

EU Military Deployment – An Executive Prerogative?

Decision-making and parliamentary control on the use of force by the EU

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Abstract

Decisions on the deployment of military forces are amongst the most sensitive for a democratic polity. Since the establishment of the European Security and Defence Policy (ESDP), EU Member States are increasingly deciding to carry out crisis management operations in the framework of the Union. Despite the complexity of the issue, in public the process of taking a decision on a military EU deployment is generally perceived as a »simple« decision – the foreign minister of EU member states meet in Brussels, negotiate and decide to launch an operation. In practice, however, the complex institutional substructures of ESDP envision a multiplicity of actors on the European and national level, which pre-negotiate and prepare the decisions for ESDP operations in detail. Concentrating on the aspect of parliamentary control, this paper will elaborate upon three aspects of EU decision-making concerning the deployment of military force: firstly, despite the strict intergovernmental structure of ESDP, the EU's decisions are primarily formulated and taken by bodies in Brussels (»Brusselization«), so that national ministry officials not only prepare and coordinate the decision-making on the national, but also jointly on the European level. Secondly, due to this »interministerial linkage«, not only the strategic and political control of military EU operations, but also the policy formulation in ESDP is a product of interministerial negotiations largely beyond the control of the European and national parliaments. Finally, the consequences of this development for parliamentary control will be illustrated with a short analysis of the decision-making process on the military EU operation in the Democratic Republic of Congo in 2006.

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I. Introduction

Decisions on the deployment of military forces are amongst the most sensitive for a democratic polity - they can place soldiers in great physical and psychological danger, have considerable impact on relations with other states and international actors and entail significant economic and political costs. Since the establishment of the European Security and Defence Policy (ESDP), European Union (EU) Member States are increasingly carrying out crisis management operations in the framework of the Union. From 2003 onwards they have jointly conducted fifteen civilian and five military EU operations with up to 7,000 soldiers on three continents. With increasingly sensitive operations like EUFOR TCHAD/RCA and EULEX Kosovo, the dynamic development of ESDP also raises questions about the democratic legitimacy of EU decisions concerning the use of military force.

Previous studies¹ have concluded that ESDP suffers from a »double democratic deficit«: while the European Parliament is confined to the role of a commenting spectator, parliamentary control of ESDP can only be realized by the national parliaments, which differ significantly in their power to influence national deployment decisions and are often sidelined by national governments. As an international security actor, the EU takes crucial decisions with the unanimous consent of all EU member states, ranging from the principal decision to launch an operation over the generation of the force to the duration, scope and rules of engagement of the operation. In order to prepare and take these decisions, the EU has created a complex system of decision-making procedures in ESDP, where the challenge of combining the capacity to act with sufficient democratic legitimacy is particularly present.

The inherent need of security and defence policy for rapid decisions as well as secrecy further impedes transparent and democratically legitimate decision-making. This paper therefore pursues the question how EU decisions on the deployment of military forces are formulated and taken at the interplay between the EU level, national decision-making and the co-operation with international actors such as the UN and NATO. It also identifies which options remain in this multi-level decision-making procedure for parliamentary control at the different levels?

The paper will approach these questions by way of an analysis of the multilevel decision-making procedures of ESDP on the European as well as the national level. Despite the complexity of the issue, in public the process of taking a decision on a military EU deployment is generally perceived as a »simple« decision - the foreign ministers of EU member states meet in Brussels, negotiate and decide to launch an operation. This perception is hardly surprising, as it mirrors the general provisions of the EU treaty for ESDP. In practice, however, decisions are taken quite differently. The complex institutional substructures of ESDP envision a multiplicity of actors on the European and national level, which pre-negotiate and prepare the decisions for ESDP operations. These structures include the Political and Security Committee (PSC) and the EU Military Committee and Staff. Whilst this paper agrees that the heads of states and government as well as their foreign ministers in the Council are the formal decision-makers, it will show that they generally only give guidelines and approve the decisions prepared by the »decision-shapers« in the ESDP bodies.

On the basis of this analysis, three aspects of EU decision-making on deploying military force become clear: Firstly, despite the strict intergovernmental structure of ESDP, its decisions are primarily formulated and

¹ See for instance Wolfgang Wagner, "The Democratic Legitimacy of the European Security and Defence Policy," *Occasional Paper 57* (2005); Hans Born and Heiner Hänggi, eds., *The 'Double Democratic Deficit'. Parliamentary Accountability and the use of Force Under International Auspicy* (Aldershot: Ashgate, 2004).

taken by bodies in Brussels (»Brusselization«)² where a high degree of integration between national foreign and defence ministries has taken place. These ministries therefore not only prepare and coordinate decision-making on the national, but also jointly on the European level. Secondly, due to this »interministerial linkage«, not only the strategic and political control of military EU operations, but also the policy formulation in ESDP are products of interministerial negotiations largely beyond the control of the European Parliament and national parliaments. Finally, the consequences of this development for parliamentary control will be illustrated with a short analysis of the decision-making process on the military EU operation in the Democratic Republic of Congo in 2006.

II. Parliamentary Control on military deployments

Ever since the end of the Cold War, the demand for armed forces in international peace-keeping operations has been on the rise - regardless of whether they are conducted in the framework of the United Nations (UN), NATO, the EU, the African Union (AU) or by coalitions of the willing. In 2006 alone, the UN had more than 80,000 troops, military observer and police deployed across various crisis regions in the world, while regional organisations (NATO, EU, AU) had deployed a further 68,000 troops.³ To varying degrees, EU member states have contributed parts of their national armed forces to these operations, most notably under NATO and, since the creation of ESDP, the EU itself. As participating in such operations requires substantial material, political and financial costs, EU member states are today regularly confronted with the question whether and in which framework they want to use their armed forces in multilateral crisis-management.

Traditionally, foreign and security policy have been regarded as »domaines réservés« left to the discretion of the executive, especially in regards to the deployment of military means.⁴ With the democratization and constitutionalization of Western states (but also the development of military technology towards mass destruction) the involvement of parliamentary assemblies in decisions of war and peace has become to be regarded as imperative. According to the theories of »democratic peace«, democracies are regarded as less war-prone than non-democratic states. In empirical studies on »democratic peace«, the democratic element is generally operationalised as accountability of »[...] those who have the authority to decide and act to the

² Gisela Müller-Brandeck-Bocquet, "The New CFSP and ESDP Decision-Making System of the European Union," *European Foreign Affairs Review* 7/2002 (2002), 257-282.

³ Ian Johnstone, ed., *Annual Review of Global Peace Operations 2007* (New York: Center on International Cooperation (CIC), 2007), 2.

⁴ Sandra Dietrich, Hartwig Hummel and Stefan Marschall, "Von Der Exekutiven Prärogative Zum Parlamentarischen Frieden. Funktionslogik Und Funktionsprobleme Der Parlamentarischen Kontrolle Militärischer Sicherheitspolitik Am Fallbeispiel Deutschland," *Paks Working Paper*, no. 6 (2007).

elected representatives.«⁵ This assumption is founded upon the hypothesis that parliament, acting as the agent of the electorate, will transport war-averse tendencies within the general public to the government, which it may hold accountable via its constitutional powers.

Notably, the deployment of armed forces in the framework of multilateral crisis management operations such as in NATO or ESDP is fundamentally different from the use of forces following a declaration of war. Hence, even within the established democracies of the European Union, the involvement of national parliaments in decisions on the participation in such operations differs significantly. While states such as Germany or Ireland consider their armed forces as parliamentary (»Parlamentsarmee) and require an ex-ante parliamentary consent before any deployment⁶, other member states' executives such as France or Poland may deploy their forces without consulting their parliament at all (see section III.3). Leaving aside the normative question on extent to which parliaments should control military EU deployments, the following analysis will focus how these different degrees of parliamentary control are embedded in and affected by decision-making on military EU operations.

III. Decision-making on military EU operations

The European Security and Defence Policy (ESDP) is a strictly intergovernmental policy characterized by unanimous decision-making in the Council with little to no involvement on the part of the European Commission or the European Parliament (EP). Although the legal base for ESDP is quite vague,⁷ it has developed into one of the most dynamic policy areas of the Union in the last ten years or, as Javier Solana called it, »the integration project of [this] decade.«⁸ Today, with operations on three continents, the EU has established itself as an international security actor with both civilian and military means as well as a declared willingness to engage itself in international crises. Lacking its own military or civilian resources, the EU is dependent upon contributions from its member states for the conduct of these operations. Due to the intergovernmental nature of ESDP, decision-making on EU operations therefore takes place on two levels - regardless of their general consent to the launch of an operation, member states may decide voluntarily

⁵ Heiner Hänggi, "The use of Force Under International Auspices: Strengthening Parliamentary Accountability," *DCAF Policy Paper* 7 (2005).

⁶ Exceptions are, of course, emergency measures which may be legitimized ex-post, as well as, in the case of Ireland, small operations with less than 11 soldiers. Wolfgang Wagner, "Parliamentary Control of Military Missions: Accounting for Pluralism," *DCAF Occasional Paper* 12 (2006).

⁷ Art. 17 (1) TEU (Nizza) only ascribes the EU only the competence for the »progressive framing of a common defence policy«, without further specifying the content of this policy.

⁸ Javier Solana, "Die Gemeinsamen Europäische Sicherheits- Und Verteidigungspolitik. Das Integrationsprojekt Der Nächsten Dekade," *Integration* 23, no. 1 (2000), 1-6.

according to their national legal procedures whether and in what quantity they want to contribute forces. These national decision-making procedures may include the compulsory parliamentary approval of the deployment of troops and/or the allocation of financial resources.

III.1. Actors - decision-makers and decision-shapers

In order to manage this two-level decision-making set-up, the EU has established special procedures and bodies in ESDP that are distinct from those of other policy areas. On the European level, the primary decision-making body is the General Affairs and Foreign Relations Council (GAERC), composed of the foreign ministers of the member states. Although the national defence ministers accompany their foreign ministry colleagues on a regular basis, there is no separate Council formation for defence ministers. Unlike in the Common Foreign and Security Policy (CFSP), all decisions on military operations have to be taken by unanimity without exception, so that each member states may veto decisions on the deployment of EU operations.⁹ For the deployment of an EU operation, the GAERC therefore takes an unanimous decision in the form of a 'Joint Action' under CFSP, which constitutes the general decision to deploy an EU operation and includes general operational details (e.g. the command structure, the time frame and the financial details). As this general decision does not oblige the member states to commit forces to the operation, full national sovereignty is apparently retained.

Albeit, in political practice the real negotiations hardly take place in the forum of 27 national foreign ministers with their limited timeframes and overcrowded agendas. In fact, a 2001 study of the workload in GAERC has shown that even before the 2004-EU-enlargement and the dynamic development of ESDP, the amount of agenda items for the »impossibly busy foreign ministers« had risen so fast that hardly any substantial discussions on single items were possible.¹⁰ Instead, all decisions »taken by« the European Council and the Council of Ministers are negotiated by preparatory bodies, with only the politically most sensitive points actually discussed between the ministers heads of states. The most important of these preparatory bodies in the EU is the Committee of Permanent Representatives (COREPER), where all Council legislation is discussed and negotiated by the permanent representatives of the member states. ESDP, however, has its own

⁹ See art. 23 EUV (Nizza). This strict unanimity rule may be circumvented by individual states by invoking the instrument of 'constructive abstention', whereby a state may decide to abstain without blocking a vote. This instrument has recently been used for the first time, as Cyprus decided to abstain from the vote on the ESDP operation in Kosovo in February 2008. Renata Goldirova, "EU One Step Closer to Kosovo Mission," *EU-Observer* (04.02.2008).

¹⁰ Ricardo Gomez and John Peterson, "The EU's Impossibly Busy Foreign Ministers: No One is in Control," *European Foreign Affairs Review* 6, no. 1 (2001), 53-74.

structure of bodies that prepare decisions on EU crisis management and capabilities, established in 1999 along with the creation of ESDP.¹¹

The central preparatory body in ESDP is the Political and Security Committee (PSC). It is the only preparatory body of ESDP that has found its way into the treaties and is tasked with monitoring the international situation as well as preparing policy decisions in CFSP/ESDP and monitoring their implementation (Art 25 TEU). For the conduct of EU crisis management, the GAERC can transfer the political and strategic control of operations to the PSC, an option it has used in every ESDP-operation so far ([?, 267]). It is also charged with co-ordinating activities with other international organisations, most notably NATO and the UN. Finally, all decisions taken by GAERC are previously negotiated in the PSC, where often more than 90% of a proposal is agreed upon unanimously before it is transferred to the Council.¹² Additionally, the PSC guides a number of further ESDP bodies and working groups located in the Council structure, including the EU Military Committee (EUMC) and the EU Military Staff (EUMS) as well as the Committee for Civilian Aspects of Crisis-Management (CIVCOM), which are also composed of delegates from the national defence and foreign ministries.¹³

Due to the pivotal position of the PSC in the decision-making process, it is worth taking a detailed look at its composition and working procedures. Unlike the GAERC it is composed of national delegates permanently based in Brussels, who meet on a regular and frequent basis (at least twice a week). Although the delegates receive their directives from the national capitals, they therefore develop close personal networks as well as informal rules in the almost daily negotiations.¹⁴ On every proposal, including decisions on the deployment of military and civilian operations, the PSC agrees as many points as possible under the principle of consensus, while the remaining controversial aspects are transferred to the Council itself.

Two aspects of this structure are highly relevant for the parliamentary control of decision-making processes, including at the national level. First, although the PSC is not a decision-maker in its own rights, it can rather be regarded as a decision-shaper since its negotiations have a profound impact on all ESDP decisions. Due to

¹¹ Gilles Andréani, "Why Institutions Matter," *Survival* 42, no. 2 (2000), 80.

¹² Nevertheless, all proposals agreed in the PSC still have to go through COREPER before being transferred to the Council, but the main preparatory work in CFSP/ESDP is generally completed in the PSC. Ana E. Juncos and Karolina Pomorska, "Playing the Brussels Game: Strategic Socialisation in the CFSP Council Working Groups," *European Integration Online Papers (EIOP)*, Vol 10, no 11, 2006.

¹³ Council Decision of 22 January 2001 Setting Up the Political and Security Committee (2001/78/CFSP).

¹⁴ For a further analysis of the working methods of the PSC, see Simon Duke, "The Linchpin COPS. Assessing the Working and the Institutional Relations of the Political and Security Committee," (2005); Juncos and Pomorska, Ana E. Juncos and Karolina Pomorska, "Playing the Brussels Game: Strategic Socialisation in the CFSP Council Working Groups," *European Integration Online Papers (EIOP)*, Vol 10, no 11, 2006.

the sensitive nature of ESDP, PSC negotiations are generally held behind closed doors, so that national parliaments are only informed by their respective national ministries, and are hence at an informational disadvantage. Due to informal rules in the preparatory bodies of the EU, member states, rarely, if ever, open up points that were previously politically agreed by consensus, since doing so would entail considerable political costs. When a proposal for a Joint Action is actually on the agenda of the Council itself, there is politically very little room for manoeuvre to change the pre-shaped decision.

The second important aspect is the remarkable linkage between national foreign and defence ministries on the EU level. The co-operation between the national representatives in the ESDP decision-shaping bodies has created a tight network between national ministries, which can be regarded as an *interministerial* sub-level to the intergovernmental decision-making Council. This has the effect that during the planning stage of an ESDP operation, the national ministries conduct the necessary European negotiations as well as the planning for national contributions in parallel and in the same ministerial departments. On the one hand, this streamlines and accelerates decision-making, as decisions on an EU operation should only be taken with available troop contributions in mind. On the other hand, this institutional design is highly problematic for national parliaments in their control function, in particular if national decisions on the deployment of armed forces to EU operations are informally anticipated at the EU level by politically pledging them in the interministerial negotiations. In this sense, the extent to which parliaments are informed about the negotiations in the interministerial ESDP bodies by their governments and ministries is of core relevance for their ability to control the executive.

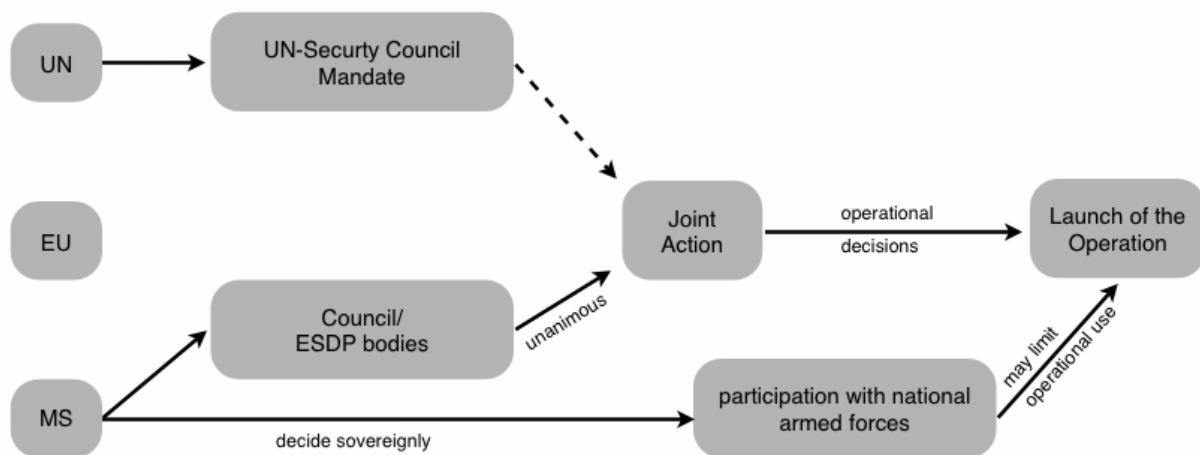
III.2. Sequential decision-making procedure

A decision on the deployment of an EU military operation consists of several parts, which are taken in a sequential decision-making procedure on the European, national and international level. At the beginning of this procedure stands the **general decision** to conduct an operation. According to international law, every military operation on the territory of another state requires the consent of the legitimate government of the concerned states concerned and/or a mandate by the UN Security Council. In such a mandate, the latter may authorize a regional organization such as the EU to conduct military operations under Chapter VI or VII of the UN Charter. On the European level, the general decision comes in the form of a Joint Action (Art. 14 TEU), while the member states decide about their participation according to their national legal requirements.

Along with this general decision a great number of **operational decisions** have to be taken, which are split up into several documents on the European level. Legally, a Joint Action should include details as to the

objectives, the scope, means, the financing and the time frame of the operation (art. 14 TEU). In practice, even those aspects have been framed only generally in past Joint Actions; for instance, the exact numbers of troops to be deployed have not been specified. To this end, a (confidential) *crisis management concept* (CMC) is developed for each EU operation, which includes detailed objectives, plans for the desired end state as well as an exit-strategy. Additionally, EU member states may define the operational uses to which their contributions are put, including the area of operation, the duration or rules of engagement.¹⁵ Thirdly, the EU and its member states have to take **decisions on co-operation** with other international partners such as NATO or the participation of third states. All in all, a military EU operation is therefore deployed after a sequence of decisions taken in an interplay between decision-making on international, European and national levels (see illustration I), while parliamentary control takes place only within the member states:

Illustration 1: Elements of the ESDP decision-making process



Source: Own compilation based on official information from the EU.

In order to assess the nature and scope of parliamentary control in this decision-making procedure, it is imperative to take a closer look at its sequence and when parliaments may lock into it. In general, the EU

¹⁵ For instance, during the operation EUFOR RD CONGO the participating German troops could only be used in the area of the capital Kinshasa, a limit that did not apply to EUFOR as a whole but was a national German decision. See *Antrag Der Bundesregierung, Beteiligung Bewaffneter Deutscher Streitkräfte an Der EU-Geführten Operation EUFOR RD CONGO Zur Zeitlich Befristeten Unterstützung Der Friedensmission MONUC Der Vereinten Nationen Während Des Wahlprozesses in Der Demokratischen Republik Kongo Auf Grundlage Der Resolution 1671 (2006) Des Sicherheitsrates Der Vereinten Nationen Vom 25. April 2006* (2006).

decision-making procedure for ESDP missions may be grouped into five phases, each marked by a unanimous decision¹⁶:

1. Crisis detection
2. General decision and determination of the command structure
3. Operational planning and force generation
4. Implementation
5. Revision/termination of operation

On a general basis, the PSC monitors the international security situation and conducts regular reports on developing crises, for which it receives information from the Commission and the member states. As soon as the PSC detects a crisis, it - meaning the ministerial officials of the member states - may consensually agree that an EU action is appropriate (1st phase). In the subsequent negotiations, the ESDP bodies prepare the crisis management concept (CMC) under the guidance of the PSC. When the CMC is agreed upon by the PSC, it forwards it to the Council for adoption along with a suggestion for the most suitable course of action. Thus, by the time the ministers in the Council deal with an envisioned EU operation for the first time, important preliminary agreements have already been taken. At the same time, national planning begins and the EUMC gathers preliminary, non-binding information from the member states in regards to their possible contributions.

In the 2nd phase, the general decision to conduct the operation is taken in the form of the Joint Action, which also includes the important determination of the command structure. Unlike NATO, the EU does not operate a standing headquarter, but has to rely either on a national headquarter, NATO's SHAPE or it may temporarily activate the EU Operations Centre. As in the first phase, the PSC is the linchpin of decision-preparation at the EU level, by presenting to the Council the draft of the Joint Action along with the preferred civilian and military options as well as the suggested command structure. With the decision of the Council to adopt the Joint Action, the general decision to deploy an EU operation is taken. At this point, national parliaments are generally informed by their respective governments, while only a few parliaments - e.g. Finland or Luxembourg - may issue a binding mandate for their minister before the vote in the Council of

¹⁶ The following analysis of the EU decision-making procedure on military operations is based on the relevant treaty articles in the TEU as well as the following official documents: European Council of Nice 2000, *Presidency Conclusions Annex VI, Presidency Report on the European Security and Defence Policy*, Council of the European Union, *Suggestions for Procedures for coherent, comprehensive EU crisis management*, Brüssel 2006; Council of the European Union, *Council Decision (2001/78/CFSP) of 22 January 2001 setting up the Political and Security Committee*, Brüssel 2001; Council of the European Union, *Council Decision (2001/79/CFSP) of 22 January 2001 setting up the Military Committee of the European Union*, Brüssel 2001; Council of the European Union, *Council Decision 2005/395/CFSP of 10 May 2005 amending Decision 2001/80/CFSP on the establishment of the Military Staff of the European Union*.

Ministers.¹⁷ For parliaments like the Finnish, the interministerial preparation of decisions may prove to be impedimental, if decisions are already agreed in consensus before being put on the agenda of the Council.

The 3rd and last phase before the launch of the operation is marked by detailed operational planning on the EU level and formal decision-making on the national level in regards to the national contributions in the force generation process. The operational planning is mainly conducted by the ESDP bodies as well as the now determined command structure (Operation Headquarters and Operation Commander), based on a so-called *Initiating Military Directive* (IMD) issued by the PSC. The following planning is developed across several key documents such as the concept of operations (CONOPS), the operation plan, the rules of engagement etc. Most important for parliamentary control is the force generation. Armed forces for military EU operations are generated based on the principles of »recourse« (to the member states forces) and »voluntariness«¹⁸, regardless of whether they are composed ad-hoc based on the Helsinki Headline Goal Catalogue or an EU Battlegroup is used.¹⁹ Hence, after the governments of the EU member states have unanimously taken the decision to deploy an operation, the member states decide voluntarily and individually on the national level whether to contribute forces. It is only the individual national decision that is being scrutinized by some of the national parliaments, at a time when the general decision is already being taken (see the following section).

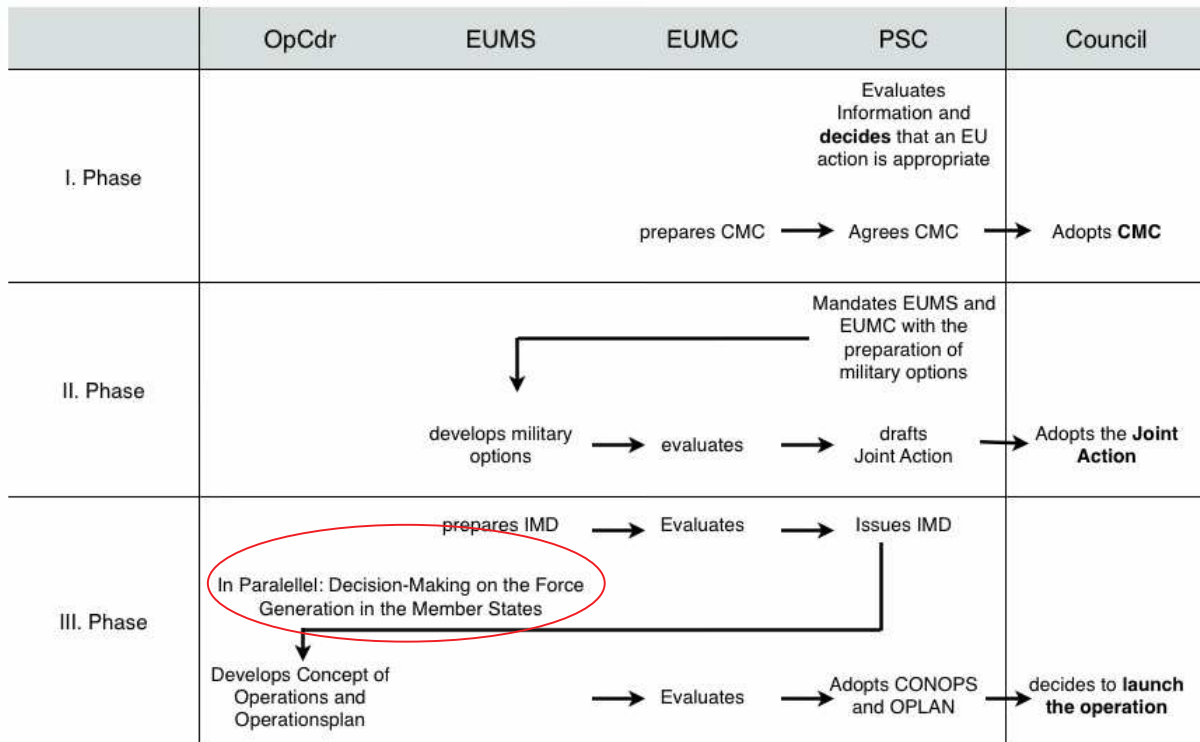
Once the operational planning is completed and all member states have decided on their contribution, thus concluding the force generation, the Council takes the decision to launch the operation. During the 4th phase (implementation), national parliaments may monitor the conduct of the operation, while decision-making in the 5th and final phase follows the procedures of the second and third phase. Thus, the decision-making procedure may be illustrated as follows:

¹⁷ Hans Born, Alex Dowling, Teodora Fuior and Suzana Gavrilesco, *Parliamentary Oversight of Civilian and Military ESDP Mission: The European and National Levels* (Brussels, European Parliament [2007]).

¹⁸ Sebastian Graf von Kielmansegg, "The European Union's Competences in Defence Policy - Scope and Limits," *European Law Review* 32 (2007), 228.

¹⁹ Due to the recourse to member states armed forces, the EU has to create a new force on a case to case basis for each military operation based on the member states' contributions. In order to facilitate this process, it has set up the so-called Headline Goal Catalogue, a Catalogue of potentially available national forces (see Bastian Giegerich and William Wallace, "Not such a Soft Power: The External Deployment of European Forces," *Survival* 46, no. 2 (2004), 163-182). The EU-Battlegroups, in contrast, are multinational forces that are on call for a rotation period of half a year each and are envisioned to be deployed rapidly. Both forms of force generation, however, require a voluntary consent by the participating member states.

Illustration 2: Schematic order of the decision-making procedure for military EU operations



Source: Own compilation based on official information from the EU.

III.3.Parliamentary Control - the National level

This decision-making procedure poses a distinct challenge for the ability of national parliaments to scrutinize decisions on the deployment of military EU operations. In principle, for each military EU operation all member states have to take two formally separate decisions - (A) whether they consent to the deployment of the operation in the EU framework as well as (B) whether and in what quantity they want to contribute troops to the operation. As shown above, decision A is prepared by the ministerial representatives in the ESDP bodies and taken in the form of a Joint Action by the foreign ministers in the Council; this decision is usually preceded by a governmental decision on the national level. Although the Joint Action constitutes the general decision to deploy a military EU operation, and is accompanied by a preliminary political agreement on the main set-up of the force to be used, very few national parliaments scrutinize or mandate their government in the decision to approve a Joint Action in ESDP. Furthermore, in most EU member states CFSP/ESDP are exempted from the usual mechanisms developed as regards the information exchange and parliamentary

control of European Union affairs.²⁰ This is further supported by the lack of interest displayed by national parliamentarians in military EU operations in which their respective country does not plan to contribute significant troops.²¹ Thus, it is in particular the general decision to deploy and launch a military EU operation that escapes scrutiny by national parliaments.

The decision on the contribution of national troops to an ESDP operation (B) that has already generally been decided in form of the Joint Action is taken voluntarily according to national procedures. As illustrated in section III.3, the degree of parliamentary control in national deployment decisions varies significantly across the different EU member states. Altogether, the member states' parliaments can be sorted into four categories according to their scrutiny rights - (I) compulsory parliamentary co-decision before the adoption of the Joint Action, (II) compulsory affirmation by the parliament before the deployment of national armed forces, (III) consultation and/or affirmation after the start of the deployment and finally (IV) no formal involvement of the parliament.²² This heterogeneous spread means that the parliamentary control of military EU operations via national parliaments is only guaranteed in a limited number of member states. Thus, a military EU operation is feasible in which no member states of category I or II participates.²³ In other words, this operation could be launched without any parliamentary approval on the national or European levels.

²⁰ COSAC Secretariat, *Fourth Bi-Annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny* (London: COSAC Secretariat, [2005]).

²¹ For instance, in a series of interviews conducted in December 2007 with members of the German *Bundestag*, parliamentarians affirmed that the military EU operation EUFOR TCHAD/RCA was not discussed in the respective committees, since no German participation was planned.

²² Hans Born, Alex Dowling, Teodora Fuior and Suzana Gavrilescu, *Parliamentary Oversight of Civilian and Military ESDP Mission: The European and National Levels*.

²³ For instance, in the second half of 2008, an EU Battlegroup contributed by the United Kingdom is on call, which may deploy its armed forces without parliamentary consent.

Illustration 3: Parliamentary control of deployment decisions in EU member states

Member state	Parliament may issue a mandate	parliamentary approval before deployment	co-decision on operational issues	Information Rights
Austria	yes (binding)	yes	yes	yes (all members)
Belgium	no	no	no	yes (Committees)
Bulgaria	no	no	no	yes (Committees)
Cyprus	no	yes	yes	no
Czech Republic	no	no	yes	yes (Committees)
Estonia	no	yes	yes	yes (Committees)
Finland	no	no	no	yes (all members)
France	no	no	no	no
Germany	yes	yes	yes	yes (all members)
Greece	no	no	no	
Hungary	yes (non-binding)	no	no	yes (Committees)
Ireland	no	yes	yes	yes (only head of Committees)
Italy	no	yes	no	yes (Committees)
Latvia	yes (binding)	yes	yes (only duration)	yes (Committees)
Lithuania	yes (binding)	yes	yes	yes (Committees)
Luxemburg	no	no	no	no
Malta	no	n/a	n/a	n/a
Netherlands	yes (binding)	yes	yes	yes (Committees)
Poland	no	no	no	no
Portugal	no	no	no	no
Rumania	no	no	no	yes (Committees)
Sweden	yes (non-binding)	yes	yes	yes (Committees)
Slovakia	yes	yes		
Slovenia	no	no	no	yes (Committees)
Spain	yes (non-binding)	yes	yes	no
United Kingdom	no	no	no	yes (Committees)

Source: Own compilation based on a survey sent to the national parliaments of the 27 EU member states.

In order to illustrate the extent of the differences between EU member states, it is worth taking a closer look at two member states, France and Germany. These two are especially suited for such a comparison as they represent the two ends of the spectrum, while also at least one of the two has played a leading role in each of the past military EU operations. Germany is among the member states with the most stringent parliamentary participation in deployment decisions, since approval is required before any deployment of German armed forces. For a military ESDP operation, the German government therefore has to table a proposal for a

decision to the Bundestag, which has to be sufficiently concrete.²⁴ However, this proposal can only be tabled on the basis of an adopted Joint Action on the European level, so that the principal decision to deploy an EU operation has already been taken, and the Bundestag may only approve or reject but not change the proposal. In practice, though, the requirement of approval by the Bundestag requires the government to consult at least the main parliamentary groups during the decision-making process on the European level, hence ensuring a relatively high level of parliamentary control.²⁵

In France, on the other hand, the government is not obliged to consult the *assemblée nationale* on military operations short of war. In practice, French governments have only informed the parliament on the issue of participation, and even then, only after the beginning of the deployment.²⁶ Thus, both decision A and B are taken by the executive alone. Interestingly, Article 88-3 of the French constitution assigns parliament the principal right to scrutinize EU decisions, including in CFSP/ESDP. In practice, however, in each past decision on military EU operations the French government has evaded the involvement of the *assemblée nationale* by evoking urgency procedures, leading in France to an almost in-existent parliamentary control of military EU operations.

In sum, an overall assessment of parliamentary control of decisions on military EU operations by national parliaments is hardly possible in view of the vast differences displayed in these two cases alone. It can be concluded, however, that a general parliamentary control of these decisions cannot be provided for by the national parliaments as a whole.

III.4. Parliamentary Control by the European Parliament

Formally speaking, the European Parliament (EP) is required neither to give its approval nor to be consulted during any stage of the decision-making procedure on military EU operations. According to Article 21 TEU, the Council Presidency shall consult and keep the EP informed on the main aspects and basic choices of CFSP. However, in practice this does not require the consultation of the Parliament on military ESDP operations, although members of the European Parliament (MEPs) may initiate (non-binding) resolutions and

²⁴ Gesetz Über Die Parlamentarische Beteiligung Bei Der Entscheidung Über Den Einsatz Bewaffneter Streitkräfte Im Ausland (*Parlamentsbeteiligungsgesetz*) (2005).

²⁵ Member of the Defence Committee of the German Bundestag, personal communication, 13th December 2007.

²⁶ A notable exception of this practice was the French decision to participate in the coalition operations against Iraq in 1991, where President Mitterand asked the *assemblée nationale* for approval. This practice, however, was not repeated in the following deployment of French armed troops, e.g. in the framework of ESDP or in the NATO military operations in the Balkans or Afghanistan (Olivier Rozenberg, "French Parliamentary Participation in Foreign, Security and Defence Policy: Anaemic National Performance and European Potential" In *The Parliamentary Dimension of CFSP/ESDP. Options for the European Convention*, eds. Jürgen Mittag and Wolfgang Wessels (Cologne: 2002), 128).

recommendations to the Council at any stage during the decision-making procedure, including before the Joint Action's adoption.²⁷ Additionally, an EP Committee, a political group or a group of MEPs as well as individual MEPs may table questions to the Council (and the Commission in regards to civilian ESDP operations) and request members of the Council to appear before the EP. Finally, a selected group of five MEPs has access to classified information from the Council on sensitive ESDP documents, while members of the EP Committee on Foreign Affairs (AFET) and its Sub-Committee on Security and Defence (SEDE) have the right to visit ESDP operations abroad. In particular the latter Sub-Committee SEDE, which was first established at the beginning of the current legislature (2004), is aiming at the accompaniment of the decision-making processes of ESDP with input from the Parliament and using its powers as extensively as possible. In addition, the EU's High Representative for the CFSP, Javier Solana, has appointed a Personal Representative for Parliamentary Affairs in order to work closely with the European Parliament.²⁸

This brief overview of the formal powers of the European Parliament in ESDP reveals a picture more mixed than conventional wisdom suggests. While it certainly lacks the extensive powers in security and defence policy assigned to some national parliaments, it may use its access to information (formally, but also informally due to local networks in Brussels) and its right to issue resolutions/recommendations for a proactive involvement in ESDP decision-making processes. In fact, the EP has issued resolutions before the launch of the last three military EU operations (EUFOR Althea, EUFOR RD CONGO and EUFOR TCHAD/RCA). Although these resolutions are non-binding and their effect on the actual decision taken by the Council is most likely limited, they may lead to a stronger political involvement of the EP and in particular SEDE in decision-shaping on ESDP operations. The biggest lacuna compared to the national parliaments, however, is the EP's lack of budget control in ESDP - as will be shown in the following section. In effect, while its access to information and the right to issue resolution matches that of some national parliaments, the EP remains essentially unable to sanction and thus to control any decisions on military EU operations.

III.5. Financial oversight by the European and national parliaments

A central element for the parliamentary control of executive action is budgetary law, or 'power of the purse', which is also assigned to the European Parliament in almost all EU policy areas. In principle, this also applies to CFSP, where the operative costs of Joint Actions are financed by the EU budget, including civilian ESDP

²⁷ Hans Born, Alex Dowling, Teodora Fuior and Suzana Gavrilescu, *Parliamentary Oversight of Civilian and Military ESDP Mission: The European and National Levels*, 12.

²⁸ Spokesperson of the Secretary General/ High Representative for CFSP, "Javier Solana, EU High Representative for CFSP, Appoints a Personal Representative for Parliamentary Affairs," 29.01.2007.

operations. All operations having military or defence implications, however, are excluded from this rule and cannot be financed from the CFSP title nor the EU budget in general (article 28 TEU). This is of special relevance to the European Parliament, which accordingly lacks budget oversight on military EU operations. According to an Interinstitutional Agreement between the EP, the Commission and the Council, the Parliament has to be informed and consulted before any CFSP-decision entailing costs for the EU budget, including civilian ESDP operations.²⁹ With the current rules in place, however, the financing of military EU operations is completely outside the realm of the European Parliament.

Instead, these missions are financed by the member states via the so-called Athena mechanism. Athena distinguishes between *common costs*, which are covered by all member states based on the GNI scale, and *individual costs*, which have to be covered by the member states participating in an operation based on the »costs lie where they fall« principle.³⁰ All costs which are not explicitly attributed to the first category³¹ automatically fall in the second, so that in the past the common costs amounted for less than 10% of the total costs for military EU operations.³² The remaining 90+% of the total costs are covered by the member states national budgets, usually stemming from the defence budgets.

On the national level, by contrast, all national parliaments are assigned with budgetary powers in security and defence policy. There are, however, significant differences in regard to the way these powers are realised. For instance, while eight parliaments have to approve the individual budget for each military deployment, fifteen can only approve them as part of the general budget once a year. In this general debate individual military operations are usually of only minor significance, while an individual budget allows for far more focused scrutiny. A second difference is whether the parliament in question scrutinizes only the individual budget for the national deployment, or the national contribution to the common costs too:

²⁹ Andreas Maurer, Daniela Kietz and Christian Völkel, "Interinstitutional Agreements in the CFSP. Parlamentarization through the Back Door?" *European Foreign Affairs Review* 2/2005 (2005), 175-195.

³⁰ David Scannell, "Financing ESDP Military Operations," *European Foreign Affairs Review* 4/2004, 529-549.

³¹ The exact definitions of which costs are eligible as common costs may be found in the Annex to the legal rules on the Athena mechanism. See *Council Decision 2007/384/CFSP of 14 May 2007 Establishing a Mechanism to Administer the Financing of the Common Costs of European Union Operations having Military Or Defence Implications (Athena)*, (2007).

³² EU Council Secretariat, "Factsheet. Financing of ESDP Operations," (2007).

Illustration 4: Budgetary Powers of National Parliaments in regards to military EU operations

	Individual control of the national participation and the national contribution to the common costs	Individual control of the budget for the national participation	Control only as part of the General Budget
Member state	Austria, Belgium, Bulgaria, Estonia, Lithuania, Sweden (6)	Germany, Italy (2)	Cyprus, Czech Republic, Finland, France, Hungary, Ireland, Latvia, Luxemburg, Netherlands, Poland, Portugal, Rumania, Slovenia, Spain, UK (15)

Source: Own compilation based on a survey sent to the national parliaments of the 27 EU member states.³³

This mechanism for financing ESDP has hence two potentially perilous effects on the parliamentary control of military EU operations. First, it does not include a substitute for the lack of parliamentary control by the EP for the common costs, since the budget for Athena is drawn up, managed and controlled by a »Special Committee« composed of representatives from the member states' governments.³⁴ Secondly, the complicated mechanism distinguishing between common and individual costs, with the former only being partially scrutinized by national parliaments, means that the overall budget for a military EU operation is at no point subject to parliamentary control.

IV. Decision-making in practice - EUFOR RD CONGO

After this analysis of the formal decision-making procedures, it is imperative to examine how they play out in practice and which effects they have on parliamentary control. The military EU operation EUFOR RD CONGO in the Democratic Republic of Congo (DRC) in the second half of 2006 is particularly suited for this study, as it was led by a member states with a high level of parliamentary control (Germany) and its decision-making process took place at a time when the ESDP bodies and procedures were already firmly in place. Additionally, it was widely regarded as an operation with high symbolic significance, demonstrating the Union's ability for autonomous military action.

Between 1996 and 2002, the DRC was the theatre of a brutal war claiming over 5 million lives³⁵ with the involvement of all neighbouring countries of the DRC.³⁶ Since 1999 the UN operation MONUC has been

³³ No data available for Greece, Malta and Slovakia. Denmark does not participate in ESDP.

³⁴ Council Decision 2007/384/CFSP of 14 May 2007 Establishing a Mechanism to Administer the Financing of the Common Costs of European Union Operations having Military Or Defence Implications (Athena).

³⁵ Joe Bavier, "Congo War-Driven Crisis Kills 45.000 a Month," Reuters, 22.01.2008.

stationed in the country in order to support the peace process and ensure long-term stabilisation. With currently about 17,000 soldiers, MONUC constitutes one of the largest UN operations world-wide.³⁷ In the summer of 2006, the peace process in DRC entered a critical phase, as the all-party interim government was to be succeeded by a new government in the first democratic elections for over 30 years. Since most of the presidential candidates were formerly involved in the war and still maintained their own armed forces, these critical elections were constantly in danger of being disrupted by a new outbreak of armed conflicts. In December 2005 the UN therefore asked the European Union, which was already engaged in the DRC³⁸, whether it could support MONUC during the election process with a deterring military force.³⁹

The following decision-making process for the military operation EUFOR RD CONGO took place during the first half of 2006, lasting from the UN request to the Union on 27 December 2005 until the final Council decision to launch the operation on the 12 June 2006 (see Illustration 5). At large, the process followed the specified procedures, with the interministerial ESDP bodies starting the preparation in January 2006. During the first phase of consultation, however, the ESDP structures ran into problems - although the member states were generally in favour of deploying an operation in the DRC, not enough contributions were announced, as especially none of the larger states wanted to take the lead. Only after a political agreement between the leaders of Germany and France outside the EU structures on 14 March that France would deploy an equally large contingent as Germany while the latter would lead the operation allowed for a settlement in the ESDP bodies.⁴⁰ A week later, the PSC agreed the Crisis Management Concept. From the end of March onwards, the now appointed Operation Headquarters in Potsdam started the military planning and send the first of several fact-finding missions to Kinshasa (DRC). Finally, on 27 April the GAERC adopted the Joint action, after the UN Security Council had formally mandated the EU to deploy the operation two days earlier.

³⁶ This war is sometimes differentiated into the First Congo War (1996-1997) and the Second Congo War (1998-2002). Despite the formal end of the war in 2002 hostilities continue until today, in particular in the East of the country.

³⁷ International Crisis Group, "Securing Congo's Elections: Lessons from the Kinshasa Showdown," *Africa Briefing*, no. 42 (2006).

³⁸ The EU had previously deployed its military operation Artemis in 2003, the civilian operations EUPOL Kinshasa as well as EUSEC RD Congo and invested heavily in the peace process, in particular the elections. See Marta Martinelli, "Helping Transition: The EU Police Mission in the Democratic Republic of Congo (EUPOL Kinshasa) in the Framework of EU Policies in the Great Lakes" In , 2006).

³⁹ *Council Joint Action (2006/319/CFSP) on the European Union Military Operation in Support of the United Nations Organisation Mission in the Democratic Republic of Congo (MONUC) during the Election Process*, Public Law 2006/319/CFSP, (2006): ..

⁴⁰ Peter Schmidt, "Freiwillige Vor! Bundeswehreinsetzung Im Kongo - Zur Dialektik Einer Führungsrolle Wider Willen," *Internationale Politik* 11/2006 (2006), 68-77..

Illustration 5: The decision-making process for EUFOR RD CONGO

Date	Decision
27 December 2005	Request by the United Nations to the EU asking for military support during the election process in the DRC
January 2006	First consultation between member states in the ESDP bodies and the UN, including a technical assessment mission sent to the DRC
14 March 2006	Informal agreement between President Chirac and Chancellor Merkel on the force composition
23 March 2006	Adoption of the CMC by the Council after agreement in the ESDP bodies
28 March 2006	The Austrian Presidency officially informs the UN that the EU is willing to send forces into the DRC
4 April 2006	The PSC identifies the <i>Einsatzführungskommando der Bundeswehr</i> in Potsdam as Operation Headquarters, which immediately starts its work by sending a joint fact-finding mission to the DRC
25 April 2006	Resolution adopted by the UN Security Council
27 April 2006	Adoption of the Joint Action by the Council
24 May 2006	Decision of the cabinet in Berlin
1 June 2006	Constitutive Approval of the Bundestag
12 June 2006	Council Decision to launch the operation

Source: Own compilation based on official information by the EU and the German Bundestag.

At this point, the general decision to deploy an EU operation had been taken, along with a *political* agreement on the main contributors to the force. On first sight, one may argue that this decision had been taken by the executives of the member states alone - prepared in the interministerial bodies of ESDP and formally adopted by the foreign ministers in the Council, neither the European Parliament was formally consulted nor were a significant number of national parliaments involved. For instance, in Germany the constitutive approval of the *Bundestag* is required »in due time before the begin of operations«⁴¹, but the formal proposal was tabled by the government on 17 May, that is 21 days after the adoption of the Joint Action. The final approval was given by the *Bundestag* on the 1 June 2006, more than a month after the political agreement and more than two month after the *Einsatzführungskommando* in Potsdam started its work as Operational Headquarters for EUFOR RD

⁴¹ Deutscher Bundestag, *Gesetz Über Die Parlamentarische Beteiligung Bei Der Entscheidung Über Den Einsatz Bewaffneter Streitkräfte Im Ausland (Parlamentsbeteiligungsgesetz)*.

CONGO.⁴² At that point, although a rejection of the German participation in the operation was legally possible, it would have severely damaged the country's credibility towards the EU, the UN and its major ally France.

A more detailed look at the activities of parliaments at the time in question, however, reveals a distinctly different picture. At first, during the »hot phase« of decision-shaping in March 2006, the European Parliament adopted a resolution on 23 March with several clear demands for EUFOR RD CONGO, most of which have been met.⁴³ Not met, though, have been the EP's demand to be adequately informed by the Council, so that it »is fair to say that the Press has been better informed than the EP«⁴⁴. On the national level, in ten of the participating member states parliament gave its approval before the launch of the operation. A closer look at Germany therefore reveals that although the formal approval by the Bundestag was given only in June, due to the requirement to secure such an approval the government was in constant exchange with the relevant committees during the whole decision-making process. Parliamentarians from the governing coalition interviewed for this paper have assessed the Bundestag's influence during the decision-making process as »very high« and stressed that they were consulted adequately before the adoption of the Joint Action and the political agreement on European level.⁴⁵ It can be assumed that a similar concomitant exchange between government and parliament has taken place in those ten member states where the government required a parliamentary approval before the launch of the operation. Additionally, even in five member states without compulsory parliamentary control including Poland and the UK, the parliaments were informed by their respective government and discussed the operation formally in committee. In France, this discussion took place in March, hence one month before the adoption of the Joint Action.⁴⁶ After the completion of the national decision-making, the Council unanimously decided to launch the operation on 12 June 2006.⁴⁷

⁴² EU Military Staff, "EUFOR RD CONGO - the Making of a Mission," *Impetus - Bulletin of the EU Military Staff*, (2006).

⁴³ Due to the non-public nature of the ESDP bodies' meetings, it is almost impossible to assess whether the EP's resolution had any significant impact on the actual decision. The fact that the PSC agreed the CMC on the same day without waiting for the EP's resolution, though, suggests rather an opposite interpretation.

⁴⁴ Gerrard Quille, *On NOTE: On ESDP Mission "EUFOR RD CONGO": In Support of UN Mission (MONUC) in the Democratic Republic of the Congo (DRC) during the Elections Expected in July 2006*, [2006].

⁴⁵ Interviews with four members of the Bundestag from both governing and opposition parliamentary groups conducted in Berlin, December 2007.

⁴⁶ Hans Born, Alex Dowling, Teodora Fuior and Suzana Gavrilescu, *Parliamentary Oversight of Civilian and Military ESDP Mission: The European and National Levels*, 24.

⁴⁷ Council of the European Union, *EU Military Operation in Support of the MONUC during the Election Process in RD CONGO*, (12.06.2006).

V. Conclusion

This analysis of the decision-making procedure on military EU operations has shown that by the time an operation is launched, a large number of actors on the European and national level have participated in shaping and taking this decision. Although the member states of the Union have not transferred sovereignty in the crucial area of security and defence policy, both the general as well as the operational policy choices are formulated by the ESDP's preparatory bodies composed of national representatives from the foreign and defence ministries. This form of 'interministerial decision-shaping' with parallel planning on the European and national level and subsequent unanimous decision-taking by the member states' governments in the Council as well as a voluntary decision on the national level on the actual deployment enables the Union and its member states to take such decisions with remarkable efficiency.

Albeit, this sequential decision-making procedure, with an increase in political liability with each agreement (but not decision!) in the bodies of the ESDP structure, poses a distinct problem for parliamentary scrutiny. By the time the formal decisions are being taken on the European *and* national level, the political agreements made both in and outside the EU structures leave little room for parliaments to question the agreed deployment of national troops. Furthermore, the lack of parliamentary control on the general decision for a military EU operation in most member states as well as by the European Parliament is striking.

Nevertheless, a look at decision-making in practice in the example of EUFOR RD CONGO revealed a more mixed picture. On the one hand, the German case exemplified the fact that a requirement for parliamentary approval before the deployment of national troops led to a constant exchange between government and parliament during the negotiations on the European level. On the other hand, the increasingly pro-active engagement by the European Parliament in the form of ex-ante resolutions and political scrutiny points to the establishment of parliamentary control on the European level - although the EP doubtlessly still lacks important formal power, especially in regards to the financing of military EU operations.

In sum, parliamentary control of military EU operation is flawed, but not inexistent. The most significant shortfalls in this respect are firstly the vast difference on the national level leading to a patchwork of partially controlled and partially uncontrolled national deployments. Secondly, the lack of overall control both of the general decision to deploy an EU operation as well as the total budget on either level is remarkable.

V.1. Outlook and recommendations

The European Union is on the brink of a significant overhaul of its institutional structures and procedures if the Lisbon Treaty comes into force as planned on 1 January 2009. Against this background, it is imperative to examine the changes affecting parliamentary control in ESDP decision-making. In general, despite the planned abandonment of the EU's pillar structure, CFSP/ESDP remains a special policy area in the EU's institutional structure. Decisions on ESDP operations will continue to be taken unanimously by the Council without the formal involvement of the European Parliament, including the exceptional financing of military operations outside the control of the EP. Most game-changing in the decision-making process will be the new role of the High Representative, whose *hat* as Vice-President of the Commission is under the control of the Parliament. This, and the High Representative's new function in presiding over the Council formation for External Relations, might give the Parliament room to increase its role in CFSP and ESDP. At present, however, the exact details of the High Representatives and the European External Action Service are still under discussion, so that their political consequences will have to be assessed in more detail once the implementation starts. In conclusion, though, the main shortfalls of the EP's ability to scrutinize military EU operations were not addressed in the Lisbon Treaty.

In parallel, discussions are also under way in several member states on the procedure for the deployment of national armed forces. While Spain has introduced a compulsory parliamentary approval for deployment decisions in 2005, both in France and the United Kingdom a stronger involvement of parliament in such decisions is currently under discussion. On the other hand, the need for this kind of prior approval for operations in the framework of the EU or NATO has recently been abolished in Bulgaria, the Czech Republic, Hungary and Romania. In Germany, a discussion has taken place with members of parliament and the academic community suggesting a general approval for a given time period (*»Vorratsbeschluss«*) allowing the government to deploy forces in the framework of the EU or NATO (e.g. as part of an EU Battlegroup) without individual parliamentary approval. The results of this analysis point in the other direction - the requirement of compulsory parliamentary approval has contributed significantly to the involvement of parliament during the crucial phases of the decision-making process on EUFOR RD CONGO without substantially protracting the process.