in the design and implementation of the CFSP/CSDP. In practice, however, the EP plays a relatively important role in exercising scrutiny over the CFSP, which it derives from its broader parliamentary prerogatives. First, the EP oversees the Commission's work, with the legal possibility of a vote of no-confidence (Article 17(8) TEU) sanctioning the Commission as a collective body. Moreover, the Parliament must approve the composition of the Commission as a college, and Article 17(7) TEU makes particular reference to the HR in his capacity as Vice-President (VP) of the Commission. Secondly, the EP can exert real influence thanks to the power that it wields (together with the Council) over the budget. The Interinstitutional Agreement on budgetary discipline sets out practical modalities that allow the EP to supervise the implementation of the CFSP budget, including the CSDP realm.²⁵ Each of these competences will be analysed in further detail in Section 2.3.

Prior to this discussion, the next Section (2.2) will briefly describe the parliamentary landscape in the CSDP realm which, next to the dedicated EP (sub)committees, also entails 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 NATO Parliamentary Assembly, on the other.

2.2 Institutional arrangements regarding parliamentary oversight

The **European Parliament's Committee on Foreign Affairs** (AFET) deals with most questions of EU external action and is responsible for interparliamentary assemblies for matters falling under its remit.²⁶ It is composed of 75 members (and 74 substitutes) and has two subcommittees: the Subcommittee on Human Rights (DROI), and the Subcommittee on Security and Defence (SEDE) which is composed of 30 members (and 29 substitutes).

The **role and competences of SEDE** are defined by the EP's Rules of Procedure, however these only vaguely state that it assists AFET in its task to promote, implement, and monitor the CSDP.²⁷ According to its own website, the remit of SEDE – which is the key actor around whose competences this study revolves – is 'to provide a forum for thorough public debate on, and detailed parliamentary scrutiny of, all EU action in the area of the CSDP, whether it concerns institutions, capabilities or operations.'²⁸ As such, the subcommittee 'intends to make an active contribution to the formulation of EU security and defence policy'.²⁹

Although the European Parliament has accrued powers through various treaty amendments made in recent decades, the oft-lamented democratic deficit of the EU has been a constant in discussions about its

²⁴ See Article 28(1) TEU: 'Where the international situation requires operational action by the Union'.

²⁵ 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 [2020] OJ L1 433/28.

²⁶ Annex VI, Powers and responsibilities of standing committees to the Rules of Procedure of the European Parliament, 9th parliamentary term, September 2021.

²⁷ *ibid.*

²⁸ <https://www.europarl.europa.eu/committees/en/sede/about> (accessed 14 April 2022).

²⁹ *ibid.*

decision-making processes.³⁰ The Treaty of Lisbon aimed to address the problem by reinforcing the role of both the EP and its national counterparts, while stressing the benefits of interparliamentary cooperation. Regarding EU affairs in general, the **Conference of Community and European Affairs Committees of the parliaments of the European Union (COSAC)** has been perceived as a useful tool for members of national parliaments and the EP to cooperate on improving the legitimacy of EU affairs by directly scrutinising its day-to-day work, and also by influencing EU policymaking.³¹ Regarding foreign affairs, security and defence more specifically, a designated interparliamentary forum has been institutionalised since 2012, the so-called **Interparliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defence Policy** (hereafter **IPC for CFSP/CSDP**). While this biannual encounter of parliamentarians offers a welcome platform for exchanging information and best practices between 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, not least because of turf wars in the interparliamentary field³² and the rather formalistic exchanges of information between the EP and national parliaments.³³

Building closer relations with strategic partners (including NATO and the 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 this study, the EP **Delegation to the Parliamentary Assembly of NATO** (DNAT) is the most relevant. Composed of 10 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 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 OSCE insofar as they relate to pan-European security.

We will now take a closer look at the competences the EP holds in relation to EU security and defence, with a particular focus on CSDP matters.

2.3 EP competences in relation the CSDP

Before detailing the EP's competences in relation to CSDP dossiers, it is wise to recall some fundamental **legal and institutional particularities of EU security and defence**. That is because in the EU's constitutional and institutional framework, security and defence stands out: the CSDP is fundamentally intergovernmental in terms of its actors, procedures, and instruments.³⁴ As previously mentioned, Member States – not supranational institutions – set the tone in the CSDP realm. National actors make strategic and operational choices and are in charge of putting these choices into practice.

³⁰ 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.

³¹ For a detailed discussion of the role, challenges, and limits of COSAC, see Part IV of the edited volume Nicola Lupo and Cristina Fasone (eds), *Interparliamentary Cooperation in the Composite European Constitution* (Hart Publishing 2016).

³² Anna Herranz Surrallés, 'The EU's Multilevel Parliamentary (Battle)Field: Inter-Parliamentary Cooperation and Conflict in Foreign and Security Policy' (2014) 37 *West European Politics* 957.

³³ Daniel Schade, 'Parlamentarische Kontrolle durch Vernetzung? Eine kritische Analyse der Rolle der Interparlamentarischen Konferenz für die GASP/GSVP' (2019) 42 *integration* 118; Ian Cooper, 'The Inter-Parliamentary Conferences of the European Union: Discussion Forums or Oversight Bodies' in Kolja Raube, Meltem Müftüler-Baç and Jan Wouters (eds), *Parliamentary Cooperation and Diplomacy in EU External Relations. An Essential Companion* (Edward Elgar 2019).

³⁴ Koutrakos (n 15) 23–55.

This **intergovernmental governance scheme** is encapsulated in Article 24(1) TEU, according to which the European Council, the Council, and the HR are the central decision-making and implementation figures in EU security and defence. At the same time, the Commission and the Parliament are each bestowed with a 'special role', and the jurisdiction of the Court of Justice of the EU (CJEU) over CFSP and CSDP matters is significantly limited.

As regards the special role of the EP in EU security and defence, the policy's distinctly intergovernmental setting offers the institution, on first impression, only **limited formal parliamentary competences**.³⁵ The legal and institutional framework of the CFSP has even been said to resemble a 'parliamentary vacuum',³⁶ and a cursory look at the pertinent primary law provisions seems to corroborate this finding in relation to CSDP matters.³⁷ As a matter of fact, the EP is not mentioned once in the Treaty chapter dedicated to CSDP matters (Chapter 2, Section 2, TEU). Hence, one can reason that the EP derives its scrutiny powers over the CSDP 'indirectly' – that is, either *incidentally* from primary or secondary law provisions governing both the CFSP and the CSDP (such as Articles 24, 36, and 41 TEU), or *inherently* from powers the EP holds more generally in relation to budgetary matters, law-making or appointment procedures.³⁸ The limited scope of the EP's CSDP prerogatives, on the one hand, and the 'indirect' conferral of these prerogatives, on the other, has important normative and analytical implications. As far as the normative effect is concerned, the precise reach of the EP's competences in relation to the CSDP derive from the larger body of EU security and defence rules – that is, by reading jointly CSDP and non-CSDP primary and secondary law stipulations. As far as the analytical implication is concerned, the spread of pertinent rules and procedures across policies means that a thorough study of the EP's involvement in CSDP matters needs to go beyond the arrangements shaping that precise policy field to comprise an analysis of EU law provisions that regulate security and defence issues more generally. The legislative and budgetary competences of the EP in the EDF context is a case in point.³⁹ What's more, due to limited scholarly attention to the subject matter, a thorough analysis of the precise contours of the EP's competences in the CSDP realm is so far missing.

That said, the **central (primary) law reference regarding the EP's role in CSDP matters is Article 36 TEU**, which reads as follows:

The High Representative of the Union for Foreign Affairs and Security Policy shall regularly consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy and inform it of how those policies evolve. He shall ensure that the views of the European Parliament are duly taken into consideration. Special representatives may be involved in briefing the European Parliament.

The European Parliament may address questions or make recommendations to the Council or the High Representative. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.

³⁵ 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); Koutrakos (n 15); Ben Crum, 'Parliamentarization of the CFSP through Informal Institution-Making? The Fifth European Parliament and the EU High Representative' (2006) 13 *Journal of European Public Policy* 383.

³⁶ Daniel Thym, 'Beyond Parliament's Reach? The Role of the European Parliament in the CFSP' (2006) 11 *European Foreign Affairs Review* 109, 110–111.

³⁷ Carolyn Moser, *Accountability in EU Security and Defence. The Law and Practice of Peacebuilding* (Oxford University Press 2020) 149–152.

³⁸ The EP is indeed mandated to elect the President of the Commission as well as the college of Commissioners, including the HR/VP. See Article 17(7) TEU.

³⁹ See on this issue Fiott (n 35).

The above article interlaces **three dimensions of parliamentary involvement**, namely: (i) the provision of information; (ii) a supervisory and deliberative mandate; and (iii) an advisory function. More precisely, Article 36 TEU imposes on the HR an obligation to regularly share information with the EP on EU security and defence matters – and hence indirectly offers the EP a right to information in this policy field. It moreover outlines the EP's core supervisory and deliberative tasks in the CFSP and CSDP realm. Importantly, it also lays down an advisory function with respect to key CSDP elements. While this is not made explicit in the provision at hand, the three different dimensions of parliamentary involvement set out by Article 36 TEU are interdependent: the article grants the EP a right to information which, in turn, allows the institution to diligently perform its advisory, as well as deliberative and supervisory, functions, respectively. This interdependence might explain why the three dimensions are brought together in one single Treaty provision and, moreover, tend to be conflated in official documents and academic analyses on the matter. Yet, it is worth disentangling the three dimensions of parliamentary involvement circumscribed by Article 36 TEU to grasp the EP's codified role in relation to CSDP matters in its entirety. Indeed, the three dimensions merit being unpacked separately, as they enable the EP to exercise different, although complementary, competences.

Considering the intergovernmental blueprint of the CSDP, the following sub-sections will study in detail the competences the EP holds in the CSDP realm based on a **positivist reading of existing black letter law**. Once we have outlined the EP's right to information, the analysis will unfold along four categories of competences – namely, (a) supervisory and deliberative; (b) advisory; (c) law-making and law-shaping; and (d) budgetary – and discuss relevant rules and regulations accordingly. Drawing on these insights, Section 3 will then offer a contextual and teleological interpretation of the existing legal arrangements, while extending the study to pertinent legal principles, jurisprudential developments, and practice.

2.3.1 Right to information

It goes without saying that the provision of appropriate and sufficient information is a prerequisite for parliamentary activity – particularly in a policy field dominated by executive national actors. **Article 36 TEU accommodates this fundamental need for information** by requiring the HR to regularly brief the EP about CSDP developments and, hence, **conferring the EP a right to information**. While primary law remains vague on the precise contours of this right to information in terms of substance, procedure, and timing, several secondary law sources and official documents substantiate and supplement the information obligation arising for the HR from Article 36 TEU. We will address these additional sources in turn.

First and foremost, the **Declaration on political accountability**,⁴⁰ issued in 2010 by the then HR Catherine Aston, substantiates Article 36 TEU. It outlines the procedural rules regulating the interaction between the HR and the EP,⁴¹ and thereby significantly contributes to the **operationalisation of the HR's information and reporting duties**. The declaration notably reiterates that the provision of information on CFSP/CSDP dossiers will, inter alia, continue to take place in the format of Joint Consultation Meetings (para 1), which senior EEAS staff, as well as the Chair of the Political and Security Committee (PSC), attend. Importantly, these meetings are supposed to deal with both ongoing CSDP business, and activities that are under preparation, which, in turn, allows the EP to receive information on prospective undertakings. The document furthermore acknowledges that, in line with Article 218(10) TFEU, the EP will immediately and fully be informed about the negotiation of international agreements, including those in the area of

⁴⁰ Declaration by the High Representative on political accountability (2010), Council Doc. 12401/10.

⁴¹ Bjorn Kleizen, 'Mapping the Involvement of the European Parliament in EU External Relations – a Legal and Empirical Analysis', *CLEER working papers 2016/4*, vol. *CLEER working papers 2012/1* (Centre for the Law of the EU External Relations (CLEER) 2016) 19.

CFSP/CSDP (para 2). In addition, the declaration assures that newly appointed Heads of Delegations and Special Representatives will appear before AFET for an exchange of views, if requested by the EP (para 5). In a similar vein, the document states that the HR will facilitate that Heads of Delegations, Special Representatives, Heads of CSDP missions and operations, as well as senior EEAS officials appear before the EP to provide Members of the European Parliament (MEPs) with regular briefings (para 7).

The **Decision establishing the EEAS**, adopted in 2010,⁴² **adds an additional legal layer to the EP's right to receive information in the CSDP realm.** Without going into detail about the Decision at stake,⁴³ it is sensible to note that it confirms, and even enlarges, the EP's information prerogatives.⁴⁴ Next to underlining that the EEAS shall extend appropriate support and cooperation to other Union institutions (in particular, the European Parliament)⁴⁵, the Decision offers the EP a legal basis for requesting information from EU delegations that it deems necessary for its scrutiny of EU external action in third countries.⁴⁶ It is worth adding that, with regard to EU Delegations, there is an agreement between the EEAS and the EP according to which the latter can receive key reports from EU Delegations containing classified information.

In addition, an **Interinstitutional Agreement** on the EP's access to sensitive information in the field of the CSDP, which was concluded in 2002, **grants the EP a right to consult classified (CSDP) information.** According to the Interinstitutional Agreement (IIA) in question, the EP – that is, the President of the EP or the Chairpersons of several committees, including SEDE – may request information from the Council Presidency or the HR on CSDP developments.⁴⁷ In the event that the requested information is of a sensitive nature, the IIA provides for specific information sharing arrangements – notably, a special committee that can gain access to sensitive information (documents classified *confidentiel UE* and above) on the premises determined by the Council, composed of the Chairperson of AFET and four specifically designated MEPs,⁴⁸ which in practice belong to different committees (AFET and SEDE) and have different party affiliations. Yet, the IIA so far only applies to documents labelled top secret, secret, or confidential, and does not cover *restreint UE* documents, which constitute the major part of classified documents contained in the Council's register.⁴⁹ In addition, *limité* documents – internal documents used in the course of decision-making which account for roughly one third of Council documents – are equally excluded from the existing access to information arrangements.⁵⁰ These access limitations and the alleged Council tendency of over-classification notwithstanding,⁵¹ the IIA on sensitive information considerably bolsters the EP's right to information enshrined in Article 36 TEU, not least because it allows the institution to proactively reach out

⁴² Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service [2010] OJ L 201/30, and Annex thereto.

⁴³ 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).

⁴⁴ Guri Rosén and Kolja Raube, 'Influence beyond Formal Powers: The Parliamentarisation of European Union Security Policy' (2018) 20 *The British Journal of Politics and International Relations* 69, 7; Kolja Raube, 'The European External Action Service and the European Parliament' (2012) 7 *The Hague Journal of Diplomacy* 65, 75.

⁴⁵ Article 3(4), Council Decision 2010/427/EU [2010] OJ L 201/30. See also point 6 of the Decision's preamble.

⁴⁶ Article 5(7), *ibid.* Kleizen (n 41) 15.

⁴⁷ 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 [2002] OJ C 298/01. In times of crisis, this information shall be provided timely in line with point 3.2 of the IIA.

⁴⁸ Point 3.3, *ibid.*

⁴⁹ Moser (n 37) 112.

⁵⁰ *ibid.* 160; David Galloway, 'Classifying Secrets in the EU' (2014) 52 *Journal of Common Market Studies* 668, 672; Deirdre Curtin, 'Overseeing Secrets in the EU: A Democratic Perspective' (2014) 52 *Journal of Common Market Studies* 684, 685–686.

⁵¹ Guri Rosén, 'Secrecy versus Accountability. Parliamentary Scrutiny of EU Security and Defence Policy', *ARENA Working Paper 1/2014* (ARENA Centre for European Studies 2014) 15.

for information, and entertain and shape a working relationship with the Council and other relevant Brussels-based actors around security and defence issues.⁵² What's more, since current HR Josep Borrell came into office in 2019, there has been an EEAS-EP working group on classified information and, within the EP, a Special Committee in charge of handing such information. Whether and how information contained in classified documents can be used in the work of the EP – for instance, an own-initiative report or a resolution – is so far unclear, particularly if not all (shadow) rapporteurs have access to the classified sources.⁵³

Another stream of information, briefly touched upon above, flows from **Article 218(10) TFEU on the conclusion of international agreements, which reinforces the EP's right to information in the field of CFSP/CSDP**. It requires that, when the EU negotiates and concludes international agreements, the EP be 'immediately' and 'fully' informed about 'all stages of the procedure'. The CJEU's jurisprudence on the matter offers two important clarifications in this regard: first, the Court explained that Article 218(10) TFEU sets out an essential procedural requirement, and secondly, it held that this requirement applies to all international agreements, including to those exclusively relating to CFSP and CSDP matters.⁵⁴ In addition, negotiations are ongoing under the 2016 Better Law-Making Agreement to improve arrangements for cooperation and information-sharing on international agreements, particularly in relation to their negotiation and conclusion. Depending on the outcome of these negotiations, the EP might see its right to information, once more, bolstered.⁵⁵

Finally, the EP is to be informed in the event a **crisis response** is triggered, in accordance with Article 222 TFEU⁵⁶ read together with the relevant Council Decision detailing the implementation arrangements.⁵⁷ Article 222 TFEU – the Union's solidarity clause – applies to both terrorist attacks and natural and man-made disasters. Importantly, such a response can also involve military resources, as underlined by Article 222(1) TFEU. What's more, responses having a defence implication are to follow usual CFSP decision-making procedures as set out by Article 31(1) TEU.⁵⁸ Reliance on CSDP instruments – including those capabilities developed under PESCO and with EDF means – would hence be possible in this context, but only if Member States decided so, and not in the form of a CSDP operation or mission, as the use of CSDP means within the Union is not foreseen by primary law.⁵⁹

2.3.2 Supervisory and deliberative mandate

As previously mentioned, Article 36 TEU also lays down the second dimension of parliamentary involvement in CSDP matters by granting the EP a supervisory and deliberative mandate. More precisely, the second indent of said Article spells out three types of **parliamentary tasks that flow from its supervisory and deliberative role**. First, the EP is mandated to deliberate bi-annually on the state of play

⁵² Moser (n 37) 165; Marianne Riddervold and Guri Rosén, 'Beyond Intergovernmental Cooperation: The Influence of the European Parliament and the Commission on EU Foreign and Security Policies' (2015) 20 *European Foreign Affairs Review* 399, 408.

⁵³ This matter is discussed in more detail in Section 4.1.

⁵⁴ Case C-263/14 *European Parliament v Council (Tanzania Agreement)* [2016] EU:C:2016:2436; Case C-658/11 *European Parliament v Council (Mauritius Agreement)* [2014] EU:C:2014:2025.

⁵⁵ 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* (Palgrave Macmillan 2020) 112.

⁵⁶ 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).

⁵⁷ Council Decision 2014/415/EU of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause [2014] OJ L 192/53.

⁵⁸ Article 222(3) TFEU.

⁵⁹ See Article 42(1) TEU.

of the CFSP and the CSDP. It does so on the basis of the yearly report which the Council drafts on the implementation of these policies. Secondly, the EP has an inquisitive function, as it can ask parliamentary questions to the HR and the Council on CSDP matters. Thirdly, the EP can address recommendations to these two actors in said policy field.⁶⁰ This supervisory and deliberative role covers the CSDP in its entirety.

Without pre-empting the analysis of parliamentary practice developed under Section 4 of this study, it can be stressed here that these three formal tasks are accompanied by a variety of **additional parliamentary activities in line with the EP's internal rules and work method**.⁶¹ Importantly, 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.⁶² The voting procedure of these annual shadow reports creates crucial momentum in terms of parliamentary debate – and even agenda-setting – that tends to generate attention with Brussels-based institutions and beyond. Indeed, next to drawing a detailed picture of key events, ongoing activities, initiatives, and institutional matters, in the CFSP and CSDP realms respectively, the reports outline the EP's vision on important (future) developments, including strategic choices.⁶³ For instance, the latest annual report, authored by Nathalie Loiseau, chairperson of the SEDE committee, reiterates the need for a fully-fledged military headquarters for EU operations,⁶⁴ and moreover, advocates for cybersecurity to play a much more prominent role in CSDP activities, including in missions and operations.⁶⁵ In addition to drawing up the yearly shadow reports on the progression of the CFSP and CSDP respectively, the EP proactively seeks information and expertise via public hearings, exchanges of views, workshops, conferences, and commissioned research, such as this in-depth analysis. Since the beginning of the current parliamentary term in 2019, SEDE has (co-) organised more than a dozen public hearings with experts on defence-related topics,⁶⁶ and commissioned some 15 studies and in-depth analyses (this one not included).⁶⁷ MEPs also undertake field visits to better understand the situation in third countries, crisis regions, and deployment contexts. The Parliament's fact-finding mission to the contact-line in Donbas just before the invasion of Ukraine by Russia constitutes a recent example.

The EP's supervisory and deliberative role in the CFSP/CSDP field is furthermore increased by the abovementioned **decision setting up the EEAS**. Several provisions of this Council decision enhance the democratic accountability of the HR and the EEAS,⁶⁸ which, in turn, bolsters the EP's scrutiny powers.⁶⁹ Noteworthy in this respect is that, next to the HR senior, EEAS staff will take part in joint meetings with the EP (paras 1 and 6) and provide (requested) briefings (paras 5 and 7).

Deliberation and supervision also takes place in the context of **budgetary matters that concern CSDP activities** funded through the EU's general budget. In this context, Article 41 TEU is the core reference, supplemented by the IIA on budgetary discipline. As the budgetary competence of the EP is discussed in

⁶⁰ This third task will be dealt with in more detail under the heading 'advisory function' (see Section 2.3.3).

⁶¹ 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, EP Rules of Procedure (2021).

⁶² Moser (n 37) 162–163.

⁶³ On the EP's law-shaping role, see Section 2.3.4 below.

⁶⁴ EP annual report on CSDP implementation (2021) para 31.

⁶⁵ *ibid* 43.

⁶⁶ For further details on dates and topics, see <https://www.europarl.europa.eu/committees/en/sede/events/events-hearings> (accessed 14 April 2022).

⁶⁷ For an overview of the commissioned studies and analyses, see <https://www.europarl.europa.eu/committees/en/sede/supporting-analyses/latest-documents> (accessed 14 April 2022).

⁶⁸ Leendert Erkelens and Steven Blockmans, 'Setting Up the European External Action Service: An Institutional Act of Balance', *CLEER working papers 2012/1* (Centre for the Law of the EU External Relations (CLEER) 2012) 26.

⁶⁹ Rosén and Raube (n 44); Raube (n 44) 75.

detail below, it suffices to mention here that parliamentary debate and supervision takes place along the entire budgetary cycle – that is, before, while, and after EU money is spent. The EP is involved in budget planning as it co-decides on the EU budget, including on CSDP budget appropriations; it is also kept in the loop on current disbursements, and it casts its vote on past spending in the context of the discharge procedure.⁷⁰

Finally, as mentioned above, the EP fulfils its deliberative and supervisory role in the context of **interparliamentary encounters**. Noteworthy in this regard is the Interparliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defence Policy (hereafter **IPC for CFSP/CSDP**) that takes place bi-annually under the rotating presidency, either in the country of the presidency or at the EP.⁷¹ The IPC for CFSP/CSDP offers a welcome platform for exchanging information and best practices between national parliamentary and the EP in relation to the CFSP/CSDP⁷².

2.3.3 Advisory function

The **third dimension of parliamentary involvement set out by Article 36 TEU** is the EP's **advisory function** in relation to the CSDP.⁷³ The pertinent Treaty provision stipulates that the HR shall: (a) regularly consult the EP on crucial CSDP matters; and (b) ensure that the institution's view are duly taken into consideration. Before addressing these two elements, it is crucial to mention that the EP's advisory function depends on the regular provision of timely and sufficient information by the HR on the status quo and future developments of the policy, as foreseen by the first indent of Article 36 TEU.

This said, let us first turn to consultations between the EP and the HR. It worth remembering that the EP's advisory function is enshrined in the Treaty. It is not the fruit of informal arrangements, but originates from primary law stipulating that the **EP has an explicit right to express its views on major CSDP dossiers**.⁷⁴ Yet, the contours of this right are only vaguely codified. This has three implications. First, the concrete **format and procedure** of the EP's advisory input is not specified by Treaty law, which merely says that: (a) the 'consultation' is to take place between the HR and the EP; and that (b) it is to occur regularly. The law remains silent as to the format and procedure; that is, whether the EP's advice is to be sought and delivered in oral or written form – or both – and in light of which developments or events. Secondly, Article 36 TEU remains imprecise as to the **frequency** with which the EP ought to be consulted by the HR. While the provision requires a 'regular' consultation, primary law does not set out precise intervals or define contexts in which such consultations ought to happen (such as the adoption of key strategy documents or the launch of a novel security and defence initiative). Finally, and importantly, there is no limitation in terms of **substance**. Indeed, the advisory function of the EP on crucial elements of the CSDP is not thematically limited to specific dossiers, but covers the entire policy. Theoretically, then, the institution can make its position known on a wide array of issues, ranging from operational CSDP activities and PESCO developments to the work of EDA, and can also cover any aspect tied more broadly to the 'progressive framing of a common Union defence policy', to use the wording of Article 42(2) TEU. This means that the EP can extend its advice to both precise and general policy issues, institutional matters, and legislative

⁷⁰ For further details, see Section 2.3.5 on the EP's budget competence.

⁷¹ Article 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).

⁷² For a more detailed discussion of the realities of interparliamentary cooperation in the CSDP realm, see in particular Schade (n 33).

⁷³ In order to avoid any confusion with the EP's prerogatives in the context of the consultation procedure (special legislative procedure) laid down by Article 289 TFEU, we refer to this parliamentary CSDP competence as 'advisory function'.

⁷⁴ Crum (n 35) 389.

evolutions that directly or indirectly impact the CSDP, such as the EDF or the Strategic Compass. Furthermore, the EP is not constrained by law to restrict its input to the status quo and ongoing activities or current initiatives. Hence, it can express its opinions on past, present, and prospective CSDP and CSDP-related dossiers.

As a second step, it is important to understand what **follow-up or impact primary law foresees in relation to the EP's advisory input**. Again, codification is vague in this context: the HR shall ensure that the views expressed by the EP are 'duly taken into consideration'. Without going into detail about practice or potential legal readings of this Treaty stipulation,⁷⁵ scholars have already emphasised that the requirement to take the EP's views duly into consideration provides the EP with an opportunity to shape EU foreign and security policy issues.⁷⁶ Interestingly, in his confirmation hearing before the EP in autumn 2019, Commission Vice-President designate Maroš Šefčovič in charge of **interinstitutional relations, better policymaking and strategic foresight** established the extension of the partnership of the EP and the Commission 'beyond the legislative domain' as one of his priorities, stating that it should apply more fully throughout the whole policy cycle.⁷⁷ Hence, the current Commission seems to attach importance to feeding the EP's views into the policy cycle, also in relation to non-legislative CSDP dossiers.

The EP's advisory function is corroborated by both the **Declaration on Political Accountability** (2010) and the **Decision establishing the EEAS** (2010). While the latter mentions both elements of the consultation requirement – namely, the consultation, as such, and the obligation to appropriately feed the EP's views into the political process⁷⁸ – the former only mentions the consultation requirement set out by Article 36,⁷⁹ but remains silent concerning the requirement imposed on the HR to ensure that the EP's views are duly taken into consideration.

Another dimension of the EP's advisory function is that the institution is mandated to **make recommendations to both the HR and the Council on CSDP issues by virtue of the second indent of Article 36 TEU**. Mirroring the thematic indeterminacy of the 'consultation requirement', these recommendations can, in principle, concern all CSDP and CSDP-related topics without imposing limitations in terms of substance. In addition, the EP's Rules of Procedure stipulate that the institution can draw up draft recommendations for the Commission.⁸⁰ So far in the current parliamentary term, SEDE has produced six own-initiative reports on CSDP-topics (the two annual shadow reports on the implementation of CSDP included), which led to the adoption of five resolutions⁸¹ and one

⁷⁵ The pertinent practice is analysed in Section 4, and possible legal interpretations of this Treaty clause are outlined in Section 3 of this study.

⁷⁶ Péter Bajtai, 'Democratic and Efficient Foreign Policy?', *EUI Working Papers RSCAS 2015/11* (European University Institute, Robert Schuman Centre for Advanced Studies 2015) 15.

⁷⁷ For a written summary of the hearing, please see [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/629837/IPOL_BRI\(2019\)629837_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/629837/IPOL_BRI(2019)629837_EN.pdf) (consulted 18 March 2022).

⁷⁸ Point 6 of the Preamble, Council Decision 2010/427/EU [2010] OJ L 201/30.

⁷⁹ Declaration by the High Representative on political accountability (2010), Council Doc. 12401/10.

⁸⁰ Rule 118, para 1, EP Rules of Procedure (2021).

⁸¹ Namely, 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 20 January 2021 on the implementation of the Common Security and Defence Policy – annual report 2020 [2020/2207(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 7 October 2021 on the state of EU cyber defence capabilities [2020/2256(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)].

recommendation on PESCO.⁸² Two additional own initiative reports are still under preparation. SEDE has also contributed to the adoption of two legislative resolutions regarding the European Defence Fund.⁸³

Finally, the EP has a **consultative mandate in relation to the conclusion of certain international agreements**. Indeed, Article 218(6)(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 for which EP consent is required under Article 218(6)(a) TFEU – the Council can conclude an international agreement only after consulting the EP. The precise procedure for adopting the relevant EP resolution is laid down in the institutions Rules of Procedure.⁸⁴

2.3.4 Law-making and law-shaping role

Let us now turn to the EP's competences when it comes to law-making and law-shaping in the CSDP realm. While the **adoption of legislative acts is excluded from the CFSP/CSDP** under Article 24(1) TEU, the **Treaties still provide some leeway for both law-making and law-shaping**. The latter primarily originates 'indirectly' from the non-law-making powers the EP holds in the CSDP realm (i.e. its rights to information or its advisory function), which, in turn, allow the institution to make its position heard and potentially leave its mark on CSDP dossiers in which the EP is, on first impression, not involved. The EP's law-shaping potential derives chiefly from Article 36 TEU, which stipulates – as previously mentioned – 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 *all* (...) *questions* relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence' (Article 24(1) TEU). Indeed, the EP successfully and proactively uses recommendations or non-legislative resolutions to make its voice and positions heard in relation to security and defence dossier.⁸⁵ As previously mentioned, the EP's annual report on the state of the CSDP offers an important opportunity to emphasise certain topics and, hence, place them high(er) on the political agenda of other EU institutions. This agenda-setting role should not be confused with proper law-making competences, however.⁸⁶

That said, the EP has law-making and law-shaping options in the field of defence beyond the CSDP, particularly when it comes to common **defence industry**, where procedures and competences are governed by the TFEU. This can be illustrated by the introduction of the **EDF** (further discussed in Section 2.3.5), in which context the EP acted as a co-legislator. As the EDF was subject to the ordinary legislative procedure,⁸⁷ the file went through Parliament, where it was consequently assigned to the Committee on Industry, Research and Energy (ITRE). The EP's Committees on Foreign Affairs (AFET), Internal Market and Consumer Protection (IMCO), and Budget (BUDG) provided their opinions, and the adopted report called

⁸² 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)].

⁸³ 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)); 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)).

⁸⁴ Rules 114 and 118, EP Rules of Procedure (2021).

⁸⁵ Moser (n 37) 149–173.

⁸⁶ 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) 446.

⁸⁷ Unless stated otherwise, the ordinary legislative procedure as provided by Articles 289 and 294 TFEU applies. Articles 173(3), 182(4), 183 and 188(2) TFEU, on which the EDF is based, do in contrast to CFSP matters not fall under the special legislative procedure as defined by Article 298(2) TFEU and thus provide for full parliamentary involvement.

on the Commission to include several changes to the proposal – among others, that actions implemented under the envisaged fund comply with values and norms reflected in the relevant national, Union, and international law sources.⁸⁸ After several trilogue meetings in which a text was negotiated between the Parliament and the Council, ITRE endorsed the draft, and the plenary adopted the EDF Regulation in its first reading.⁸⁹ This 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, even if the legislative basis for these parliamentary competences falls outside the realm of CSDP.

The same applies to two **procurement** Directives, namely Directive 2009/43/EC, which intends to harmonise the procedures for transfers of CSDP-related products throughout the EU, and Directive 2009/81/EC, which aims to facilitate access for suppliers to the defence markets of other Member States. The common market legal basis of these two Directives, both of which seek to extend the principles of the internal market to the defence industry (which otherwise often benefits from exemptions under Article 346 TFEU)⁹⁰, provided for EP involvement in both the initial legislation and its update through the ordinary legislative procedure.⁹¹ Similarly, a Regulation 'setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of **dual-use items**'⁹² was adopted using the legal basis of Article 207(2) TFEU (outlining the Common Commercial Policy of the EU), and thus depending on the EP as a co-legislator.

The EP's law-making and law-shaping competences in the realm of CFSP are most pronounced in the **negotiation and conclusion of international agreements under Article 37 TEU**. As mentioned above, the procedure to negotiate and conclude such agreements is spelled out in Article 218(6) TFEU, stating that 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'⁹³. While one might deduce from this stipulation that the Parliament is not contributing to the process, the EP needs to consent to the conclusions of CFSP-related agreements. Indeed, the Council may only adopt decisions concluding accession agreements⁹⁴ and agreements with important budgetary implications for the Union⁹⁵ after obtaining the EP's consent. As accession treaties (Article 49 TEU), association agreements (Article 217 TFEU), and other EU international accords (Article 216 TFEU) may include a CSDP dimension, they constitute an area where EP consent is mandatory, which therefore grants the Parliament important law-making powers. Article 218(6)(a) TFEU further stipulates that the 'European Parliament and the Council may, in an urgent situation, agree upon a time-limit'⁹⁶ 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. Primary law grants the EP important information rights in relation to negotiation and conclusion of international agreements, including for

⁸⁸ [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630289/EPRS_BRI\(2018\)630289_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630289/EPRS_BRI(2018)630289_EN.pdf), 6 (accessed 14 April 2022).

⁸⁹ *ibid* 7.

⁹⁰ Article 346 TFEU provides Member States with exemption rules to protect their national security.

⁹¹ Cemal Karakas, 'Defence Industry Cooperation in the European Union. Rationale, Initiatives, Achievements, Challenges', *PE 690.607* (European Parliament 2021) 5.

⁹² Regulation (EU) 2021/821 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) [2021] OJ L 206/1.

⁹³ Article 218(6) TFEU. For a thorough (comparative law) discussion of the domestic and EU legal framework for the ratification and denunciation of international treaties, see Council of Europe (Venice Commission), 'Report on the Domestic Procedures of Ratification and Denunciation of International Treaties', Opinion No. 1045/2021, CDL-AD(2022)001, Strasbourg, 25 March 2022.

⁹⁴ Article 218(6)(a)(i).

⁹⁵ Article 218(6)(a)(iv).

⁹⁶ Article 218(6)(a).

those agreements that exclusively related to CFSP/CSPD matters, as the CJEU has clarified.⁹⁷ This **information right arises under Article 218(10) TFEU**, which stipulates that the ‘European Parliament shall be *immediately* and *fully* informed at all stages of the procedure’ (emphasis added). The EP’s right to information is corroborated by Article 218(6)(b), 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 it to shape such agreements by way of making its voice heard through these opinions. In this regard, the provision of information can be considered a prerequisite for the modest democratic scrutiny of the EP over CSDP matters, without which Parliament cannot effectively exercise its law-shaping role.⁹⁸

In addition, the EP enjoys law-shaping competences derived from its **right to request CJEU opinions on draft international agreements** in line with Article 218(11) TFEU. This provides the opportunity to ascertain ‘whether an agreement envisaged is compatible with the Treaties’⁹⁹ at the drafting stage, and not just at the time of its ratification. 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 CJEU for an opinion if it is not sure about or satisfied with the amendments made to the draft agreement.¹⁰⁰

The legal basis for the **PESCO** within the Union’s framework provides a purely intergovernmental basis by way of Council decisions, thus excluding the EP from any law-making or law-shaping in this area.¹⁰¹

CFSP sanctions (which may entail a CSDP dimension) are adopted by way of a Council decision that must be taken unanimously,¹⁰² based on a proposal of the HR. In order for the sanctions to take effect, the Council needs to adopt a regulation spelling out the details of implementation. This is based on a joint proposal of the Member States and the HR, requiring a qualified majority.¹⁰³ The EP has the right to be informed of the adopted measures, but is not granted any formal involvement within the decision-making process by the Treaties.¹⁰⁴

Generally, it can be stated that most of the law-making and law-shaping competences of the EP in CSDP matters do not arise from the Treaties themselves, but rather through different channels by which the Parliament makes its position heard during the legislative process. This role, in turn, depends on the availability of information, thus creating interdependencies between this area and its supervisory, budgetary, and advisory competencies.

2.3.5 Budgetary powers

The EP’s budgetary prerogatives constitute an important point of entry to exercise scrutiny over EU dossiers, including in the field of CSDP. The EP may use its budgetary power to scrutinise all policy areas

⁹⁷ Article 218(10); Case C-658/11 (*Mauritius Agreement*) [2014]; Case C-263/14 (*Tanzania Agreement*) [2016]; Declaration by the High Representative on political accountability (2010), Council Doc. 12401/10 pt 2.

⁹⁸ Moser (n 37) 161.

⁹⁹ Article 218(11) TFEU.

¹⁰⁰ The Commission, which is also entitled to request CJEU Opinions under Article 218(11) TFEU, did so in Opinion 1/91 (EEA I) and Opinion 1/92 (EEA II); Kleizen (n 41) 13–15.

¹⁰¹ von Achenbach (n 13).

¹⁰² Article 31(1) TEU.

¹⁰³ Article 215 TFEU.

¹⁰⁴ Kleizen (n 41) 17.

that fall within the **multiannual financial framework**¹⁰⁵, as well as the annual budget of the Union.¹⁰⁶ As a matter of fact, the general rule is that the Parliament must be involved whenever EU budget is spent, and CSDP activities constitute no exception in this regard. Scrutiny must, in this sense, be distinguished from actual parliamentary control, meaning that the budgetary prerogatives enable the EP to *oversee* the bigger picture without necessarily shaping the individual substantive policy decisions. Parliament's different budgetary powers – which range from *ex-post* control rights,¹⁰⁷ to formulating observations on the basis of which the Commission must act,¹⁰⁸ and vetoing the budget altogether¹⁰⁹ – have also been employed in the past to exert influence in policy areas where this is not inherently provided for by primary law; in the area of CFSP, for example.¹¹⁰ The actual budgetary competences of the EP in the realm of CSDP, however, remain limited to a few areas, which will be introduced in the following Sections.

Civilian missions constitute a branch of CSDP operational activity where the EP can exercise its budgetary powers to their full extent, as Article 41 TEU states that both administrative¹¹¹ and operating¹¹² expenditure is to be charged to the Union's budget.¹¹³ Nevertheless, important financial contributions (i.e. for seconded personnel) are provided by the Member States, hampering comprehensive control and overview of the exact composition of the funding stream.¹¹⁴ The 2020 IIA on budgetary matters formulates the exact procedure in more detail.¹¹⁵ It stipulates that the operating costs, which are accounted for in the part of the budget allocated to the CFSP, must be agreed upon between the EP and the Council on an annual basis.¹¹⁶ While it does not mention CSDP expenditure in particular, the IIA does provide that 'single major missions'¹¹⁷, as well as 'other missions (for crisis management operations, conflict prevention, resolution and stabilisation, and monitoring and implementation of peace and security processes)'¹¹⁸, shall be distributed to individual articles within the CFSP budget chapter.¹¹⁹ Parliament is further entitled to at least five Joint Consultation Meetings with the High Representative per year as part of the regular policy dialogue, which includes the financial implications for the Union budget.¹²⁰ In addition, the Commission is obliged to provide information about the implementation of CFSP (and thus CSDP) actions and the financial forecasts for the remainder of the financial year to both the EP and the Council once a quarter.¹²¹ The IIA moreover establishes that Parliament must be informed through the HR 'immediately, and in any event, no later than five working days' after the Council adopts a 'decision in the field of the CFSP entailing

¹⁰⁵ Article 312(2) TFEU.

¹⁰⁶ Article 314 TFEU.

¹⁰⁷ Article 318 TFEU.

¹⁰⁸ Article 319 TFEU.

¹⁰⁹ Article 314(7) TFEU.

¹¹⁰ For instance, by the EP's threat to veto the budget in 2010 until a draft decision on the EEAS more in line with the Parliament's demands was presented.

¹¹¹ Article 41(1) TEU.

¹¹² Article 41(2) TEU.

¹¹³ For a concise overview of the incremental integration, institutional setting, and operational realities of EU civilian missions, see Koutrakos (n 15) 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).

¹¹⁴ Moser (n 37) 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) 92.

¹¹⁵ IIA on budgetary discipline (2020).

¹¹⁶ Para 23, *ibid.*

¹¹⁷ Para 23, *ibid.*

¹¹⁸ *ibid.*

¹¹⁹ Para 23, IIA on budgetary discipline (2020). The budget appropriations for civilian missions are listed under a special line in chapter 19.03 of the EU budget.

¹²⁰ Para 24, *ibid.*

¹²¹ Para 24, *ibid.*

expenditure',¹²² thus entailing a right for MEPs to be provided with a financial statement, as well as to be kept informed about Council decisions with a financial impact.¹²³ Furthermore, the HR has to consult the EP on a 'forward-looking document, [...], setting out the main aspects and basic choices of the CFSP, including the financial implications',¹²⁴ providing it with access to *ex-ante* information on future budgetary developments.

Military operations, on the other hand, are not financed through the Union's budget, and thus yield very limited possibilities for scrutiny by the EP.¹²⁵ Parliament's role remains restricted to receiving information on financial developments, initially introduced under the 2004 *Athena* mechanism, which handled the financing of common costs relating to EU military operations.¹²⁶ The mechanism, which was replaced by the EPF in 2021,¹²⁷ does not 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 the SEDE subcommittee. Given that CSFP expenditure for operational activities cannot be charged to the Union budget if it has military or defence (hence CSDP) implications,¹²⁸ but must be paid for by Member States,¹²⁹ the EPF puts in place an off-budget mechanism supplied by national contributions that provides for a more stable and predictable funding stream of military activities. These cautious integrative tendencies in CSDP funding matters, despite not changing the overall distribution of competences, have already led to increased involvement of the executive branch at the supranational level.¹³⁰

The same cannot be said for **PESCO**, even if the EP does not hold any budgetary scrutiny rights over the design and management of projects financed exclusively through the budgets of Member States. Although PESCO is generally organised at the level of the Council and in accordance with the intergovernmental framework spelled out in Article 46 TEU, and thus does not appear to include the EP, this does not apply to PESCO projects that benefit from financial means provided through the European Defence Fund (EDF).¹³¹ Indeed, the EDF forms part of the EU budget that is administered by the Commission (through the new DG DEFIS) and thus subject to parliamentary scrutiny. The Regulation establishing the EDF even explicitly stipulates that action developed in a PESCO context may benefit from a funding rate increase of an additional 10%.¹³² Similarly, the **European Defence Agency** (EDA), which facilitates the development of defence capabilities that underpin the CSDP, relies on contributions payable by the participating Member States, and is therefore not subject to the usual parliamentary budgetary competences. Yet, once EDF funds come into play, this changes, and the ordinary budgetary mechanisms apply, including both *ex-ante* and *ex-post* control through the EP.¹³³

¹²² *ibid.*

¹²³ Moser (n 37) 155.

¹²⁴ Para 24, IIA on budgetary discipline (2020).

¹²⁵ For a concise overview of the incremental integration, administrative framework, capabilities, financing, and operational realities of EU military activities, see Koutrakos (n 15) 101–132; Daniel Fiott, 'Military CSDP Operations: Strategy, Financing, Effectiveness' in Steven Blockmans and Panos Koutrakos (eds), *Research Handbook on the EU's Common Foreign and Security Policy* (Edward Elgar 2018).

¹²⁶ 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 [2004] OJ L 63/68.

¹²⁷ Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528 [2021] L102/14.

¹²⁸ Article 41(2) TEU.

¹²⁹ *ibid.*

¹³⁰ For a more detailed analysis of this shift, see Section 4.5 of this study.

¹³¹ See Blockmans (n 10).

¹³² Article 13(3)(a), Regulation (EU) 2021/697 establishing the EDF.

¹³³ Article 14(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 [2016] OJ L 219/98.

This inevitably raises the question of the **budgetary competence of the EP within the framework of the EDF**.¹³⁴ The Parliament, as a co-legislator of the regulation that established the EDF, automatically enjoys a higher level of involvement than for acts set on a CSDP legal basis. This higher level of involvement was, however, limited to the initial adoption of the Regulation establishing the EDF, which is based on Articles 173(3), 182(4), 183, and 188(2) TFEU, making it subject to the ordinary legislative procedure where the EP enjoys budgetary and legislative powers that it lacks in CSDP matters. Although Parliament enjoys far-reaching budgetary powers in the realm of the Single Market, these cannot simply be assumed for the EDF. In fact, the budgetary dynamics in the field of CSDP do not necessarily change because of the fact that the Commission created a new DG using a legal basis enshrined in the TFEU.¹³⁵ The EP's competences are constrained by way of the EDF regulation itself, which provides that the Commission must monitor the implementation of the Fund and annually inform both the EP and the Council on the state of affairs, as well as the results of the Commission's evaluations.¹³⁶ For the adoption of the EDF work programme and grant award decisions, the Commission uses implementing acts under Article 291 TFEU, not delegated acts (Article 290 TFEU), which leaves the EP out of the operational decision-making process of the EDF implementation.¹³⁷ The influence which the EP can exert over the implementation of the EDF thus rests on its use of limited information rights, rather than a competence enabling it to intervene directly within budget decisions related to the management of the Fund. Nonetheless, by virtue of both the treaties (*lex generalis*) and on the basis of the EDF regulation (*lex specialis*), the EP enjoys competences that go beyond its role as co-legislator; namely, the right to monitor the Fund's implementation through the information provided by the Commission.¹³⁸ The EP's involvement in the framework of the EDF can therefore be described as two-phased: it had a high level of involvement in the initial drafting phase of the EDF Regulation, determining the alignment of the fund, followed by five years of implementation, where its role is (in absence of competences to intervene) limited to that of the informed spectator.

2.3.6 Summary of EU competences in the CSDP realm

Right to information

Article 36 TEU, requires the HR to regularly brief the EP about CSDP developments and, hence, confers the EP a right to information. The HR's Declaration on political accountability of 2010 outlines the procedural rules regulating the interaction between the HR and the EP, and thereby significantly contributes to the operationalisation of the HR's information and reporting duties. An Interinstitutional Agreement concluded in 2002 furthermore grants the EP's access to sensitive CSDP information. Another stream of information in the field of CFSP/CSDP flows from Article 218(10) TFEU on the conclusion of international agreements. Finally, the EP is to be informed in the event a crisis response is triggered, in accordance with Article 222 TFEU read together with the relevant Council Decision 2014/415/EU of 24 June 2014 detailing the implementation arrangements.¹³⁹

Supervisory and deliberative mandate

Article 36 TEU grants the EP a supervisory and deliberative mandate, with three types of parliamentary tasks flowing from this role: (i) the EP is mandated to deliberate bi-annually on the state of play of the CFSP and the CSDP, (ii) the EP has an inquisitive function, as it can ask parliamentary questions to the HR and the

¹³⁴ Regulation (EU) 2021/697 establishing the EDF.

¹³⁵ Article 28(3), *ibid.*

¹³⁶ Article 29(4), *ibid.*

¹³⁷ 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.

¹³⁸ *ibid.* 75.

¹³⁹ Council Decision 2014/415/EU of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause [2014] OJ L 192/53.

Council on CSDP matters, and (iii) the EP can address recommendations to these two actors in said policy field. These three formal tasks are accompanied by a variety of additional parliamentary activities in line with the EP's internal rules and work method. One of the examples are the field visits undertaken by MEPs to better understand the situation in third countries, crisis regions, and deployment contexts. Deliberation and supervision also takes place in the context of budgetary matters, namely when CSDP activities are funded through the EU's general budget. In this context, Article 41 TEU is the core reference, supplemented by the Interinstitutional Agreement on budgetary matters (last updated in 2020). Finally, the EP fulfils its deliberative and supervisory role in the context of interparliamentary encounters, in particular the bi-annual Inter-Parliamentary Conference for the CFSP and CSDP.

Law-making and law-shaping

While the adoption of legislative acts is excluded from the CFSP/CSDP under Article 24(1) TEU, the Treaties still provide some leeway for both law-making and law-shaping. The EP's law-making and law-shaping competences in the realm of CFSP are most pronounced in the negotiation and conclusion of international agreements under Article 37 TEU and concluded in accordance with Article 218(6) TFEU. As accession treaties, association agreements, and other EU international agreements may include a CFSP/CSDP dimension, they constitute an area where EP consent is mandatory, which therefore grants the Parliament important law-making powers. The EP's law-shaping potential derives chiefly from Article 36 TEU, which stipulates that the EP's views regarding the status quo and evolution of the CFSP/CSDP are to be 'duly taken into consideration'. In addition, the EP enjoys law-shaping competences derived from its right to request CJEU opinions on draft international agreements in line with Article 218(11) TFEU. This provides the opportunity to ascertain 'whether an agreement envisaged is compatible with the Treaties' at the drafting stage, and not just at the time of its ratification. The reach of the EP's competences is, however, limited when it comes to PESCO or CFSP sanctions. More recently, the EP has also expanded its law-making and law-shaping competences over defence industrial dossiers in the context of the EDF.

Budgetary powers

The EP is involved in budget planning as it co-decides on the EU budget, including on CSDP budget appropriations; it is also kept in the loop on current disbursements, and it casts its vote on past spending in the context of the discharge procedure. The actual budgetary competences of the EP in the realm of CSDP, however, remain limited to few areas. One of them are civilian missions. They constitute a branch of CSDP operational activity where the EP can exercise its budgetary powers to their full extent, as Article 41 TEU states that both administrative and operating expenditure is to be charged to the Union's budget. The Interinstitutional Agreement on budgetary discipline details the EP's role and rights in this regard, namely (i) that the EP is entitled to at least five Joint Consultation Meetings with the High Representative per year; (ii) that the EP must be provided by the Commission with an information about the implementation of CFSP (and thus CSDP) actions and the financial forecasts for the remainder of the financial year once a quarter; (iii) that the EP must be informed through about Council decisions with a financial impact; and (iv) that the HR has to consult the EP on a 'forward-looking document, [...], setting out the main aspects and basic choices of the CFSP, including the financial implications. Military operations, on the other hand, are not financed through the Union's budget, and thus yield very limited possibilities for scrutiny by the EP. The situation is similar with PESCO, as the EP does not hold any budgetary scrutiny rights over the design and management of projects financed exclusively through the budgets of Member States, with the exception of PESCO projects that benefit from financial means provided through the European Defence Fund (EDF). Indeed, the EDF is part of the EU budget that is administered by the Commission (through the new DG DEFIS) and thus subject to EP scrutiny.

3 The EP's powers in CSDP from a constitutional law perspective

As we have seen in the previous Section, the EP exercises different competences in the CSDP realm, which offer the institution a varying degree of ex ante and ex post control over and involvement in CSDP decision-making and implementation. More precisely, the EP has a right to information which, in turn, constitutes the basis for its supervisory and deliberative mandate, as well as its advisory function. The institution moreover exercises budgetary powers with respect to EU finances spent on CSDP activities.¹⁴⁰ 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 the EP holds more generally.

With a view to complementing the above positivist reading of existing legal arrangements, this Section will put the different roles the EP plays in relation to CSDP dossiers in its wider constitutional law context. More precisely, this Section will explore existing legal arrangements against the backdrop of pertinent (constitutional) principles and jurisprudential developments. It starts by discussing the values, principles, and objectives that underpin EU external action, including CSDP activities (3.1), then goes on to outline the relevant jurisprudence (3.2), and finally offers some intermediate findings as to the role the EP could potentially play in the CSDP realm (3.3).

3.1 EU external action values, objectives, and principles

First and foremost, it is important to outline the provisions of primary law that define the values, objectives, and principles according to which the EU's security and defence policy – as part of the CFSP – should be conducted. We will discuss these elements in turn.

Article 2 TEU spells out the **values** on which the EU is built, namely 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'. How democracy is to be operationalised in the EU context becomes clear when looking at Article 10 TEU, which stipulates in its first paragraph that 'the functioning of the Union shall be founded on representative democracy'. What's more, the second paragraph of Article 10 TEU underscores the paramount role of the EP, which is the institution directly representing citizens at the EU level, while national governments are represented in the European Council and Council. Without oversimplifying the complex multi-level democratic legitimacy and accountability structure of the Union,¹⁴¹ 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 furthermore defines a number of **founding principles** that underpin EU foreign affairs.¹⁴² Article 21(1) TEU enumerates the principles that guide the Union's action on the international scene and, in this enumeration, democracy ranks first.¹⁴³ The promotion of democracy is also very high on the list of

¹⁴⁰ In addition to the competences spelled out in Section 2.3, it goes without saying that the EP also has an appointment prerogative by virtue of Article 17(7) TEU and can pass a motion of sanction according to Article 17(8) TEU.

¹⁴¹ For a thorough discussion of the Union's democratic legitimisation structures, see Jelena von Achenbach, *Demokratische Gesetzgebung in der Europäischen Union* (Springer 2013) 302–326.

¹⁴² 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' (2010) 16 *European Law Journal* 95.

¹⁴³ 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. See Article 21(1) TEU.

external action objectives (Article 21(2)(b) TEU).¹⁴⁴ Importantly, Article 21(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, primary law sets out a sort of '**obligation of conduct**', according to which the same standards apply to policy *goals*, on the one hand, and to policy *processes*, on the other.¹⁴⁵ In other words, the provision at hand sets out both procedural and substantive requirements for EU external action.¹⁴⁶ These requirements are also applicable to the CFSP and the CSDP. Indeed, Article 24(2) TEU stipulates that the CFSP unfolds within the framework of the principles and objectives of EU external action – and the same applies to the CSDP, which constitutes an integral part of the CFSP (Article 42(1) TEU). In sum, this means that in light of the founding principles of the Union in general and EU external action in particular, **democracy constitutes a key reference both for the content and conduct of EU foreign affairs.**

There is also a range of **pertinent EU law principles governing the CSDP realm.**¹⁴⁷ Indeed, despite the legal and procedural distinctiveness of the CFSP and the CSDP, both policies form part of the EU's legal order which, in addition to the abovementioned founding or constitutional principle of democracy – or to use the formulation of the CJEU, the fundamental democratic principle –, comprises a range of organising principles that originate from both primary law and the jurisprudence of the CJEU.¹⁴⁸ These organising principles comprise sincere and loyal cooperation, conferral, institutional balance, mutual solidarity, subsidiarity, autonomy, consistency (coherence), transparency, and effectiveness.¹⁴⁹ Designed to regulate the relationship between different EU institutions and national actors in external relations, the principle of **sincere and loyal cooperation**, together with the principle of **institutional balance**, is particularly relevant, as we will see in the next Section (3.2) which outlines relevant jurisprudential developments.

Before delving into the relevant jurisprudence, it is worth noting that democracy is listed as a founding 'value' of the Union and as a guiding 'principle', as well as a core 'objective', of EU external action. This diverging labelling is not without impact: values and objectives are rather indeterminate, even though they provide an important point of orientation for policymakers. Principles, in turn, are generally more defined and can therefore generate specific legal rules and obligations that can also be enforced by a court.¹⁵⁰ This finding also applies to democracy, as we shall see shortly.

3.2 Jurisdictional insights regarding democratic scrutiny

As there is, to date, no judgment of the Court of Justice of the EU relating precisely to the interpretation of the EP's prerogatives in the CSDP realm, this Section will analyse the relevant jurisprudence that deals with the EP's involvement in CFSP matters more broadly. Bearing in mind the abovementioned values and principles underpinning EU external action, this approach will allow identification of some core elements and, by way of legal analogy, their application to the CSDP context (in Section 3.3).

¹⁴⁴ In this context, it is also worth mentioning Article 3(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.

¹⁴⁵ Moser (n 37) 77–78; 80.

¹⁴⁶ Ramses A Wessel, 'General Principles in EU Common Foreign and Security Policy' in Katja A Ziegler, Päivi J Neuvonen and Violetta Moreno-Lax (eds), *Research Handbook on General Principles in EU Law. Constructing Legal Orders in Europe* (Edward Elgar 2022) 607–624.

¹⁴⁷ There is a rich corpus of literature discussing the structural and procedural principles underpinning EU external action. For an overview see *ibid*.

¹⁴⁸ 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' (2016) 69 *Current Legal Problems* 35; Wessel (n 146). For the sake of clarity, we will refer to all these principles as *organising* principles (in contrast to founding principles).

¹⁴⁹ Cremona (n 148).

¹⁵⁰ In this line of thought, see von Bogdandy (n 142); Cremona (n 148) 47–48.

Two judgments are of particular interest, namely the *Mauritius Agreement*¹⁵¹ and *Tanzania Agreement*¹⁵², **both of which clearly underscore the importance of supranational democratic scrutiny of the CFSP.** The cases at hand both related to the conclusion of international agreements by the Council in the context of EU-led anti-piracy operation Atalanta in the Gulf of Aden – one with Mauritius (in 2011)¹⁵³ and the other with Tanzania (in 2014)¹⁵⁴. The two judgments, handed down in 2014 and 2016 respectively, were essentially about clarifying the EP's information rights under Article 218(10) TFEU, which states that 'the European Parliament shall be immediately and duly informed [by the Council] at all stages of the procedure.' The Court of Justice held that Article 218(10) TFEU contained an information requirement that constituted an 'essential procedural requirement' – including for the conclusion of agreements exclusively relating to CFSP matters.¹⁵⁵ In both cases, the Court declared that the Council had infringed this essential procedural requirement, as it had neither immediately nor fully informed the EP at all stages of the procedure.

That said, it is interesting to take a closer look at the different **democratic scrutiny arguments** that were made in this context. In its ***Mauritius Agreement judgment of 2014***, the Court underscored the importance of democratic scrutiny of CFSP issues. It recalled 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'.¹⁵⁶ The Court furthermore clarified 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).¹⁵⁷ On the contrary, the Court argued that precisely because primary rules conferred to the EP a limited role in relation to the CFSP, the provision of information was essential 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 precisely in consequence of the choice of legal basis for a decision concluding an agreement.'¹⁵⁸

In a similar vein, AG Kokott, who delivered her **opinion on the *Tanzania case in 2015***, reasoned that the 'very extensive duty for the Council to provide information' under Article 218(10) TFEU was 'a reflection of the fundamental democratic principle applying to *any* decision-making process at EU level [see Article 2 TEU], *including in the field of foreign and security policy*.'¹⁵⁹ She furthermore argued that 'democratic control is not limited to the exercise of formal rights to have a say, and the purpose of informing the Parliament is not only to prepare for the exercise of such rights – rather, the transparency created by informing the Parliament immediately and fully at all stages of the procedure is in itself an element of democratic control which is not to be underestimated and therefore has inherent value.'¹⁶⁰

¹⁵¹ Case C-658/11 (*Mauritius Agreement*) [2014].

¹⁵² Case C-263/14 (*Tanzania Agreement*) [2016].

¹⁵³ 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 [2011] OJ L 254/1.

¹⁵⁴ 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 [2014] OJ L 108/1.

¹⁵⁵ Case C-658/11 (*Mauritius Agreement*) [2014] para 85.

¹⁵⁶ Emphasis added, *ibid* 81.

¹⁵⁷ *ibid* 82; 84.

¹⁵⁸ Emphasis added, *ibid* 80. A similar reflection is developed in *ibid* 83–86.

¹⁵⁹ Emphasis added. Case C-263/14 European Parliament v Council (*Tanzania Agreement*) [2015] EU:C:2015:729, Opinion of AG Kokott of 28 October 2015 para 76.

¹⁶⁰ *ibid* 78.

According to AG Kokott, the **timely and comprehensive provision of information constitutes a corollary of the democratic principle** as parliamentary scrutiny is only possible if the EP is properly informed.¹⁶¹ In light of the importance of democratic control over EU external action, AG Kokott found it entirely legitimate and compatible with primary law (including its annexed Declaration 14) that the EP sought to influence the context of the contested agreement, even if its formal consent was not necessary for its conclusion.¹⁶² She emphasised the EP's function as democratic watchdog *tout court*, and not only its competences in relation to law-making (in the sense of treaty-making) in the CFSP realm – and the same wording can be found both in the *Mauritius* and *Tanzania* judgments of the Court.

In its **Tanzania Agreement decision of 2016**, the Court confirmed its previous assessment and, moreover, explained that the timely and comprehensive provision of information by the Council to the EP in the context of the conclusion of international agreements was not only necessary to enable democratic control of the EU's external action, but was also a means to ensure coherence and consistency.¹⁶³

In other words, the proceedings concerning the conclusion of two exclusively CFSP-related international agreements allowed the Court to stress the significance and enforce **the principles of democracy, transparency, sincere cooperation, institutional balance, and coherence** in the CFSP context.

3.3 Intermediate conclusions: Putting the EP's potential role in CSDP into perspective

Prior to engaging in an interpretation exercise, let us briefly **summarise the essential aspects of the CJEU's jurisprudence in relation to the EP's role in the CFSP realm**. In short, the Court highlighted that primary law confers the Parliament a democratic scrutiny function of CFSP matters, which is not necessarily linked to the EP having law-making competences.¹⁶⁴ This democratic scrutiny function, even though it is more limited than in relation to other EU policy fields, implies that the EP can verify that its powers are being respected. For the EP to be in a position to properly verify respect of its prerogatives, the provision of information to the institution is essential. Additionally, the provision of information contributes to the coherence of EU external action and the integrated approach to external conflict and crisis.¹⁶⁵

In light of treaty interpretation methods¹⁶⁶ and with the above jurisprudence in mind, we can draw some **general conclusions on the EP's role in CSDP** according to primary law. First, we can infer that, by virtue of the fundamental democratic principle underpinning the EU edifice and EU decision-making, the EP's democratic control function also covers the distinctive policy field of the CFSP and, by extension, of the CSDP, as the latter forms integrally part of the former. Secondly, even though the EP's democratic scrutiny of CSDP dossiers is more limited than in other policy fields (where the institution acts as a co-legislator, for instance), it cannot plausibly be construed so narrowly as to (further) restrict or undermine the EP's democratic scrutiny. Thirdly, the provision of information to the EP is important in this context. As the provision of information constitutes the very basis for both the EP's democratic scrutiny and its ability to check whether its rights were actually respected, its respect is of utmost importance.

¹⁶¹ *ibid* 79.

¹⁶² *ibid* 89.

¹⁶³ Case C-263/14 (*Tanzania Agreement*) [2016] 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)' (2017) 54 *Common Market Law Review* 899.

¹⁶⁴ In the cases at hand, the EP was indeed not involved in the conclusion of the agreements.

¹⁶⁵ Council Conclusions on the Integrated Approach to External Conflicts and Crises, adopted by the Council on 22 January 2018, Council Doc. 5413/18.

¹⁶⁶ See Article 31 of the Vienna Convention on the Law of Treaties; with regard to the interpretation of EU law, see Jan Komárek, 'Legal Reasoning in EU Law' in Damian Chalmers and Anthony Arnall (eds), *The Oxford Handbook of European Union Law* (Oxford University Press 2015).

This brings us back to **Article 36 TEU**, which states that the 'High Representative of the Union for Foreign Affairs and Security Policy shall regularly consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy and inform it of how those policies evolve. He shall ensure that the views of the European Parliament are duly taken into consideration.' Considering the founding principle of democracy together with the organising principles of transparency, sincere cooperation, institutional balance, and coherence, all of which also apply to the CSDP, it is logical to give the provision in a more parliamentary-friendly reading.

If EU law principles are to be taken seriously – particularly the principles of democracy, sincere cooperation, and coherence – this implies that information 'on how the CSDP evolves' must be shared by the HR with the EP sufficiently often to allow the EP to properly fulfil its supervisory and deliberative mandate and its advisory function, on the one hand, and to enable verification that its (limited) scrutiny role is respected, on the other. To paraphrase AG Kokott, the provision of information leads to enhanced transparency which, in turn, has an inherent value in the context of the EU's fundamental democratic principle.¹⁶⁷ While the Treaty does not specify how 'regular' the provision has to occur and which precisely are the 'evolutions' worthy of reporting, one can assume that a yearly report would not do justice to the information requirement. Rather, the provision of information needs to be adapted to the actual pace of developments in the CSDP realm, which also implies that a higher frequency of briefings is required in times of crises. In other words, the more important developments take place, the more often the HR has to proactively brief the EP about these developments.

With regard to the EP's **supervisory and deliberative mandate**, our reading of the pertinent primary law provision in light of the democratic principle, in particular, would suggest that the EP's involvement takes place not only *ex post facto*, but also *ex ante*. Asking the EP to discuss primarily already decided matters would indeed contravene the democratic spirit underpinning EU law, as it would reduce the EP to a more or less well-informed spectator without an (even informal) role exercising its democratic scrutiny function.¹⁶⁸ It would also impair sincere cooperation and institutional balance, as it would deprive the EP of properly fulfilling its limited democratic scrutiny as set out by primary law.

Finally, primary law also ascribes the EP an **advisory function**. Again, if the advisory input of the EP on the 'main aspects' and 'basic choices' to feed into the CSDP policy cycle is to live up to the democratic principle, it need not only take place *ex post facto*, but also relate to dossiers for which decision-making or implementation is still ongoing. Had 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 – Article 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*. What's more, primary law does not thematically limit the EP's advisory function. It is true that the institution is only consulted on major developments, but these can relate to operational activity, strategic reflections, defence industrial initiatives, or any other CSDP-relevant topic.

Echoing the **reflection on democratic scrutiny more broadly** made by AG Kokott in her opinion in the *Tanzania* case, it is important to clarify at this point that it is a legitimate expectation by the EP to seek to informally influence the CSDP policy cycle, be it at the planning, decision-making, implementation, or evaluation stage, even in cases where the institution has no formal competence.¹⁶⁹ Likewise, to paraphrase AG Kokott, the democratic scrutiny over the CSDP is not contrary to primary law or Declaration 14 annexed to the Lisbon Treaty, which stipulates that 'the provisions covering the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions, nor do they increase the role of the

¹⁶⁷ Case C-263/14 (*Tanzania Agreement*) [2015], Opinion of AG Kokott para 78.

¹⁶⁸ Currently, the yearly report by the HR deals, however, with past developments and therefore leaves little room for democratic scrutiny or even debate. See von Achenbach (n 13).

¹⁶⁹ Case C-263/14 (*Tanzania Agreement*) [2015], Opinion of AG Kokott para 79.

European Parliament.’ All of the founding and organising principles, which help us to understand the precise reach of the EP’s competences in relation to the CSDP, existed in the EU legal order before the entry into force of the Lisbon Treaty. Furthermore, in the drafting process of the Lisbon Treaty, which articulates a set of external action principles and objectives (including democracy), these principles and objectives were expressly chosen to be grand and ambitious in order to reflect the international aspirations of the EU.¹⁷⁰ One cannot therefore claim that some lower democratic standard would apply to the CFSP/CSDP.

However, it is true that **at the national level, parliamentary oversight of foreign policy, and in particular EU security and defence matters, tends to be rather limited** and often focusses on procedural aspects – i.e. that the consultation or consent of parliament occurred, in contrast to substance.¹⁷¹ More precisely, four categories of national parliamentary scrutiny over EU security and defence can be distinguished, allowing for high, relatively high, low, or no involvement.¹⁷² Those national parliaments on the highest end of the involvement spectrum (category 1) can exercise ex ante decisional control of their executive in the Council (e.g. Finland, Sweden). On the lowest end of the involvement spectrum (category 4) are those national parliaments whose scrutiny over CSDP issues is excluded (e.g. Greece, Romania). In the middle are those national legislators with a relatively high level of involvement (category 2), primarily because they must approve the deployment of personnel for extraterritorial CSDP activities. Some must only approve the deployment of military operations (e.g. Germany, Spain), however, others must approve of deployment (e.g. Austria, Italy, the Netherlands). Finally, there are also those national parliaments with a low level of involvement in CSDP matters (category 3) that mainly have a consultative and debating role (e.g. France, Poland).

¹⁷⁰ Panos Koutrakos, ‘External Action: Common Commercial Policy, Common Foreign and Security Policy, Common Security and Defence Policy’ in Damian Chalmers and Anthony Arnall (eds), *The Oxford Handbook of European Union Law* (Oxford University Press 2015).

¹⁷¹ Hans Born and others, ‘Parliamentary Oversight of Civilian and Military ESDP Missions: The European and National Levels’, *Study PE 348.610* (European Parliament 2007).

¹⁷² Moser (n 37) 139–141. See further 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).

4 Analysis of parliamentary realities

So far, our legal positivist reading of EU law shows that the scope for parliamentary scrutiny over CSDP matters remains limited. While this general finding should not come as a surprise given the 'specific' (i.e. intergovernmental) governance regime applied to the CFSP overall, this situation nevertheless represents a deviation from other policy areas where the role of the EP has increased concurrent to new decision-making powers conferred upon the EU.¹⁷³ Our contextual and teleological approach to EU law suggests that a more expansive reading of the competence reach of the EP would be logical to keep up with the gradual supranationalisation of defence policy, notably in terms of the coordination of budget spending and the de-fragmentation of the defence industrial market.

Past developments have taught us that Parliament is by no means satisfied with its subordinate role in CFSP/CSDP affairs, and that it actively tries to expand its competence reach through indirect and informal means.¹⁷⁴ Indeed, it has been argued that the role of the EP in CFSP and, subsequently, CSDP cannot be sufficiently understood by analysing the black letter law, but rather by looking at the different facets of parliamentary practice.¹⁷⁵ This form of engagement has already been the subject of scholarly studies for CFSP matters, identifying additional parliamentary functions such as the framing of policy issues and normative argumentation as means to inform and steer formally intergovernmental policies.¹⁷⁶

This Section aims to analyse the practices through which parliamentary involvement materialises in the CSDP realm. While doing so, a special emphasis will be put on existing discrepancies between Treaty stipulations and realities. Consequently, it aims to cover the full range of democratic scrutiny exercised in practice, ranging from the capacity to intentionally change the outcome of CSDP policies and institutional structures, to softer elements, such as improving Parliament's information position. The examination of the different elements through which the EP de facto exercises democratic scrutiny will be subdivided into the four competence categories presented in Section 2, plus the EP's rights to information. Through the evaluation of semi-structured interviews with relevant stakeholders (see Annex) conducted as part of this analysis, the practice of parliamentary scrutiny in CSDP will be presented for each competence, thus aiming to complement the legal interpretation of the relevant norms and identify the gaps between law and practice.

4.1 The provision of information

Prior to discussing in more detail the specific competences of the EP and how they currently play out in practice, it is important to underline that all interlocutors stressed the **significance of the provision of information for the EP to properly fulfil its competences in relation to CSDP issues**. Indeed, the timely and comprehensive sharing of information was described as vital for the EP to exercise its functions, be they supervisory and deliberative, advisory, law-making, or budgetary in nature.¹⁷⁷ In line with the legal and institutional framework, the primary thread of information runs between the EEAS – that also communicates on behalf of the HR – and the EP. While the degree and quality of the provision of information differs from one policy issue to the other, the overall cooperation between SEDE and the EEAS was said to be constructive.¹⁷⁸

¹⁷³ Riddervold and Rosén (n 52) 401.

¹⁷⁴ Rosén and Raube (n 44) 2.

¹⁷⁵ Lazarou (n 86) 446.

¹⁷⁶ Marianne Riddervold and Guri Rosén, 'Trick and Treat: How the Commission and the European Parliament Exert Influence in EU Foreign and Security Policies' (2016) 38 *Journal of European Integration* 687; Moser (n 37) 149–172.

¹⁷⁷ Stakeholder interviews 1, 2, 3, 4, 5, 6, and 7.

¹⁷⁸ Stakeholder interviews 1, 2, 3, and 7.

That said, our interviews with different stakeholders highlighted **four factors that seem to significantly shape the provision of information in practice.**

First, **informality is key.** There is obviously a variety of formal exchanges between the EP, on the one hand, and the HR and the EEAS, on the other. Exemplary of these formal information exchange venues are the HR's appearances in the plenary or the participation of mostly senior EEAS staff in EP (public) hearings or Joint Consultation Meetings. However, a big part of the information which allows SEDE to actually follow CSDP developments and ask critical questions is shared via *informal* information sharing arrangements, in particular with the EEAS.¹⁷⁹ Although MEPs seem generally satisfied with the scope and quality of the information they informally receive from the EEAS,¹⁸⁰ the informal nature of many communication channels between the EP and the EEAS underscores that the formal information sharing mechanisms in place do not suffice. The so-called 'Kangaroo' format meetings,¹⁸¹ where key MEPs meet informally in the presence of additional stakeholders (e.g. external experts and industry representatives) to discuss CSDP related issues off-record are indicative of this.¹⁸² The informal exchanges of information at Kangaroo group meetings were reportedly important for the EP to keep track of (important) current and future CSDP developments.¹⁸³ As access to the Kangaroo group is subject to the organisers' discretion, individuals deemed untrustworthy can be excluded, raising serious questions as to the democratic legitimacy of this 'exclusive' format. However, this does not appear to translate into a high degree of homogeneity of this group in practice, as representatives of many political groups and countries form part of it.¹⁸⁴ The format's governance credentials aside, its very existence underscores that informal platforms for exchanging information on CSDP relevant topics are essential for the EP to carry out its scrutiny mandate. The inherent risk of current practices is that – should the currently smooth working relations between the EEAS and the EP fade – Parliament might be deprived of valuable and necessary information, and thus falter in its democratic oversight. This would seriously undermine transparency and, moreover, hamper the EP's ability to secure institutional balance and coherence.

Secondly, **information sharing is limited on purely intergovernmental CSDP dossiers and initiatives.** While the EEAS sees itself generally as supportive of the EP, it needs to take care that it does supply information without overstepping its mandate or infringing confidentiality rules. Indeed, the EEAS has to walk a thin line between the expectations of the EP to receive sufficient information, on the one hand, and the worries of many Member States that the EEAS does not, by its actions, confer on the EP a role it does not have according to the treaties, on the other.¹⁸⁵ This reservation to share (sometimes important) pieces of information is corroborated by other interviewees who confirm that the EEAS does not share any information (formally or informally) on the EDA or PESCO, referring the EP/SEDE to the Member States instead.¹⁸⁶ Since these policy initiatives are formally intergovernmental, the EP continues to have a hard time accessing the information it deems necessary to scrutinise important CSDP developments which, in turn, engenders some frustration.¹⁸⁷ Under these conditions, it might at times be difficult for the EP to gauge whether the principle of institutional balance and the principle of coherence are being respected.

¹⁷⁹ Stakeholder interviews 1, 2, 3, and 7.

¹⁸⁰ Stakeholder interviews 1, 6, and 7.

¹⁸¹ <https://www.kangaroorgroup.de> (accessed 14 April 2022). Created in 1979, the format is currently chaired by MEP Michael Gahler.

¹⁸² Stakeholder interviews 1, 3, and 5.

¹⁸³ Stakeholder interviews 1, 3, and 5.

¹⁸⁴ Stakeholder interview 2.

¹⁸⁵ Stakeholder interviews 2, 3, and 7.

¹⁸⁶ Stakeholder interviews 1, 5, and 7.

¹⁸⁷ Stakeholder interview 7.

Thirdly, **access to classified information remains often difficult and incomplete.** The reasons are manifold. First, the IIA on the matter foresees a relatively burdensome access procedure, both in terms of who can be part of the exclusive group of MEPs allowed to see classified information, and in terms of the actual consultation conditions (where, when, etc.). In particular, the very limited number of MEPs who can access classified information – namely five MEPs¹⁸⁸ – reportedly poses concern, as it deprives many parliamentarians dealing with defence issues (e.g. defence industrial regulation under ITRE) from accessing classified information.¹⁸⁹ Hence, the IIA concluded in 2002 seems to reflect no longer the policy-transversal reality of defence issues. Secondly, the IIA in question only covers certain types of sensitive information but leaves out, for instance, *'limité'* documents, which constitute the bulk of the working documents in the CSDP policy cycle.¹⁹⁰ This, in turn, means that even those MEPs with a privileged access to classified information can only consult a fraction of relevant classified documents.¹⁹¹ It is also important to mention, however, that a lot of classified information is received by MEPs anyway, because other EU institutions make it public in other formats or through informal channels, including the press.¹⁹² Thirdly, political dynamics within the EP seem to hamper the sharing of some (very) sensitive information, as the risk of leaks is real.¹⁹³ The input on the Strategic Compass was mentioned as a case in point.¹⁹⁴ The threat analysis which underpins the Strategic Compass, for example, was considered too sensitive to share with even high-level members of the EP, as there is no protected space for sharing very confidential information.¹⁹⁵ What's more, 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.¹⁹⁶ Interestingly, then, some problems in connection with the sharing of (sensitive) information seem to be caused by internal issues, rather than poor collaboration with the EEAS,¹⁹⁷ although insecurity of communications and the lack of interoperability between encrypted messaging systems of the institutions certainly does not help in this regard.¹⁹⁸ Notwithstanding this potential issue of confidentiality within the EP, the limited and fragmented access to classified information is difficult to square with the principles of transparency and sincere cooperation.

Fourthly, **the division of labour on security and defence dossiers within the EP potentially increases existing information asymmetries.** Indeed, different interlocutors stress that the sharing of information with the EP was partly impaired by the fragmentation of security and defence competences across the institution's own (sub)committees, political groupings, and nationalities, all of which were identified as undermining the institution's quest for coherence and influence in the CSDP realm.¹⁹⁹ This phenomenon is not uncommon to other EU policies, but it is exacerbated in relation to the CSDP by lack of a fully-fledged committee on security and defence. What's more, as responsibilities in security and defence matters are spread across several parliamentary committees, which all have different political priorities, there is an

¹⁸⁸ 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, IIA on access to sensitive information (2002).

¹⁸⁹ Stakeholder interviews 1 and 5.

¹⁹⁰ Moser (n 37) 112.

¹⁹¹ Stakeholder interview 5.

¹⁹² Stakeholder interview 1.

¹⁹³ Stakeholder interviews 1 and 5.

¹⁹⁴ Stakeholder interviews 1, 2, 3, 5, and 7.

¹⁹⁵ Stakeholder interview 1, 2, 3, and 5.

¹⁹⁶ Stakeholder interview 1.

¹⁹⁷ Stakeholder interview 1, 6, and 7.

¹⁹⁸ 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).

¹⁹⁹ Stakeholder interviews 1, 2, 4, 5, and 7.

understanding that it could potentially be problematic (not to mention risky) to share some information even within *in camera* meetings, as members of all ends of the political spectrum participate and could leak information.²⁰⁰ Hence, the EP would hence have to better streamline internally the access to and processing of information related to security and defence matters.

4.2 Supervisory and deliberative mandate

As already touched upon earlier, the EP's and SEDE's supervisory and deliberative function is, in practice, much broader than what a positivist reading of EU law suggests. Without repeating the enumeration of parliamentary activity in relation to the supervision and debate in the CSDP realm,²⁰¹ it can be underlined here that these activities make the **SEDE subcommittee an echo chamber of policy developments in EU security and defence** and, moreover, offer a unique discussion platform, although without any formally binding powers (as all votes happen within the AFET Committee).²⁰² This, in turn, makes the EP an important partner for the EEAS when it comes to sending political messages on CSDP developments or priorities to the Council.²⁰³ As a subcommittee of the EP, SEDE is close to Brussels-based policy- and decision-makers, and therefore has a somewhat privileged position (notably in comparison to its national parliamentary counterparts). Indeed, SEDE frequently hosts different stakeholders from EU institutions (including members of the Commission, representatives of the Council Presidency, the HR), but also extends its invitations to members of national ministries of defence. What's more, SEDE counts several very experienced security and defence policy-makers, which raises the quality of the exchange.²⁰⁴ Yet, while our interviewees confirmed that parliamentary scrutiny was exercised, above all, in *in camera* meetings where MEPs reportedly asked pointed questions to their guests,²⁰⁵ they were a little astonished that this level of scrutiny was not upheld outside meetings – particularly via more (written) parliamentary questions to concerned institutions.²⁰⁶ In addition to this echo chamber and debating function, external experts are invited to inform the subcommittee on specific matters (e.g. the main problems in connection to the EDF implementation), thereby making SEDE a **hub for information exchange**.

Regarding the **supervision of CSDP missions**, SEDE plays a pivotal role. It owes this special status to the fact that SEDE reportedly offers an important forum at the EU level where heads of CSDP missions and operations are invited to discuss the state of play.²⁰⁷ In practice, the interaction with mission and operation members is frequent and of good quality, not least because MEPs ask many and often very informed questions²⁰⁸ and also visit deployed personnel. Furthermore, staff of CSDP missions and operations often contact members of the EP to provide information and draw the institution's attention to specific issues.²⁰⁹ All of these activities together allow the EP to provide democratic scrutiny over CSDP activities and the bodies of the EEAS that provide conduits for political control by the Member States.

Interlocutors identified the **IPC for CFSP/CSDP** as a weak point of parliamentary activity.²¹⁰ The degree to which IPC discussions really deal with security and defence matters chiefly depends on the agenda of the country holding the Council Presidency, which also organises the bi-annual interparliamentary

²⁰⁰ Stakeholder interview 1.

²⁰¹ For details, please see Section 2.3.2 above. The specific limitations of SEDE's sub-Committee status as well as the implications of a possible change by means of the EP's Rules of Procedure are discussed in more detail under Section 4.4.

²⁰² Stakeholder interviews 1 and 5.

²⁰³ Stakeholder interview 7.

²⁰⁴ Stakeholder interview 7.

²⁰⁵ Stakeholder interviews 1, 2, 3, 5, and 7.

²⁰⁶ Stakeholder interviews 3, 5, and 7.

²⁰⁷ Stakeholder interviews 1 and 5.

²⁰⁸ Stakeholder interview 1 and 7.

²⁰⁹ Stakeholder interview 5.

²¹⁰ Stakeholder interviews 1, 2, and 3.

conference.²¹¹ While some Member States pay a lot of attention to security and defence matters, others prefer to focus on more general foreign policy issues. What's more, the level of expertise on EU security and defence issues is said to be poor at the national level,²¹² which hampers a fruitful exchange or debate. Despite this, these kinds of formats are believed to possess untapped potential for the exchange of views and deliberation if used more strategically by national parliaments and the EP (notably, the chairs of AFET and SEDE).²¹³ Indeed, not only could an enhanced interparliamentary exchange (partly) remedy the existing information asymmetry, it would also allow the EP to improve democratic scrutiny at the EU level, including the monitoring of the principle of institutional balance, which national parliaments cannot.

In practice, another important entry point for the EP are the initiatives under the **2016 Action Plan on Defence**,²¹⁴ which consist of an industrial defence package covering the industrial base, development capabilities, and research incentives.²¹⁵ One interlocutor stated that the EP could bring the principle of coherence (already discussed under Section 3) to play,²¹⁶ meaning that it could demand the necessary amount of scrutiny over the different initiatives to put Parliament in a position to ensure compliance with this principle of EU law. This would, in practice, grant the EP a hook to demand increased scrutiny over a range of initiatives, including the European Defence Fund,²¹⁷ as well as involvement in initiatives that aim to create a 'European Defence Single Market' (e.g. through re-evaluation of the two Procurement Directives discussed under Section 2.3)²¹⁸, as these were part of the 2016 Action Plan on Defence. The judgment on the *Tanzania Agreement* underlined the importance that the Court attaches to this principle, stating that the information requirement set out by the Treaties is 'to ensure that the Parliament is in a position to exercise democratic control over the European Union's external action'²¹⁹ and that the 'European Union must ensure, in accordance with Article 21(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.²²⁰

4.3 Advisory function

In terms of **how the EP can feed its views into the CSDP policy cycle** in line with Article 36 TEU, the consultation requirement set out by Article 36 TEU is currently primarily satisfied by the **presentation of the annual report of the HR to the EP**. This has two implications. First, the debate ensuing the presentation of the report is not only an important moment of parliamentary debate – and hence of the EP's supervision and deliberation mandate – but also the key moment for advisory input. Yet, instead of providing an occasion for a substantial policy input, the debate about the HR's report is seen as a mere communication exercise for the purpose of displaying political positions by MEPs, rather than an opportunity for exercising thorough democratic scrutiny over the role of the HR and functioning of the EEAS.²²¹ While this reflection of political positions and current affairs might be part of the parliamentary nature, it deprives the EP of an opportunity to properly double down on both the HR and the EEAS.²²²

²¹¹ Stakeholder interviews 1, 2, and 3.

²¹² Stakeholder interviews 2 and 3.

²¹³ Stakeholder interview 3.

²¹⁴ European Defence Action Plan, COM(2016) 950 final (30 November 2016).

²¹⁵ Steven Blockmans, 'The 2016 "Winter Package" on European Security and Defence: Constitutional, Legal and Institutional Implications', *PE 571.405* (European Parliament 2016).

²¹⁶ Stakeholder interview 4.

²¹⁷ European Defence Action Plan (2016) 5–7.

²¹⁸ *ibid* 14.

²¹⁹ Case C–263/14 (*Tanzania Agreement*) [2016] para 71.

²²⁰ Stakeholder interview 4.

²²¹ Stakeholder interviews 2, 5, and 7.

²²² Stakeholder interviews 1, 3, and 7.

Secondly, the EP's involvement prior to and after the presentation of the HR's annual report seems to be limited. While the EEAS staff prepare a summary and background information, which is presented to Parliament, channelling the EP's comments or critique into the policy cycle is a complex endeavour.²²³ 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.²²⁴ Beyond the institution's annual report, however, it is far more difficult for the EP's stances to be 'duly taken into consideration' as MEPs seem to express varying, sometimes diverging priorities at different occasions.²²⁵ Hence, the involvement of the EP before and after the debates with the HR is rather limited, and takes primarily place through informal briefings. The same applies for follow-up exchange of communication, for instance to answer remaining questions posed in the plenary, which are addressed via informal and often oral channels, also in the context of other sessions.²²⁶ 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.

Another crucial expression of the EP's advisory function is the **EP's annual shadow report**. Next to concisely outlining the EU's security and defence environment, the report also entails some recommendations. It seems that, with a view to increasing the impact of its advisory input, the EP increasingly includes actionable recommendations in its annual reports.²²⁷ With the objective of paying sufficient parliamentary attention to the manifold security and defence developments at the EU level and with a view to countering the fragmentation of parliamentary scrutiny over EU security and defence, it would be judicious to pull all defence-related strings together in the annual CSDP report and debate, with other EP committees providing input. That said, the limited (formal) involvement and impact of the EP on the CSDP policy cycle was a recurring issue brought up by our interlocutors. In light of the fundamental democratic principle underpinning EU-decision making – CFSP and CSDP being no exception in this regard – this situation seems problematic, as it deprives the EP of actually inputting its views into the policy process. It is particularly striking that: (i) the EP is almost exclusively asked to provide its views *ex post facto* – that is, once decisions have been made or implemented; and (ii) there is, beyond the cross-checking of the EEAS, no formalised or institutionalised process or follow-up mechanism to ensure that the EP's views and input are 'duly taken into consideration' for current or future CSDP developments.

This is linked to another issue, namely the **enhancement of security and defence expertise at the EP**, in particular in SEDE. Several interlocutors pointed to the fact that, in recent years, SEDE managed to acquire and consolidate essential expertise in relation to EU security and defence, not least thanks to some MEPs with a strong security and defence record, and expert hearings and commissioned reports.²²⁸ This increase of knowledge, in turn, allowed MEPs to better gauge the status quo, keep track of initiatives and activities, and reflect upon potential future developments. This important expertise enhancement is, however, relative in view of the massive expansion of the CSDP and EU security and defence topics more broadly, and the increase of expertise in the concerned institutions: the Commission has gained an entire Directorate General in charge of transversal defence questions (DG DEFIS) and the EEAS is building a dedicated Direction (SECDEFPOL.1). The EP committees in charge of security and defence – notably SEDE – have not seen their administrative staff increase.²²⁹

Another insight we gained through our interviews is that **personal ties considerably impact the EP's standing in the CSDP realm**. Currently, several high-ranking EU officials and members of the EP seem to

²²³ Stakeholder interviews 2, 3, and 7.

²²⁴ Stakeholder interview 7.

²²⁵ Stakeholder interview 7.

²²⁶ Stakeholder interviews 2 and 3.

²²⁷ Stakeholder interview 5.

²²⁸ Stakeholder interview 1, 3, 5, and 7.

²²⁹ Stakeholder interview 5.

share a similar vision of EU security and defence which, obviously, facilitates cooperation. It was also mentioned that there was some sort of interinstitutional *filière française* in defence matters due to former French politicians now occupying key positions in the Commission's DG DEFIS (Thierry Breton) and the European Parliament's SEDE (Nathalie Loiseau).²³⁰ Furthermore, the 2022 French Presidency of the Council entailed an additional momentum for interinstitutional cooperation – across policy levels – as the Presidency placed an emphasis on CFSP/CSDP matters (even before the Russian invasion of Ukraine).²³¹

4.4 Law-making and law-shaping role

Also in relation to **law-making and law-shaping**, Parliament's role was described as going beyond what the Treaties explicitly foresee, although with significant differences between specific CSDP files. The overall added value of the EP in this regard was described by one of the interlocutors as engaging the public through hearing, involving different people, and bringing together perspectives, exercising both *ex ante* and *ex post* scrutiny over the legislative process.²³²

In the case of **PESCO**, the EP was said to have successfully shaped the outcome of the constituent Council decision, despite a formal lack of competence. SEDE, after coordination with the EEAS, adopted a report which allegedly shaped the outcome.²³³ Interlocutors ascribed the same causal effect to the EP report on **transatlantic relations and NATO**. The process behind this form of **public diplomacy** seems to be based on intense 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 aims 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.²³⁴ This fruitful cooperation could, in line with the priorities stated by Josep Borrell in his confirmation hearing before the EP in autumn 2019, be intensified in the future.²³⁵

For **international agreements** concluded in line with Article 218 TFEU, the EP's role vis-à-vis the Council was described as rather weak. It was said that one core reason for the EP's weak stance was that agreements on security and defence matters (or those entailing a CFSP/CSDP dimension) were not dealt with by SEDE which, in turn, meant that the parliamentary committee in charge was generally not aware of, or had not enough expertise, to scrutinise specific CSDP-related issues.²³⁶ The example of Brexit shows, however, that this lack of competence can partly be compensated by informal and personal relationships. 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 was possible, subsequently enabling SEDE to influence the Political Declaration accompanying the Withdrawal Agreement.²³⁷ Other than that, the relationship between the Council and the EP/SEDE was described as almost non-existent, except in the context of the trilogue on dossiers with defence implications.²³⁸ Furthermore, while the CJEU strengthened the EP's right to information in relation to the conclusion of international agreements in its *Mauritius Agreement* and *Tanzania Agreement* judgments, it is unclear to what extent this provision of information actually allows the EP to change the course of action or the content of the instrument under negotiation, as most CSDP-related agreements (namely SOFAs and SOMAs) are template documents with

²³⁰ Stakeholder Interviews 1, 2, and 3.

²³¹ Stakeholder interviews 1 and 3.

²³² Stakeholder Interview 2.

²³³ Stakeholder interview 2.

²³⁴ Stakeholder interviews 2 and 7.

²³⁵ A written summary of the hearing can be found at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/629837/IPOL_BRI\(2019\)629837_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/629837/IPOL_BRI(2019)629837_EN.pdf) (accessed 14 April 2022).

²³⁶ Stakeholder Interviews 1 and 5.

²³⁷ Stakeholder interview 1.

²³⁸ Stakeholder interviews 1 and 3.

standard clauses, leaving little to no negotiation leeway.²³⁹ So while the pertinent jurisprudence undeniably reinforces the EP's right to information, it seems to make little difference in practice.²⁴⁰

4.5 Budgetary powers

Although the EP generally holds wide-ranging powers in relation to the EU budget,²⁴¹ the institution's **impact on or control of financial means in the CSDP realm remains limited** (with the exception of EU money spent on civilian missions and administrative CSDP matters). However, as SEDE's status does not include a vote on budgetary matters, the subcommittee is – if at all – involved only through internal and informal ways,²⁴² which depends to a high degree on the willingness of the rapporteur of the pen-holding committee (BUDG).²⁴³ Moreover, 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. Their focus tends to be diverted from budgetary scrutiny to the discussion of current affairs.²⁴⁴

Somewhat counterintuitively, interlocutors said **that introduction of the EDF did not significantly increase SEDE's involvement**, even though, from an institutional point of view, the EP was characterised as being successful in leaving its mark on the EDF based on its formal powers as a co-legislator.²⁴⁵ Although the overall budget as well as the legislative framework were discussed in Parliament, the debate was perceived by SEDE as lacking depth regarding details, and is therefore not believed to have helped the subcommittee in gaining weight in CSDP matters writ large.²⁴⁶ SEDE's limited role in the negotiations of the EDF was, in the absence of any formal say, believed to be based on the personal contact to the rapporteur of the leading ITRE committee, underlining once more the importance of individual relationships between relevant stakeholders.²⁴⁷ The fact that the EDF was hardly discussed in the MFF context and that it was significantly cut during the MFF negotiations made interlocutors think that the interest of the EP in security and defence has (so far) been limited in practice.²⁴⁸ This might hint at the finding that even where the EP is involved in CSDP matters (by way of the ordinary legislative procedure), it is not necessarily the parliamentary committees equipped with the field-related competences that are formally involved, suggesting that the internal order of the Parliament is not ideal to exercise the highest amount of democratic scrutiny possible. For this reason, a priority stated by some interlocutors was to revise the Rules of Procedure of the EP to make sure that the prerogatives are more clearly defined, as the current setup implies lower coherence and less impact.²⁴⁹ 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. Due to the informal nature of this (and in the absence of written agreements), this could happen comparatively easily if a political majority was to be found in the EP to address this perceived lack of coherence and missed opportunity for the EP to make its voice heard on defence and security.²⁵⁰ Another possible avenue mentioned in ample EP debates and reports would be the upgrade of SEDE to a fully-fledged committee

²³⁹ Moser (n 37) 198–203; Kleizen (n 41) 8–10.

²⁴⁰ Stakeholder interviews 1 and 3.

²⁴¹ See for further details Section 2.3.5.

²⁴² Stakeholder interview 6.

²⁴³ Stakeholder interview 1.

²⁴⁴ Stakeholder interview 7.

²⁴⁵ Stakeholder interviews 2 and 6.

²⁴⁶ Stakeholder interviews 1 and 6.

²⁴⁷ Stakeholder interviews 1 and 6.

²⁴⁸ Stakeholder interviews 2 and 6.

²⁴⁹ Stakeholder interviews 1, 5, and 6.

²⁵⁰ Stakeholder interview 1.

alongside AFET, leading to enhanced transparency and accountability.²⁵¹ According to Rule 206 of the Rules of Procedure of the EP, this standing committee could be set up by Parliament on a proposal from the Conference of Presidents and, through the same procedure, be equipped with budgetary powers.

The EP's and SEDE's influence over the **European Peace Facility** was described as very limited due to its intergovernmental nature.²⁵² However, the cautious integrative tendencies in CSDP funding matters that have so far left the overall distribution of competences unchanged have already led to increased involvement of the executive branch at the supranational level.²⁵³ This becomes evident in the field of measures assisting third states and international or regional organisations, which are adopted pursuant to Articles 28 and 30 TEU, and intend to either strengthen the military and defence capacities or support the military aspects of peace operations.²⁵⁴ The recent decisions to contribute EUR 1 billion to Ukraine for the procurement of lethal aid indeed marks a 'watershed' in the evolution of the EU's strategic responsibility for the return of peace to the European continent.²⁵⁵ The HR is responsible for both the implementation of these support measures,²⁵⁶ as well as for appointing an administrator for this purpose.²⁵⁷ This strengthened role within the framework of the EPF could, in view of the advisory competences that the EP enjoys in relation to the HR,²⁵⁸ create a spill-over effect on the amount and type of information with CSDP relevance communicated to Parliament. Although the Council has adopted assistance measures since the EPF became fully operational in July 2021,²⁵⁹ there have been no indications of increased parliamentary participation (formal or informal). Very recently (and remarkably), however, the HR suggested that in the wake of Russia's invasion of Ukraine, the EP should reconsider old certainties when it comes to Parliament's budgetary competences. During the EP Plenary at the beginning of March 2022, with reference to two recent assistance measures adopted by the Council on February 28 2022 under the EDF (to supply the Ukrainian armed forces with EUR 50 million for fuel and EUR 450 million for lethal aid, a first for the EU),²⁶⁰ Josep Borrell stated:

*'Yes, we have capacities. We have mobilised these capacities and we have to continue doing so, putting together the capacities of the Member States and the European Union. I want to remind you that the European Peace Facility is not part of the budget that you vote. It is another budget. It is an intergovernmental fund, managed by the Member States. Because we claim that we, the European Union, are a peace force and that we cannot provide arms to anyone else. Yes, we can. Yes, we have done it. In the next budget, think about it. When you vote your next budget, use the budgetary capacity of this institution to put the ways and the means in order to face the next crisis and the next Russian aggression.'*²⁶¹

Not only does this call for the EP to use its budgetary powers represent a remarkable shift from the EU's top representative in CSDP matters, but it also gives rise to the assumption that the executive – the legal framework remaining unaltered – is moving closer to the EP's position in this matter. The EP expressed its

²⁵¹ Steven Blockmans and Giovanni Faleg, 'More Union in European Defence', *Report by the Task Force on European Security and Defence chaired by Javier Solana* (CEPS 2015) 17.

²⁵² Stakeholder interviews 2 and 6.

²⁵³ For a more detailed analysis of this shift, see Section 4.5 of this study.

²⁵⁴ Article 56 Council Decision on EPF [2021].

²⁵⁵ See Dylan Macchiarini Crosson, 'The European Peace Facility Supporting Ukraine and Bolstering the EU's Strategic Responsibility', *CEPS in Brief* (CEPS 2022).

²⁵⁶ Article 10, Council Decision on EPF [2021].

²⁵⁷ Article 12, *ibid.*

²⁵⁸ Article 36 TEU.

²⁵⁹ See e.g., Council Decision (CFSP) 2021/2032 of 19 November 2021 on an assistance measure under the European Peace Facility to support military units trained by the EU Training Mission in Mozambique [2021] OJ L 415/25.

²⁶⁰ Council of the EU Press Release of 28 February 2022 <https://www.consilium.europa.eu/en/press/press-releases/2022/02/28/eu-adopts-new-set-of-measures-to-respond-to-russia-s-military-aggression-against-ukraine/> (accessed 14 April 2022).

²⁶¹ Josep Borrell, 'Russian Aggression against Ukraine, Speech of the HR/VP at the EP Plenary' (Brussels, 1 March 2022).

views in 2017 through the Gahler/González Pons Report,²⁶² stating that both the EDA and PESCO should be treated as unique cases, as is the case for the EEAS, and consequently be funded through a specific section of the Union budget rather than by the Member States. The legal argument developed by the report states that expenditure caused by decisions under the CSDP, in particular those under Articles 45(2) TEU and 46(2) TEU, should be financed through the EU budget.²⁶³ Consequently, the report considers that an amendment of the Financial Regulation is required,²⁶⁴ which currently does not include either provisions in its 'basic acts' definition,²⁶⁵ thus preventing the EP from taking on a more important role in CSDP matters. Yet, the HR's most recent statement could hint at the fact that the executive is open to reconsider the current budgetary practice (which relies on off-budget financing directly through the Member States), and, by adopting the EP's *sui generis* argument, allow more effective parliamentary scrutiny and budgetary control in the future.²⁶⁶

Finally, it is also worth mentioning that the EP/SEDE was said to display a significant interest identified in the Neighbourhood, Development and International Cooperation Instrument (NDICI).²⁶⁷ The EP is involved in the exchange of information through the *in camera* de-briefs of the interinstitutional coordination group.²⁶⁸

²⁶² European Parliament Resolution 2015/2343(INI).

²⁶³ Para 4, *ibid.*

²⁶⁴ Para 5, *ibid.*

²⁶⁵ Article 2(4)b, Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union [2018] OJ L 193/1.

²⁶⁶ Stakeholder interview 6.

²⁶⁷ Stakeholder interviews 5 and 6.

²⁶⁸ Stakeholder interview 2.

5 Recommendations

This Section includes concrete and actionable proposals for further action the EP, and in particular SEDE, could take to improve its standing in the CSDP realm, as well as recommendations for possible supplementary research.

Our recommendations in a nutshell

1. Use the CSDP competences granted by the Treaties more effectively.
2. Bundle parliamentary resources and act more strategically.
3. Clarify the contours of the EP's right to information.
4. Adapt the IIA on sensitive information to new security and defence realities.
5. Internally improve the handling of (highly) sensitive information.
6. Continue to build informal information sharing arrangements.
7. Intensify the EP's democratic scrutiny vis-à-vis the HR.
8. Make increased use of parliamentary questions.
9. Improve interparliamentary scrutiny.
10. Be more proactive about the EP's advisory function.
11. Broaden the scope of and ensure the impact of the EP's advisory input.
12. Increase EP impact on security and defence policy planning.
13. Ensure EP coherence on security and defence.
14. Rely on EU law principles to increase the EP's involvement.
15. Use a soft-law approach.
16. Use the budgetary hook to leave a mark on relevant dossiers.
17. Do not lose procurement out of sight.
18. Consolidate the EP's budget powers in the CSDP realm.
19. Adapt budgetary competences to new EU security and defence realities.
20. Increase budgetary oversight over the Commission.

5.1 General Recommendations

- **Use the CSDP competences granted by the Treaties more effectively.** EU law offers the EP some, albeit comparatively limited prerogatives in the CSDP realm. To bring the full potential of democratic scrutiny to bear within the bounds of a purposeful interpretation of the competences that have been attributed to it, the EP needs to be more effective and become even more proactive than it already is in scrutinizing various CSDP and defence-related topics. At the same time, the EP should be more realistic and use an incremental approach.

- **Bundle parliamentary resources and act more strategically.** The EP as a whole needs to start thinking more strategically as an institution; it is currently too fragmented along committee, political, and national divides to impact on the design and implementation of CSDP and needs to cohere the various views and actions that it espouses to maximise influence. At the same time, transparency and accountability of CSDP and defence-related decision-making needs to be enhanced. According to Rule 206 of the EP's Rules of Procedure (RoP), a fully-fledged Committee on Security and Defence could be set up by a majority decision of the Parliament on a proposal from the Conference of Presidents and, through the same procedure, be equipped with budgetary powers. A revision of the RoP should make sure that the defence-related prerogatives of the EP are more clearly defined across (sub)committees.
- **Clarify the contours of the EP's right to information.** The provision of information is key for the EP to perform its tasks of democratic oversight, budgetary backstopping, and holding to account the HR, supported by the EEAS, and the Commission, in particular its new DG DEFIS. Yet, too often, the EP is kept in the dark about CSDP and defence-related developments. The EP should therefore seek to clarify the substance and procedures concerning its right to information – set out by Article 36 TEU and Article 218(10) TFEU – and moreover consider referring questions to the CJEU under Article 263 TFEU and/or Article 218(11) TFEU, to obtain clarity on the legal remit of its competences. The EP's (near) absence in the design of the Strategic Compass, a public document which is sure to be implemented by way of one or more Council decisions, offers a suitable material basis for the Court's involvement.

5.2 Access to information

- **Adapt the IIA on sensitive information to new security and defence realities.** Underline and enhance Parliament's role as a democratic watchdog on new aspects of EU external policy, by seeking an update of the 2002 Interinstitutional Agreement concerning access to sensitive information of the Council in the field of security and defence policy. This would allow both institutions to integrate various arrangements on the EP's involvement in EU external action based on the treaty principle of sincere cooperation as well as CJEU jurisprudence (e.g. judgments over the EU's agreements with Tanzania and Mauritius).
- **Internally improve the handling of (highly) sensitive information.** Find new practical ways, such as guaranteeing sufficient security clearance of staff, the creation of one or more protected spaces, and the use of encrypted messaging systems between the EU's institutions and services, to share more sensitive information. In addition, ensure that those persons in the EP dealing with (highly) sensitive information are aware of the potential (legal) consequences of disclosing classified information.
- **Continue to build informal information sharing arrangements.** Foster, in particular, informal exchange with the EEAS on as many dossiers as possible that cannot be shared formally (cf. Strategic Compass).

5.3 Supervisory and deliberative mandate

- **Intensify the EP's democratic scrutiny vis-à-vis the HR.** Make the encounter between the HR and the EP more in-depth and content focused, less about scoring political points. To that end, use the long briefings prepared by the EEAS (e.g., for the annual reports) to the full extent. If needed, an *in camera* meeting could be used to discuss the HR's reports to apply full scrutiny.

- **Make increased use of parliamentary questions.** Seek information and follow-up on the EP's input by submitting more parliamentary questions with a sharper focus on CSDP matters.
- **Improve interparliamentary scrutiny.** Make more strategic use of the IPC on CFSP/CSDP and NATO PA by sharing positions and thus providing better democratic control in the emerging, multi-layered European Defence Union.

5.4 Advisory function

- **Be more proactive about the EP's advisory function.** Use, for instance, the frequent exchanges with the HR on CFSP and other aspects of EU external action as an entry point to enhance the EP's consultation powers in CSDP and defence-related matters.
- **Broaden the scope of and ensure the impact of the EP's advisory input.** The EP can, theoretically, express its views on all CSDP-related matters, including the 'progressive framing of a common Union defence policy'. As the institution is not constrained by law to restrict its input to the status quo and ongoing activities or current initiatives, it can and should regularly express its opinions on past, present, and prospective CSDP and CSDP-related dossiers. Put in place a follow-up mechanism to track whether and how the HR and EEAS have taken the EP's view 'duly into consideration'.
- **Increase EP impact on security and defence policy planning.** Coordinate across (sub)committees to better use Parliament's advisory competence through programming (i.e. DGs INTPA, NEAR, GROW) to share the EP's views on CSDP and defence-related issues.
- **Ensure EP coherence on security and defence.** With a view to SEDE becoming a fully-fledged committee, seek the exchange with and inputs of other EP committees to bring all defence-related aspects together in the annual CSDP report and debate.

5.5 Law-making and law-shaping role

- **Rely on EU law principles to increase the EP's involvement.** Build on the general EU law principles of coherence and institutional balance, and the logic of the integrated approach to external conflict and crisis, to insert the EP more in the political debates on CSDP matters.
- **Use a soft-law approach.** Exercise influence through close contacts with the EEAS and (own initiative) reports on PESCO and cooperation with NATO contribution to shape the design of Council decisions on CSDP.
- **Use the budgetary hook to leave a mark on relevant dossiers.** Anticipate reviews (MFF; EDF; EPF) and use public hearings, expert, and other exchanges to bring different perspectives together and influence policies.
- **Do not lose procurement out of sight.** Ask the Commission why the revision of the two procurement Directives is not on the agenda despite the lack of effect both Directives have had on the establishment of a European defence market.

5.6 Budgetary competence

- **Consolidate the EP's budget powers in the CSDP realm.** Continue to use the budgetary competence as a lever to increase parliamentary oversight over CSDP, especially since more public money is spent on EU security and defence. Use the Joint Consultation Meetings to effectively oversee CSDP spending. Create political momentum by using the HR's implicit call for Parliament to play a greater role in CSDP budgetary matters (especially with regard to the European Peace Facility) to ensure sufficient capacities to face future crisis. Reiterate the arguments and demand an end to

off-budget mechanisms to finance *sui generis* EU institutions like the EDA and PESCO in the 2017 Gahler/González Pons Report by creating a specific section in the Union budget. In this respect, push for a revision of the Financial Regulation.

- **Adapt budgetary competences to new EU security and defence realities.** Revisit the remit of SEDE in budgetary matters through the Conference of Presidents to make the EP's voice heard on defence and security (see general recommendations, above).
- **Increase budgetary oversight over the Commission.** Use the EP's powers of the purse to check the financial activities of the Commission in defence-related matters. After all, the judgment of the Court in *Tanzania* goes beyond international agreements.

6 Annexes

6.1 List of interview partners

The below list indicates, in an anonymised version, the interlocutors (with their institutional affiliations) with whom the authors of this study conducted semi-structured interviews in February and March 2022. The numbered references in the footnotes to material gained through these interviews refers to the below numbering of interviewees. The authors also reached out to EP committees beyond SEDE and BUDG, and furthermore contacted DG DEFIS and the Council General Secretariat; given the context in which this phase of the study took shape – just after the Russian invasion of Ukraine – additional interlocutors were not available.

1. Interview partner 1, European Parliament, SEDE subcommittee
2. Interview partner 2, EEAS, CSDP and Crisis Response Division, SECDEFPOL.1
3. Interview partner 3, EEAS, CSDP and Crisis Response Division, SECDEFPOL.1
4. Interview partner 4, European Commission, Legal Service, External relations team
5. Interview partner 5, European Parliament, DG for Parliamentary Research Services
6. Interview partner 6, European Parliament, Budget Committee
7. Interview partner 7, EEAS, Parliamentary Affairs Division, SG.2

6.2 Sample of interview questions

The semi-structured interviews, which were carried out in February and March 2022, were guided by the below sample questionnaire, which the authors shared with their respective interlocutors ahead of the interviews.

EP and CSDP in general

1. In general terms, how would you describe the role of the European Parliament with regard to CSDP matters, in particular its subcommittee SEDE?
2. By which competences and instruments does the EP (through SEDE) exercise the most and the least influence over CSDP matters?
3. In recent years, EU security and defence has known an unprecedented integration and cooperation thrust; suffice to mention the launch of PESCO, or the creation of the EDF. (How) Has EP scrutiny adapted to these significant changes? And what is the task of SEDE in this regard?

Supervision and consultation

4. According to Article 36 TEU, the HR/VP has to regularly consult the EP on the main aspects and basic choices of the CFSP and CSDP and to inform the institution about how these policies evolve while taking its views duly into consideration. How is this primary law provision, according to you, put into practice? Would you say that its implementation allows the EP to adequately gauge and scrutinise CSDP developments? If not, on which issues is this deficient and what changes would you propose?
5. How would you describe the interaction between SEDE and the EEAS? In particular, how is the EP/SEDE informed about the EEAS Work Programme and the implementation thereof? And is this provision of information, in your view, helping the EP/SEDE to perform its monitoring and accountability function?
6. How (often) is the EP informed or consulted about developments in relation to PESCO?
7. How (often) is the EP informed or consulted about developments concerning the EDA?

8. How far does the IIA on sensitive information allow the EP, in particular SEDE, to gain valuable information? Is this information improving CSDP scrutiny by the EP? Which changes – if any – would you like to see implemented with regard to this IIA?

Budgetary powers

9. As far as CSDP budget is concerned, how would you describe the EP's involvement? And what is the role of SEDE in this context?
10. How are the information provision and co-decision arrangements of the IIA on budgetary matters implemented? Do you see room for improvement?
11. How has the creation of the EDF changed the involvement of the EP in security and defence matters? And which role would you ascribe to SEDE in this regard?

Law-making

12. The CJEU has repeatedly held (in *Mauritius* and *Tanzania*) that, by virtue of Article 218(10) TFEU, the EP has a right to be fully and immediately informed by the Council about the negotiation and conclusion of international agreements, including those relating to CFSP/CSDP issues. How has this jurisprudence impacted the timely and comprehensive provision of information? What is the current *modus operandi*?
13. When it comes to association agreements and other international agreements with important budgetary implications for the Union – including those agreements with a CFSP dimension – how does the interaction between the Council and the EP based on Article 218(6) TFEU work out in practice? To what extent is/should SEDE be involved in the event an international agreement pertains to defence issues?
14. Would you say that the EP has a role to play in the adoption of legislative or other acts to implement PESCO? Why/why not?
15. Would you say that the EP has a (supervisory) role to play in the adoption of acts by EDA, in particular those pertaining to EDF funded projects, including under the PESCO framework?

Outlook

16. Looking ten years ahead, where do you see European security and defence? And what scrutiny role would you ascribe to the EP, in particular SEDE, in 2032? Which competences would have to be reinforced accordingly and how could this be done?

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