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A DEMOCRATIC AUDIT OF EUROPEAN FOREIGN POLICY

Lauwerier Ewoud

FACULTÉ DE SCIENCES SOCIALES ET POLITIQUES

INSTITUT D'ÉTUDES POLITIQUES, HISTORIQUES ET INTERNATIONALES

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Ewoud Lauwerier

Directeur de thèse :
Professeur Ioannis Papadopoulos

Jury :

Professeur Frank Hendriks

Professeur Christopher Lord

Professeur Francesco Maiani

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- Ioannis PAPADOPOULOS, directeur de thèse, Professeur à l'Université de Lausanne
- Frank HENDRIKS, Professeur à la Tilburg University, NL
- Christopher LORD, ARENA, Professeur à la University of Oslo, NO
- Francesco MAIANI, Professeur à l'Université de Lausanne

autorise, sans se prononcer sur les opinions du candidat, l'impression de la thèse de Monsieur Ewoud LAUWERIER, intitulée :

«A democratic audit of European foreign policy »

Jean-Philippe LERESCHE
Doyen

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Résumé - summary

Cette thèse étudie la **légitimité démocratique normative** de la **politique étrangère et de sécurité européenne** après Lisbonne. La littérature existante traite des manifestations spécifiques d'une telle légitimité, mais s'abstient d'une évaluation inclusive qui prend en compte les multiples dimensions de la démocratie. Par conséquent, le caractère multiforme de la démocratie est négligé. Pour y remédier, la thèse réalise un **audit démocratique** de la politique étrangère et de sécurité commune de l'UE. Étant une évaluation systématique et complète de la situation démocratique d'un système politique ou d'une politique spécifique, un tel audit démocratique vise une appréciation inclusive. En tant que méthode, il implique une attitude non spécifique et flexible envers l'évaluation démocratique qui, étant donné la présence de multiples traditions démocratiques en Europe et les particularités de la politique étrangère, en fait une approche utile pour évaluer la politique étrangère de l'UE. Partant de la définition concise de la démocratie comme 'contrôle public et égalité politique', la thèse propose tout d'abord un cadre d'évaluation composé de huit critères : l'octroi du droit de gouverner, l'autorité budgétaire, la participation et le débat public ; la transparence et l'obligation de donner des raisons ; et les possibilités de surveillance et d'annulation. Chacun de ces critères est davantage opérationnalisé par un ensemble d'indicateurs spécifiques. Ensuite, l'audit évalue systématiquement la politique étrangère et de sécurité de l'UE en fonction de chacun des critères. Il examine ces critères à la fois séparément et en relation les uns avec les autres. De cette manière, la thèse présente un aperçu détaillé des forces et faiblesses démocratiques de la politique étrangère de sécurité commune de l'UE et montre les interconnexions qui existent entre elles. Elle révèle également la présence de trois tendances sous-jacentes qui peuvent expliquer ces résultats à un niveau plus fondamental. Ces tendances sont la présence d'une opposition intergouvernementale-supranationale confuse et d'un décalage structurel entre les règles et les pratiques, ainsi qu'un cadre parlementaire compliqué dans lequel la répartition des responsabilités entre le Parlement européen et les parlements nationaux reste souvent floue.

This thesis studies the **normative democratic legitimacy** of the post-Lisbon **European foreign security and defence policy**. Existing literature deals with specific manifestations of such legitimacy but refrains from an inclusive evaluation that considers multiple dimensions of democracy. Hence, the many-faceted character of democracy is overlooked. To address this, the thesis carries out a **democratic audit** of the EU's common foreign and security policy. Being a systematic and comprehensive appraisal of the democratic state of affairs of a political system or policy, such a democratic audit aims for an inclusive assessment. As a method, it involves a model-unspecific and flexible attitude towards democratic evaluation, which – given the presence of multiple democratic traditions within Europe and the particularities of foreign policy – makes it a useful approach to assess the EU's foreign security and defence policy. Starting from the concise definition of democracy as 'public control with political equality', the thesis therefore, first of all, proposes an assessment framework composed of eight criteria: licensing to govern, budget authority, participation and public debate; transparency and reason giving; and oversight and overrule. Each of these criteria is further operationalised through a set of specific indicators. Thereupon, the audit systematically evaluates the EU's foreign security and defence policy against each of the criteria. It looks at these criteria both separately as well as in connection to each other. In that way, the thesis presents a comprehensive overview of specific democratic strengths and weaknesses of the EU's foreign security policy and shows the interconnections that exist between them. It also reveals the presence of three underlying trends that can explain these findings at a more fundamental level. These trends are the presence of an unsettled intergovernmental-supranational divide, a structural discrepancy between rules and practices, and a complicated parliamentary setting in which the division of responsibility between the European parliament and national parliaments rests often unclear.

Acknowledgments

"Everybody knows that the boat is leaking. Everybody knows that the captain lied…"

Just a short sentence from an old song by Leonard Cohen, yet somehow, it is the starting point of this thesis. *Everybody knows*, followed by *not democratic*; I do not know how often I must have heard or read these words regarding the EU or what it does, but it is a lot. Often, in public debate, political discussions or just everyday conversations, the non-democratic character of the EU seems to be considered a self-evident fact, something we know because *everybody knows*, right? Yet, I am not everybody, and *I wanted to know…* That is mainly how it all started.

Now, as the result of what followed lies before me, so does the moment of looking back. Looking back at all together almost six years. Six years in the companionship of *The Thesis, … La Thèse…* Six years in the companionship of so many people.

Some old friends, and some knew I met along the road. Be it in Lausanne, Geneva, Egestorf, Brussels or Ghent. Be it the new guys from *La Brouette*, my *Geneva family* Markus and Patricia and kids, my *hiking buddy for twice a year* Steffen, or *the ones that go a long way back* Joris, Lukas, Maarten. I know, for the reader these are just names, but for me they are the people that kept me sane and kept reminding me that there was a world beyond 'the democratic legitimacy of European foreign policy'.

There are also the many colleagues. Each of us in his or her little world of the own research, yet always up for a coffee, an animated lunch, an evening beer, a meeting in the endless corridors of Géopolis leading to an unintendedly long but refreshing break. I do not dare to cite names, scared to forget someone, but we had a good run. Colleagues also that have become good friends. Johanna, who unexpectedly read and commented a considerable part of the thesis. Lekh who listened quietly to my last months 'what-is-it-all-worth' lamentations.

Last but not least of course, I wish to thank my thesis director, Ioannis Papadopoulos for his continuous guidance. Not a helicopter parent style of supervising, but decisive comments that helped me find the right direction and not to get lost in an endless search for not always relevant details. A guidance that helped me keep in mind the larger picture and brought me to deliver the thesis that now lies before you.

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Abbreviations

Civil Society Organization	CSO
Committee on civil aspects of crisis management	CIVCOM
Common Foreign and Security Policy	CFSP
Common Security and Defence Policy	CSDP
Constitution (Belgium)	Const.
Court of Justice of the European Union	CJEU
Democracy Barometer	DB
Democratic Audit	DA
Democratic Audit Criteria	DAC
EU Institute for Security Studies	EUISS
EU Military Committee	EUMC
European Citizens Initiative	ECI
European Council	EC
European Defence Agency	EDA
European Democratic Audit test	EUDA
European External Action Service	EEAS
European Parliament	EP
European Political Cooperation	EPC
European Satellite Centre	SatCen
European Security Strategy	ESS
European Union	EU
Federal Act on the Federal Assembly	LParl
Federal Constitution (Switzerland)	FC
Federal Department of Defence, Civil Protection and Sports	DDPS
Federal Department of Economic Affairs, Research and Education	DEA
Federal Department of Foreign Affairs	DFA
Foreign Affairs Committee (of the EP)	AFET
Foreign Affairs Council	FAC
Foreign and Security Policy and Defence	FSPD

Foreign Policy Analysis	FPA
General Secretariat of the Council	GSC
High Representative	HR
HR's *Declaration on political accountability*	DPA
Intergovernmental Conference	IGC
Interinstitutional Agreement	IIA
International Institute for Democracy and Electoral Assistance	IDEA
International Relations Theory	IR
Member States	MS
Parliamentary Control of the Administration	PCA
Political and Security Committee	PSC
Qualified Majority Voting	QMV
Security and Defence Committee (of the EP)	SEDE
State of Democracy Assessment Framework	SDAF
Treaty establishing the European Community	TEC
Treaty of Amsterdam	ToA
Treaty of Maastricht	ToM
Treaty of Nice	ToN
Treaty on European Union	TEU
Treaty on the functioning of the European Union	TFEU
Western European Union	WEU

Introduction: towards a systematic assessment of the CFSP's democratic credentials

In June 2017, the High Representative of the Union for Foreign Affairs and Security Policy presented the first progress report on the implementation of the *EU global strategy in the area of security and defence*[1]. Adopted in November 2016 by the Council of the European Union[2], and replacing the previous European Security Strategy of 2003, this global strategy expressed the ambition of strategic autonomy for the European Union (EU) and enlists several strategic priorities for the years to come.

In the summer of 2017, European heads of State and government, at a summit in Brussels, decided a new European defence plan[3]. The plan, which has been announced as a move from military cooperation to defence integration[4], and even as the development of a *"truly European defence"*[5], foresees in the launch of several new initiatives in the field of security and defence. As a first of these initiatives, a European Medical Command was created in December 2017[6].

In reaction to the international turmoil caused by US-president Donald Trump's recognition of Jerusalem as the capital of Israel, many voices called for the EU to take up a more decisive role in the on-going Israeli-Palestinian conflict. While the Belgian minister of foreign affairs, for instance, declared that *"the EU can [...] play an important role to help parties to resume dialogue"*[7], his French homologue, Jean-Yves Le Drain was quoted saying that *"we've been waiting already for several months for the American initiative, and if one is not forthcoming*

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[1] Implementing the EU Global Strategy Year 1 europa.eu/globalstrategy/en/implementing-eu-global-strategy-year-1 [14.12.17]

[2] Foreign Affairs Council, 14 November 2016, Council conclusions on implementing the EU global strategy in the area of security and defence consilium.europa.eu/media/22459/eugs-conclusions-st14149en16.pdf [13.12.17].

[3] European Council conclusions on security and defence, 22.06.17 consilium.europa.eu/en/press/press-releases/2017/06/22/euco-security-defence/ [13.12.17].

[4] European Political Strategy Centre, *In Defence of Europe* ec.europa.eu/epsc/publications/strategic-notes/defence-europe_en [13.12.17].

[5] Federica Mogherini, Defence and development: concrete action for a stronger Europe, 30.11.16 federicamogherini.net/difesa-sviluppo-scelte-concrete-uneuropa-piu-forte/?lang=en [13.12.17].

[6] EUObserver, 13.12.17, "Medical HQ to spearhead EU military push" euobserver.com/foreign/140269 [13.12.17].

[7] Federal Public Service Foreign Affairs, *Jerusalem - Only dialogue and multilateralism can lead to peace*, 07.12.17 diplomatie.belgium.be/en/newsroom/news/2017/jerusalem_only_dialogue_and_multilateralism_can_lead_to_peace [13.12.17].

then the European Union will have to take the initiative."[8] EU High Representative Federica Mogherini, for her part, reconfirmed the EU's position in the Israeli-Palestinian conflict, by expressing her continuing support for a two-state solution[9].

On 11 December 2017, the Council of the European Union confirmed the ongoing sanctions against the Democratic Republic of Congo, consisting of an asset freeze as well as a ban on entering the EU for 16 individuals[10].

While at first sight, the above-cited events could seem unconnected or even anecdotal, in reality they are as many examples of the continuing development of a European foreign security and defence policy. They are continuing evidence of how the European Union acts towards the world outside its borders to *"safeguard its values, fundamental interests, security, independence and integrity"* (art.21.2 (b) TEU). They are as many examples of how the Union acts daily on the international scene in the name of 500 million people.

But what, in turn, do these people have to say about this policy? What is their control over this foreign policy carried out in their name? What say do they have over the sanctions that are proclaimed and executed in their name? What is their control over the persons that express position in their name? How can they control the defence operations said to be carried out to protect their interests and their security? And how can they define the overall direction of a policy that shapes their common destiny and position in the world? In a democracy, these are legitimate and important questions that merit an extensive answer.

It is these questions that are central to this thesis.

In that way, it is true; this thesis does not set on uncharted territory. For some time now, a growing body of research occupies itself with issues of democratic legitimacy in the context of the EU's foreign security policy. However, very little of this research discusses this question in an overall way. That is, those studies that, in some way or another, deal with matters of democratic quality of European foreign policy, essentially cover specific manifestations of

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[8] EUObserver, 11.12.17, "Israel presses Jerusalem claim in EU capital" euobserver.com/foreign /140231 [13.12.17].

[9] Remarks by High Representative/Vice-President Federica Mogherini at the joint press statement with Rex Tillerson, Secretary of State of the United States, 05.12.17 eeas.europa.eu/ headquarters/headquarters-homepage/36757/remarks-high-representativevice-president-federica-mogherini-joint-press-statement-rex_en [13.12.17].

[10] OJ L 328, 12.12.2017, p.19.

democracy in a free-standing way. They do not come to an evaluation that takes into account multiple dimensions of democracy in an integrated and interconnected manner. In that way, existing literature does not recognize enough the many-faceted character of democracy in its discussion of European foreign security and defense. So far, a comprehensive assessment of this policy's democratic qualities and shortcomings is missing. This hinders our understanding of how different aspects of the complex idea that is democracy interconnect within the context of the EU's foreign policy. This, in turn, hampers our understanding of this policy's democratic strengths and weaknesses and what must be taken into account in order to overcome these last ones (or for that matter reinforce the first). This thesis aims to remedy this by carrying out a democratic audit of the EU's Common Foreign and Security Policy (CFSP).

To frame that endeavour, this introductory chapter starts with a brief overview of how we came to today's CFSP. This gives some historical context to the policy in question and explains how it is formally built up. This will help to understand the systematic discussions of the policy's democratic strengths and weaknesses in the second part of the thesis. Thereafter, a discussion on the current state of the literature will help substantiate the previous claim that current literature does omit to deal with the question of European foreign policy's democratic legitimacy in a comprehensive manner. Thereupon, I will come to explain the main steps through which the announced audit will be developed and carried out.

1. A common foreign policy for Europe

The idea of a European foreign security and defence policy dates back as far as the early days of European integration. Although for a long time not amongst the most visible manifestations of European cooperation, a common foreign security and defence developed over the years.

After two failed attempts to add a foreign policy dimension to an initially purely economic cooperation – the European Defence Community aborted by the French National Assembly in 1954, and the subsequent Fouchet-plan, which also never got materialised – a European Political Cooperation (EPC) is launched in 1970. This EPC searches to improve the information exchange between Member States (MS) about major foreign policy issues and is meant to help them formulate common positions (Dinan 2004, 143). Although being rigidly intergovernmental, it means a first successful step towards closer cooperation in matters of foreign security and defence and a stepping-stone for the creation of the *Common Foreign and Security Policy* (CFSP) by the Treaty of Maastricht (ToM, 1993). Adopted as Title V of the

Treaty, the CFSP constitutes the second pillar of the newly created EU. But, although this CFSP receives two proper instruments, called *common position* and *common action* (art. J.2 and J.3 ToM), the absence of a common European response to the violent disintegration of Yugoslavia almost immediately reveals its fundamental lack of efficiency. Being common only but in name, it remains an inherently intergovernmental policy in which every decision demands unanimity. In the highly reactive domain that is foreign policy, such an approach evidently proves problematic. Subsequent treaty reforms, therefore, try to remedy shortcomings, essentially by searching the establishment of a more Europeanized common foreign policy. First of all, the Treaty of Amsterdam (ToA, 1999) introduces an additional instrument, the common strategy (art. J.3(2) and creates the post of *High Representative for the Common Foreign and Security Policy* (HR, art. J.16). Assisted by the also newly created *Policy planning and early warning unit*, this HR must help improve the visibility of the CFSP. Additionally, Amsterdam formalizes the so-called *Troika*. Composed of the HR, the Commissioner for External Relations and the Minister for Foreign Affairs of the country holding the rotating EU-presidency – who presides the General Affairs and External Relations Council[11] – this Troika contributes to the external representation of the Union and the implementation of the CFSP. The Treaty of Nice (ToN, 2003) introduces further changes. On the institutional level, the Political and Security Committee (PSC) is integrated in the Treaty (art. 25 ToN), hence replacing and reinforcing the already existing Political Committee. This PSC brings together representatives of the Member States and is placed under the authority of the Council of the EU. It assures political scrutiny and the strategic direction of crisis management operations. The Treaty of Nice also introduces the possibility of an enhanced cooperation in any of the areas referred to under Title V of the Treaty – though except for *matters having military or defence implications"* (art. 27b ToN).

However, defence matters are not completely left aside. In addition to the CFSP, efforts are also undertaken to create a common policy in the field of security and defence. While Maastricht does not take concrete measures in this domain – except for stipulating that the Western European Union (WEU) will henceforth be *"an integral part of the development of the Union"* (art. J.4 ToM) and referring to the future possibility of creating a common defence – it is the Treaty of Amsterdam – together with the Franco-British Declaration of Saint-Malo of 4 December 1998 – that can be seen as the actual beginning of a European Security and

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[11] One of the key configurations of the Council of the EU, the *General Affairs and External Relations Council* (GAERC) is, since Lisbon, split up in the *General Affairs Council* (GAC) and the *Foreign Affairs Council* (FAC).

Defence Policy (ESDP, since Lisbon denominated the *Common Security and Defence Policy*, CSDP). The main priorities for this ESDP are the so-called Petersberg tasks. Initially defined during a WEU-summit in 1992 and incorporated in the EU Treaty in Amsterdam, these tasks cover three types of missions: (1) humanitarian and rescue tasks, (2) peacekeeping tasks and (3) tasks of combat forces in crisis management, including peace-making[12]. At the same time, a non-military crisis management mechanism is proposed *"to coordinate and make more effective the various civilian means and resources, at the disposal of the Union and the Member States"*[13]. An important step for the further development of the ESDP is the publication of the first European Security Strategy (ESS), *"A secure Europe in a better world"*. Accepted by the Brussels European Council of December 2003, as a reaction on Europe's highly disconcerted answer to the Iraq-crisis (Biscop 2004, 9), this document is one of the main guidelines for external actions developed by the EU.

Further changes to the EU's common foreign security and defence result from the Treaty of Lisbon (2009)[14]. This most recent reform treaty provides a new institutional fundament for the European Union. The old pillar structure is officially abolished, the European Council (EC) is incorporated in the Treaty and becomes one of the official institutions of the EU (art. 13 TEU) while receiving a permanent president (art. 15.5 TEU), and the EU as a whole obtains legal personality (art. 47 TEU). Among the most remarkable novelties, however, are those introduced in the field of foreign and security policy. A new *High Representative of the Union for Foreign Affairs and Security Policy* is introduced (art. 18, 27 TEU). Replacing the High Representative *old style* and uniting the former Troika in one person, (s)he wears a triple hat. (S)he is at the same time Vice-president of the Commission responsible for external action, President of the Foreign Affairs Council (FAC) and head of the European External Action Service (EEAS). This newly created EEAS for its part is a functionally autonomous body independent from the Council and the Commission, acting as kind of European foreign ministry (only not to be called so) with a worldwide network of diplomatic delegations to currently 144 third countries and international organizations worldwide[15]. Also, the Common Security and Defence Policy

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[12] WEU Council of Ministers (Bonn, June 1992) – "Petersberg Declaration" weu.int/documents/920619peten.pdf [24.11.16].

[13] European Council (Helsinki, 10-11.12.1999), "Presidency Conclusions" consilium.europa.eu/en/uedocs/cms_data/docs/pressdata/en/ec/acfa4c.htm [24.11.16]

[14] *Consolidated version of the treaty on European Union (TEU)* (Including the *Consolidated version of the treaty on the Functioning of the European Union (TFEU))*, OJ C 326, 26.10.2012, p. 13–390.

[15] EEAS, *EU in the world* eeas.europa.eu/headquarters/headquarters-homepage/area/geo_en [23.08.17]

(CSDP) has been made an integral part of the CFSP (art. 42.1 TEU). All these changes are supposed to make the EU – including its foreign and security policy - more effective, but also more transparent and democratic (cf. Radtke 2012, 41). However, these changes also make it increasingly difficult to continue classifying this policy as unambiguously intergovernmental. That is, although European foreign policy is clearly not supranational, it goes further than a *simple* multilateral cooperation between completely independent countries. While its basic direction is defined by the European Council, European foreign security and defence policy subsequently is further decided upon and carried out through an intricate complex of both national and European actors and means. In that way, it has in fact become a mixed, multilevel governance system (Smith 2004, 742-45, cf. Chapter IV, 3.2 *infra* for a further discussion on this point).

2. Studying European foreign policy

With the gradual development of a common European foreign policy, also a distinct field of academic inquiry emerged. Bringing together traditional *Foreign Policy Analysis* (FPA), *International Relations Theory* (IR) and *European Integration Theory* (Smith 2009), a new literature develops from the 1970ies onwards, with a focus on foreign policy cooperation between European States and case studies about the working and results of the EPC. Especially since the Treaty of Maastricht and the launch of the Common Foreign Security and Defence Policy, this led to a considerable body of literature, essentially evolving around four axes (cf. Tonra and Christiansen 2004b, 3-5; Nitoiu 2016, 14-21).

A first strand of research concerns the processes within the EU that underpins its international capacities and focuses on the development of **decision-making and policy within the CFSP**. These studies look at the role and functioning of the competent institutions and search to understand the internal conduct of the CFSP and how this evolves. With the entry into force of the Lisbon Treaty and the important changes this involved for the EU's foreign security and defence action, many recent articles, chapters or books deal with these questions. Within these studies, attention goes to the overall institutional organisation of the CFSP/ CSDP (Klein and Wessels 2013; Koutrakos 2012; Radtke 2012; Puetter 2011; Thym 2011; von Ondarza 2008; Wessels and Bopp, 2008), the creation and the organisation of the EEAS (Juncos and Pomorska 2015; Spence and Bátora 2015; Helwig et al. 2013; Bátora 2013; Vanhoonacker and Reslow 2010; Murdoch 2012), the role of the High Representative (Helwig 2015, 2013; Helwig and Rüger 2014; Denza 2012; Rüger 2011; Kaddous 2008), or the position and powers of the

European Parliament (EP) within foreign policy (Rosén 2015, 2011; Herranz-Surrallés 2014; Wisniewski 2013, 2011; Barbé and Herranz Surrallés 2008).

Secondly, we find a number of studies dealing with the actual **performance and results of the EU's foreign policy**. Essentially these studies focus on the output of European foreign policy while looking at what the EU does (or does not) in the world. Through geographical (Viceré 2016; Baltag and Smith 2015; Juncos 2013; Grono 2010) or thematic (Portela 2014, 2010; Hillion 2014; Giumelli and Ivan 2013; Pirozzi and Sandawi 2009) case studies, questions are asked about what the EU does, obtains and realizes in the field. More general, attention goes to how the EU's foreign security performs and to its impact (Smith 2013; Dijkstra 2011; Blockmans and Wessel 2009).

A third literature follows, which looks upon European foreign policy from a national perspective. Attention here goes to the **role, position or actions of (a particular) Member State(s)** in this domain and the relationship between their proper foreign policy and the CFSP (Flers 2012; Lehne 2012; Jones 2011; Hillion and Wessel 2008; Miskimmon 2007; Wivel 2005). Several studies here look also at the role of national parliaments (Huff 2015; Huff 2013; Anghel et al. 2008; Gourlay 2004).

Finally, there are those studies that inquire into the **nature of the EU's foreign policy**. They deal with how, for instance, its underlying narrative or perceived identity determines its international behaviour. In other words, this research is interested in the competing visions that exist about the CFSP and how these could explain the EU's role as an international actor. More theorized than the previous strands, studies of this type try to understand and conceptualize what drives EU foreign policy (Bickerton 2011; Sjursen 2011a, 2007; Smith 2004; Tonra 2003; Peterson and Sjursen 1998). In this context, the EU's international role and actions are also evaluated through classical conceptions of foreign policy, originating from International Relations Theory and Foreign Policy Analysis (Piana 2005; Carlsnaes et al. 2004; Tonra and Christiansen 2004a).

As a transversal trend throughout these strands of literature, attention nowadays increasingly goes to the issue of democratic legitimacy (Nitoiu 2016, 7). Although **democratic legitimacy in European foreign policy** had not been completely ignored before (cf. Bieber 1990), it is mainly over the last fifteen years that it gained more and more popularity in the study of the EU's foreign policy. In line with the discussion about the EU's possible democratic deficit (see

i.a. Follesdal and Hix 2006; Moravcsik 2002; Schmitter 2001, 2000; Majone 1998) which emerged after the Treaty of Maastricht and the difficulties that surrounded its coming into force (Bellamy and Castiglione 2003, 10); and concurringly with a mounting political attention – especially from the European Parliament which regularly asks for greater parliamentary scrutiny – the EU's foreign policy's *democraticness* has become a recurring topic of debate, both empirically and theoretically.

In that way, it is difficult to maintain that democracy tends to receive very little attention in the European foreign policy literature – as has been claimed by Michael Smith (2008, 185). But as indicated at the beginning of this introduction, an important problem with this democracy literature is its **dispersed approach**. Research about the democratic legitimacy of European foreign policy mainly discusses specific manifestations of such legitimacy separately; but it refrains from an evaluation that comprehensively takes into account multiple dimensions of democracy. Attention goes to how the European Parliament or national parliaments scrutinize the CFSP (cf. *supra*), and to how they (can) cooperate in these matters (Herranz-Surrallés 2014b; Wouters and Raube 2012; Peters, Wagner, and Deitelhoff 2010; Mittag 2006); or to questions of transparency (Rosén 2015, 2011; De Baere 2013; Stärkle 2011, Abazi and Adriaensen 2017), public debate (Kandyla and de Vreese 2011; De Vreese and Kandyla 2009; Peter et al. 2003; Kratochvíl et al. 2011). or the democratic control of European defence in particular (Fanoulis 2017, Wagner 2007, 2006; Hilger 2002). Yet few studies deal with the question of democratic legitimacy in an overall way. Exceptions to this trend exist, but they are few; and so far, they seem not to point towards the emergence of a new, more comprehensive, approach in the literature on the democratic quality of the EU's foreign policy.

There is for instance a noteworthy paper from Anne Elizabeth Stie (2008), published in the RECON Working Paper Series[16], in which she attempts to launch a more comprehensive discussion on the topic. In this paper, Stie outlines an analytical framework allowing for an assessment of the democratic legitmacy of the EU's second pillar's decision-making system. Starting from a deliberative perspective on democracy, the author proposes five normative criteria of democratic legitmacy: (1) inclusion of affected and competent parties, (2) openess and transparency, (3) neutralisation of assymetrical power relations, (4) deliberative meeting places, and (5) decision-making capacity. The institutional and procedural aspects of the EU's foreign policy could be evaluated against these criteria for their democratic qualities or lack

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[16] Reconstituting Democracy in Europe reconproject.eu/ [18.10.17].

thereof. However, the paper neither proposes how such an evaluation should be organized, nor does it carry out an actual analysis of the CFSP's democratic legitmacy. And it seemed not to have triggered much follow-up. No further research follows that carries out an actual assessment according to the analytical framework proposed.

Also the previously cited study by Evangelos Fanoulis (2017), could be mentioned as a more comprehensive effort to assess the democratic quality of European foreign policy. Using data coming from semi-structured interviews of policy makers actively involved in the EU's foreign policy and a qualitative comparative analysis of Eurobarometer Reports, the book demonstrates how the Common Security and Defence Policy suffers from a democratic deficit. Thereupon it proposes ways to remedy the policy's legitimacy. Yet, the focus of this work lies, as pointed out before, with the CSDP in particular and not with the CFSP in general. Besides, while the study starts from the empirical analysis of a supposed democratic deficit in the CSDP and makes suggestions for improvement; it altogether rests an essentially theoretical investigation within the framework of a *quite* specific - agonistic – perspective on democracy. This makes the book, as one reviewer (Ewers-Peters 2017, 1-2) notes, *"at times arduous and intractable, for a non-expert on Foucault and his notion of governmentality"*. Besides, probably due to its very recent publication, but just like the paper by Anne Elizabeth Stie, the book so-far seems not to have triggered further debate (yet).

All in all, existing literature, and certainly more empirical research, on European foreign security and defence policy therefore largely ignores the many-faceted character of democracy and overlooks the importance of the interconnection and interplay between different aspects of democratic legitimacy. In fact, rather separated – what we could call – sub-literatures exist; each of which deals with the question of democracy in European foreign policy in its own way and from a different angle. And often they do so without much attention for and linkage with the other sub-literatures. Hence, the different findings continue to stand on their own and do not coagulate into a systematic examination of the European Union's foreign policy's overall democratic state of affairs.

A second, interconnected – and, in fact, underlying – problem lies with the **absence of a clear democratic legitimacy concept**. That is, even research that explicitly refers to the democratic legitimacy of the European Union's foreign policy as its main point of inquiry, generally omits to give a clear, unequivocal definition of what it exactly means by this concept.

3. A comprehensive assessment of the EU's foreign policy's democratic legitimacy

3.1 Contributions of the thesis

Considering this double shortcoming of fragmentation and recurring ambiguity about the concrete meaning of democratic legitimacy in current research about European foreign policy, the main goal of this thesis is to **evaluate the democratic legitimacy of the EU's foreign security and defence policy in an overall manner**. Starting from a clearly delineated understanding of democratic legitimacy, the purpose of this study is to provide a systematic and comprehensive discussion on the topic, which outlines both strengths and weaknesses of different dimensions of democracy and the interconnections that exist between them. In that sense, the thesis not just aims to understand if, but also how the EU's foreign policy is democratically legitimate. To do so, the project essentially takes the form of a **democratic audit** (DA) of European foreign policy. Additionally, by using the Democratic Audit approach to assess the democratic state of affairs of the EU's foreign and security policy, the thesis also serves a second goal. That is, so far, this method has been used to evaluate the overall democratic quality of a political system (polity), but never to evaluate a policy. Hence, by applying it to the concrete field of EU foreign policy, the thesis also contributes to the further development of this assessment methodology.

3.2 Outline of the thesis

This research will develop along the following lines:

Part I sets out the theoretical and methodological foundations of the thesis. Therefore, I start by discussing the key concepts of democratic legitimacy. Considering what I said before about the recurring ambiguity regarding what exactly is understood by *democracy* and *democratic legitimacy* in the context of a specific research, I elaborate on what I mean to look at in the context of this thesis when I talk about *democratic legitimacy*. In that context, I will argue for a normative focus on democratic legitimacy (Chapter I). Subsequently, I also explain why in fact we should bother about democratic legitimacy in the context of foreign policy in the first place (Chapter II). Thereupon, attention turns to democratic auditing, as I discuss the origin and specificities of said method and explain why I will use it to assess the democratic legitimacy of European foreign policy (Chapter III). Based upon these considerations about democracy and foreign policy on the one hand, and democratic auditing on the other hand, I then elaborate on the concrete assessment framework that underpins the intended audit (Chapter IV). Finally, I

will discuss the methodological choices underlying it, as well as present the different types of sources and data that are used for the audit (Chapter V).

Part II then will be devoted to the actual audit of the EU's foreign policy's democratic legitimacy. In line with the audit framework presented before in Chapter IV, the different criteria of democratic legitimacy are assessed and their connections and mutual influence discussed (Chapter VI to XIII). In that way, I will carry out a systematic inquiry of the EU's foreign policy's normative democratic legitimacy.

Part III, finally, consists of two chapters. First, I will come back on the main findings and the way in which they connect as a comprehensive assessment of the CFSP's normative democratic legitimacy. This chapter will close the actual audit (Chapter XIV). Thereupon, I will also return to the democratic audit method and the analytical framework I developed in that regard to assess the democratic legitimacy of a foreign policy. Building on the actual audit from the second part, the advantages for assessing the democratic quality of foreign policy are considered and possible tracks for further research discussed (Chapter XV).

Part I: Theory and methodology

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Developing a framework for democratic audit

This study aims at evaluating the democratic legitimacy of European foreign policy. In light of that objective, it is important that we understand what *democratic legitimacy* in fact is all about. Therefore, Chapter I presents three main views that exist about the concept of democratic legitimacy, while discussing what assessing such democratic legitimacy implies under each of these views. Departing from this discussion, I then elaborate on democratic legitimacy within the concrete context of my own research about European foreign policy. Chapter II subsequently deals with the question of why in fact we should study democratic legitimacy in the context of foreign policy. Discussing the changing views on the role and position of foreign policy over time, it continues by presenting arguments in favour of a democratic foreign policy.

But, how to study the democratic quality of a foreign policy? In that regard, Chapter III will discuss the democratic audit method that I will use to do so. Starting with a discussion of other assessment methods, this chapter elaborates on the key characteristics of this method and explains its main advantages in relation to the assessment of not only political systems, but also concrete policies, including foreign policy. Subsequently, the pivotal chapter of this first part – Chapter IV – proposes the actual audit framework that I will use to carry out the democratic assessment of the EU's foreign security and defence policy. It presents and discusses eight criteria as well as more precise indicators for each of them. Finally, with Chapter V, the first part is closed by a discussion of the measurement method, as well as the different kinds of data that will be used to substantiate the assessment.

I.   Understanding democratic legitimacy

Summary: *A key element of this thesis is the notion of democratic legitimacy. This chapter argues that such democratic legitimacy can essentially be understood in three ways: as 'acceptability', as 'acceptance', or as a combination of both these dimensions. Starting from a discussion of each of these legitimacy approaches, I then elaborate on how democratic legitimacy will be concretely dealt with within the context of this thesis, and why exactly I opt for that approach.*

1. Democratic legitimacy: opposing views

What it means to say that a political order is democratically legitimate is not a question that may expect to obtain an unequivocal answer. *Democratic legitimacy* is one of these concepts that Brice Gallie (1955) would describe as essentially contested. Given that its main element – legitimacy, as for that matter, also connected concepts like *power* or *authority* –represents a cluster of different phenomena (Kratochwil 2006, 305), there is no unanimity about its exact connotation. Both in the academic literature and in the public debate it is regularly called upon without much further explanation. Or, with reference to Curtin & Meyer (2006, 112), *"legitimacy is more often invoked than described and it is more often described than defined"*. Fundamentally, however, we can say that democratic legitimacy means two things (cf. Peter 2016; Schneller 2010, 1; Cheneval 2005, 1; Zürn 2004, 260), namely philosophical acceptability or social acceptance.

Firstly, from a normative point of view, legitimacy refers to the philosophical **acceptability** of a political system or decision; that is, its inherent worthiness to be recognized (Habermas 1976, 39). It is about a claim of authority being well-founded, i.e. being justified in some objective way (Bodansky 1999, 601). In that sense, democratic legitimacy is about the qualities formally possessed by a polity or policy that provide it with moral arguments for calling itself democratic. Institutions, rules, laws, governance arrangements or the actions and behaviour of individual rulers are characterised as possessing democratic legitimacy if they comply with a combination of predefined procedural norms or substantive values. Dealing with the conditions under which the members of a democratic constituency ought to respect a decision (Peter 2009, 4), democratic legitimacy from this perspective implies the accomplishment of a concrete set of normative democratic justifications and is seen as a formal aspect of a system or policy. A

legitimacy-crisis occurs when the polity or policy fails to objectively present such justifications. In practical terms, from this acceptability point of view, democratic legitimacy can be tested against a selection of predefined criteria. Essentially, the task of the researcher, then, is to define and justify such criteria, after which to apply them to a given system or policy. Subsequently, the polity or policy in question can be considered more or less democratic to the extent that it lives up to these predefined normative democratic criteria.

Yet, the problem with the acceptability perspective, so its critics say, is that by merely applying a normative yardstick it overlooks the fact that it is not because a political arrangement formally has the necessary elements to be called democratic, that it automatically feels as such. According to the contrasting **acceptance** approach, legitimacy, therefore, should not be understood in terms of a rule's inherent qualities, but in terms of its popular recognition. Legitimacy, in these terms, concerns the voluntary acceptance of a rule by those who are ruled by it; is about a situation where citizens believe that political authority is being appropriately exercised and therefore deserves to be obeyed (Bernauer et al. 2016, 2). Said otherwise, it is what turns power into authority (Schmitter 2001, 2). Excluding any recourse to normative standards (Mommsen 1992, 20), d*emocratic legitimacy* thus refers here to an empirical concept describing if and how people perceive a rule as democratic. From this Weberian point of view, democratic legitimacy is about the factual acknowledgement (or, for that matter, rejection) of a system or policy as being democratically legitimate because it is believed to be (cf. Blatter 2007, 518; also: Charlton 1986, 23). In this sense, *"legitimacy prevails as long as the people support – or at least do not challenge – democratic institutions and decisions"* (Peter 2009, 56) and a legitimacy crisis exists when the people start to doubt about the possibility to obey these institutions and decisions any longer (cf. Hennis 1976, 13). In this regard, the role of the researcher shifts from developing and applying normative benchmarks of democracy, to exposing the motivations and processes underlying the popular ascription of legitimacy to a specific political order.

However, just as normative acceptability, also empirical acceptance can be criticized for bearing an inherent shortcoming when rigorously followed as the sole source of democratic legitimacy. In its radical form, such a consent-oriented vision after all could bring us to the *Solonian* conclusion – as was famously argued by Pierce Butler at the American federal convention – that the people not necessarily need the best government that could be devised, *"but the best they would receive"* (Madison, 1787). Such a reasoning in the end could open the door to a kind of *brave new world*, the perfect authoritarian regime in which the illusion of

democracy is optimized in such a way that the people indeed believe to live in a democracy and consequently perceive the regime as legitimate.

Therefore, in addition to these basic accounts, a third vision on democratic legitimacy has been proposed. It starts from the argument that on their own, neither normative acceptability, nor social acceptance presents a sufficient argument for democratic legitimacy. According to this integrative approach, democratic legitimacy arises from the **mutual acknowledgment between the normative and the descriptive dimension** (Cheneval 2005; Weiler 1991, 416). That is, these dimensions are clearly distinct, yet interconnected and equally necessary elements with neither of them being able to make for democratic legitimacy on its own (Rosanvallon 2008, 19). This concretely means that normative democratic rules are important, but only have real political relevance when their accomplishment is recognized by society as a reason for the allocation of legitimacy to the system or policy in question. On the other hand, recognition too is not per se enough (Cheneval 2005, 2; Bellamy and Castiglione 2003, 10). As pointed out before, it is not because a system is recognized as democratically legitimate, that it necessarily is democratic in a normative sense. So, recognition must be accompanied by, and follow out of a normative democratic framework. A political system or decision must not only be recognized as democratic, but also be worthy of such recognition (Habermas 1979, 178). Or, with reference to Beetham (2013, 21), the belief in democratic legitimacy needs some democratic substance.

Summarized, we could visualize these three conceptualisations of democratic legitimacy as follows (Figure 1):

Figure 1: Concepts of democratic legitimacy

Normative democratic legitimacy   *Empirical democratic legitimacy*   *Integrated democratic legitimacy*
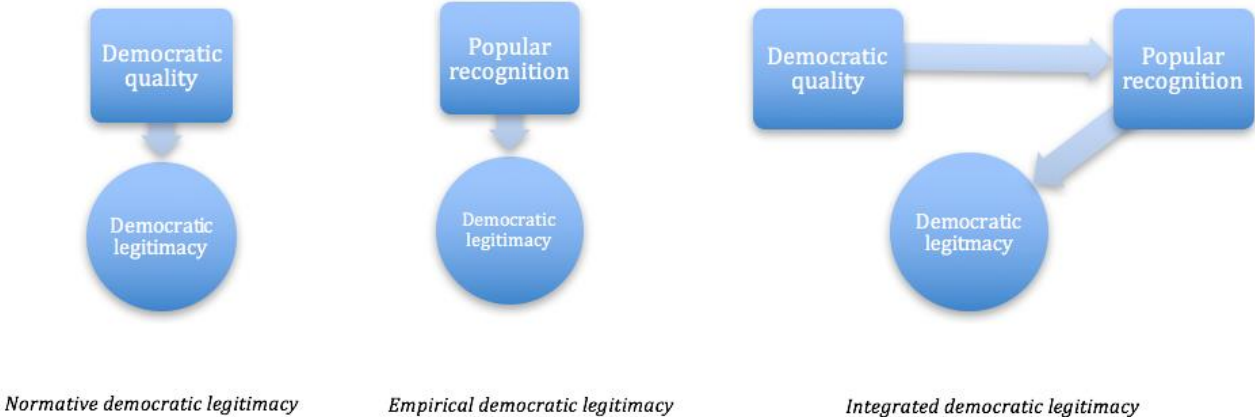
Albeit the idea of democratic legitimacy as the interplay of acceptability and acceptance has a strong theoretical appeal, to assess it in that way confronts the researcher with the problem of the concrete, day-to-day, correlation between both dimensions. Although a certain positive correlation between acceptability and acceptance could be assumed, concluding an overall causal relationship would be problematic. First, as a meta-analysis of different studies about the public understanding of democracy suggests, when citizens reflect on the normative value of democracy, they primarily identify it in relation to the freedom it assures and the social benefits it provides, and only to a lesser degree in terms of institutions and processes (Dalton et al. 2008, 4-6). Hence, insofar as an interaction between the people's acceptance of a rule and its democratic acceptability can be observed, this seems mainly determined by what the democratic system offers (substantive output) and less by how it assures popular involvement (procedural input). This observation seems further confirmed by research about popular participation. Notwithstanding that such participation holds a strong normative claim, studies suggest that people do not care about it that much (Dahl 2000, 38; Mudde 2004, 558). Furthermore, as people permanently act within a given social context, their appreciation of democratic quality will also be guided by subjective and intersubjective beliefs such as traditions, identities, and cultures. This means that the acceptance of a rule as democratic does not only follow out of rational calculations about the material benefits or individual utility of that rule but is also defined by the collective ideas and norms in which the people's understanding of the world is embedded (cf. Eilstrup-Sangiovanni 2006, 393). Arguably, the (history and values of the) regime that people are living in, will also orient the way these people understand democracy and what they consider to be democratic (Ferrín Pereira 2012). Someone from Switzerland, for example, will plausibly have a different understanding of democracy than a French or British resident. Taking all of this into account, the researcher wishing to assess democratic legitimacy in an integrated way obviously awaits a complex endeavour. Before a researcher can turn attention to if and how the acceptance of a political system or policy links to concrete characteristics of democratic acceptability, (s)he first needs to operationalize what (s)he considers acceptable. Thereupon, (s)he also needs extensive data about the presence of such normative characteristics in the context of that system or policy as well as a good understanding of the people's actual acceptance of the political system or policy, including the impact thereon from other, subjective and intersubjective factors. Only then will (s)he be able to reasonably evaluate the interlinkages between both dimensions of democratic legitimacy.

2. An empirical approach to the evaluation of normative democratic legitimacy

Each of the three perspectives on democratic legitimacy presented above has its inherent problems. The first two, on the one hand, could be criticized for presenting incomplete visions of reality. The third, however, confronts us with difficulties of a practical order, as its in-depth understanding arguably needs data from various academic fields and different strands of research. In the most ideal and complete case the study of democratic legitimacy should look at both acceptability and acceptance in an interconnected way. Such study should consider the normative democratic legitimacy of a political rule, as well as its empirical legitimacy; and thereby assess how they mutually influence and determine each other. However, while from a *real-world* point of view, the integrated approach covers most comprehensively what democratic legitimacy is about, examining the interconnections between acceptability and acceptance, logically only makes sense once enough knowledge is available about both these dimensions, as well as about (which) other factors (that) influence such interconnections.

Regarding European foreign policy, such basic knowledge is currently not sufficiently available. An evaluation of its democratic legitimacy in line with the integrative perspective would therefore be problematic. With regard to *acceptance* – and although polls should of course not be confused with the reality of public opinion itself (Sinnott and Lenzi 1997) – Eurobarometer research shows a continuously high Europe-wide support for a common European foreign policy, including a common defence. According to the standard Barometer of Spring 2017, 66% of the respondents are in favour of a common European foreign policy, and even a greater number, 75%, is favourable to a common defence[17]. This consistently confirms previous results, which have been equally high[18]. But, more elaborated research would be necessary to see if such general findings are indeed an accurate representation of the public acceptance of these policies. Besides, these data do not tell us where such large support comes from and, most importantly, how it connects to the EU's common foreign security and defence policy's actual democratic quality. That is, they do not tell how the acceptance of European foreign policy relates to its acceptability. About this last element, the problem is that current research about the normative democratic legitimacy of EU foreign policy does not suffice to do

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[17] Standard Eurobarometer 87, Spring 2017 – First Results, p.31 ec.europa.eu/commfrontoffice /publicopinion/index.cfm/ResultDoc/download/DocumentKy/79565 [11.08.17]
[18] Cf. for instance: Standard Eurobarometer 83, July 2015, pp.162-77 ec.europa.eu/COMMFront Office/publicopinion/index.cfm/Survey/getSurveyDetail/yearFrom/1974/yearTo/2015/surve yKy/2099 [08.10.17]

so. With references to what I previously said about the existence of different sub-literatures, research about the EU's foreign policy's actual democratic attributes is too fragmented and incomplete to serve as the basis for a comprehensive acceptability-acceptance assessment. As I mentioned in the *Introduction*, democracy related research on the EU's foreign policy is certainly available; but, existing studies mainly focus on separated manifestations of democracy. Hence, they mostly omit to look at democratic quality in an inclusive way. **Taking into account these considerations, this study's focus lies with the first dimension of democratic legitimacy, i.e. democratic legitimacy in terms of normative acceptability.** Said otherwise, it pursues a comprehensive evaluation of the inherent democratic quality of the European Union's foreign policy.

Though the study's basic approach to democratic legitimacy thus is essentially normative, the actual assessment will go further than simply checking if the EU's foreign policy responds to certain normative standards of acceptability. I will also try to establish how and to what degree it does so (cf. Bühlmann et al. 2012, 116). After all, democracy (neither in terms of acceptability; nor, for that matter, in terms of acceptance) is not an all-or-nothing affair in which a dichotomous distinction could be made between presence and absence. Democracy is a continuous concept that includes various degrees (Bollen 1991, 9-10), and should be dealt with accordingly. To the extent that the classical normative approach is essentially preoccupied with the plain presence or absence of formal attributes of democracy, it neglects to look at how these attributes interact with reality. The mere existence of formally democratic institutions or procedures, however, does not in itself deliver democracy. When, for instance, participation is put forward as a key characteristic of democracy, a radically normative approach tends to focus on the formal possibility for such participation to take place, and not (or at least less) at its real existence and practice. The present study in contrast envisages a wider understanding of the realisation of normative characteristics; including both their formal presence and their actual employment (cf. Chapter V, 3 *infra*). In that sense, it applies a more empirical focus on normative democratic legitimacy. It should be clear however that this empirical working method does not include a verdict about its acceptance, but simply means that I will include – where possible and useful – an assessment of the actual use that is made of normative attributes; that is, an assessment that goes further than merely monitoring if a normative requirement is formally accomplished.

3. Conclusion

Democratic legitimacy as a concept essentially means two things. On the one hand, from a normative point of view, democratic legitimacy is about *acceptability*, and deals with the inherent democratic qualities of a political rule. On the other hand, the *acceptance* idea interprets it in terms of the people recognizing such rule as democratic. In addition to these basic accounts, an integrative approach conceptualizes it as resulting from a combination of both acceptability and acceptance.

In the context of this thesis, I will look at democratic legitimacy in terms of normative acceptability. Without denying, nor diminishing the relevance of acceptance as an integrated part of overall democratic legitimacy, I opt for that focus because a comprehensive understanding of acceptability is imperative for further, more inclusive acceptability-acceptance research; and because such a comprehensive understanding of its acceptability is not yet (sufficiently) available regarding European foreign policy. With regard to the actual assessment of such acceptability, I however opt for an empirical approach that goes further than the purely normative approach. The evaluation of the EU's foreign policy's democratic legitimacy will look behind its formal democratic characteristics by not so much judging *if* such characteristics are present, but by evaluating *how* they are present.

II.   Foreign policy and democracy

Summary: Under this heading, I discuss why it is relevant to study the democratic legitimacy of foreign policy. I look at the complicated relationship between foreign policy and democracy and offer arguments for a democratic foreign policy.

Of course, the question can be asked why one should, as a matter of fact, care about the democratic legitimacy of European foreign policy? To fully grasp this question, it is important to distinguish between its two main elements, *foreign policy* and *European*. This chapter elaborates on the arguments for democracy in relation to foreign policy in general. Further on (Part II, introduction), I will discuss the particular arguments with regard to *European* foreign policy.

1.   Foreign policy and democracy: a changing relation

It has been argued for a long time that **democracy is incompatible with foreign policy**. Classical writers, such as John Locke or Alexis de Tocqueville had strong doubts about the democratic participation of the people in the formulation and implementation of foreign policy. According to John Locke (1821 [1689], 329) for instance; the law-making power, an assembly of representatives, is usually too numerous and too slow in matters which require a fast and effective execution, as does foreign policy. Alexis de Tocqueville (1836, 2:103, 99) on the other hand, wrote that foreign policy calls for the use of almost all those qualities in which a democracy is deficient. Therefore, it should be executed outside of the direct and daily influence of the people. Foreign policy should be a prerogative of the executive (cf. Jefferson 1790; Hegel 1911 [1821], §329) and *"cannot be placed at the service of a parliamentary majority without being forced into wrong paths"* (Bismarck 1922 [1887], 195). This line of thought continued to resound even through twentieth century Realist theories. Gabriel Almond (1956, 372), for instance, contends that *"[the] situation of extraordinary gravity [of foreign policy], [...] put the utmost strain on our capacity to make and maintain a foreign policy which is both democratic and effective."* Democracy in foreign policy would, so its critics claim, lead to both disruption from below and derailment from above. The popular pressure to which democratic government must respond would drive foreign policy of the path of cool reason and calculated reflection necessary to deal with an anarchistic and complex world, and democratic leaders

would be influenced – especially during elections – by incentives not always in line with the wisdom and foresight needed to conduct a foreign policy (Nincic 1992, 5-6).

More recently however, **conceptions of foreign policy have changed**, and over time it has been increasingly perceived as a *normal* public policy (Kessler 2002, 167-92). An important cause for this *desecration of foreign policy* lies with the fact that it can call less and less upon its *high politics* status as a reason for democratic exemption. Especially since World War I, the idea that foreign policy could be *safely* left exclusively in the hands of professionals lost its appeal (Carr 1946, 2). Also, as the international scene is no longer only the playing field of States (also international organizations, NGOs or multinational enterprises have become active on the global level) and it cannot be argued anymore that foreign policy solely deals with issues of State survival and territorial integrity; the Realist vision on foreign policy as a set of purely rational actions which only concern the power of the State and which in the end are external to the people's daily life (cf. Morgenthau and Thompson 1985), is difficult to maintain. After all, by dealing with topics of (international) security and peace or the protection and defence of interests, foreign policy impacts on citizens' lives in many ways. The deployment of military missions not only has political and fiscal repercussions (i.e. how much can be dedicated to other policy domains), but even put citizens' lives at risk (Wagner 2007, 3; also: Headley et al. 2012, viii). So, when, for instance, the EU Member States decide to oppose Russia's policy towards Ukraine by imposing sanctions on the country, the subsequent retaliation measures by means of a boycott against European import impact on the lives of EU citizens. In that way, foreign policy decisions are clearly not neutral. Therefore, it is increasingly questioned whether they should not also respond to certain democratic principles. Likewise, the argument of complexity does not hold: it can indeed be questioned how complexity could be an argument against democracy (Eriksen 2011, 1173), as amongst today's public affairs foreign policy is certainly not the only complex matter. In short, as Helene Sjursen (2007, 2, also: 2013a, 144) states, *"in practical terms, it is becoming increasingly difficult to argue that democratic accountability and openness should be set aside when [matters of foreign security and defence] are discussed"*. Furthermore, public contestation of foreign policy actions (such as protests against participation in military actions abroad) or other expressions of international commitment by citizens are certainly not suggesting a popular disinterest in the content or implementation of foreign policy justifying its exclusion from democratic procedures, common to other, domestic policies (Cohen 2000, 5-6).

Moreover, research increasingly affirms that democratic control of foreign policy usually improves the quality of the latter (Koenig-Archibugi 2002, 69; Schultz 2001). That is, a growing body of political research demonstrates that democracies tend to be more successful in their foreign security endeavours (Reiter and Stam 2002) and that they do have to devote fewer resources to them (Fordham and Walker 2005). Also from a *democratic peace* point of view – claiming that democracies do not make war on each other (Weart 1998; Russett 1990; and in an earlier version, also Paine 1920 [1776], 53-54)[19] – it obviously follows that especially the policy actions through which external relations are defined should not escape basic democratic procedures.

2. Foreign policy, different but not insurmountably different

Notwithstanding the changing outlook on democracy and foreign policy, foreign policy remains a particular setting. Sudden international developments can require rapid and decisive action, sometimes difficult to reconcile with the classical democratic procedure which tends to be rather incremental and slow. Given this particular setting, it is for instance still true that diplomacy often needs a certain degree of secrecy (cf. Chapter IV, 5.2.1 *infra*) and that especially in matters of foreign policy, we need to guard a delicate balance between democracy and efficiency (Cohen 2000, 10). More concretely, foreign policy proves different from other governmental affairs, mainly for three reasons:

- First of all, foreign policy is different from domestic politics in that **law-making is less central** to it (Sjursen 2011b, 1072). In reference to a distinction introduced by Luuk van Middelaar (2016, 3-4), foreign policy could be categorized as *'politics of events'* rather than *'politics of rules'*. That is, more than about the establishment of norms, the distribution of welfare or the organisation of public services, foreign policy is about (re)actions and decisions to be taken in the light of unforeseen events. Foreign policy is essentially about responding to the outside world and about defining the polity's behaviour towards other international actors and events. It is about setting strategic goals and policy positions, rather than about defining the rules for the internal organization of the own society. In doing so, foreign policy is directed towards peoples and territories over which the policy makers, in fact, have no formal authority. Instead

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[19] For an overview of democratic peace theory literature, see: Rummel, R.J. (2009), *Democratic Peace Bibliography - Version August, 2009* hawaii.edu/powerkills/DP.BIBLIO.2009.HTML [09.05.16].

of focussing on the laws that shape the own polity and the regulation of the relations between citizens within that polity, a foreign policy aims to influence the actions, behaviour, and even the law making of other polities (cf. Adnan 2014, 657-58).

- Secondly, in foreign policy, **possibilities for agenda setting are restricted**. Although it is surely justified under democratic governance to expect citizens to have the opportunity to decide what are political matters and what should be brought up for deliberation (Dahl 1989, 112-14), this is simply not always possible in foreign affairs. Often, if not most of the time, the foreign policy agenda is determined by external changes and sudden events. Different from domestic agenda setting – although of course occasionally also triggered by singular events – foreign policy often does not emerge gradually but tends to be determined by crises and dramatic occurrences, and to be driven by a continuous stream of exogenous policy events (Wood and Peake 1998, 173-74, 182). Indeed, it can be argued that policy actors altogether do not choose their foreign policy (Hill 2003, 292-97).

- Additionally, there is the less direct impact of elections on the foreign policy process as such. Thomas Zweifel (2006, 15) states that the particularity of the international context is the **absence of elections**. It can be maintained that his is true, not only for international organizations but, up to a certain degree, also for foreign policy. Although key foreign policy actors of course can be elected – and notwithstanding foreign policy issues surely can play a role during elections and even have a decisive impact on their outcome (Saldin 2009) –we can still argue that concrete, day-to-day foreign policy as such seems at least less than other, domestic policies directly defined by the results of elections. This does not mean that there could (and will) not be any impact from the public opinion and the people's political behaviour on the foreign policy (Aldrich et al. 2006); but taking into account the specific characteristics of the international game as well as the essentially reactive nature of foreign policy and the limited agenda setting possibilities mentioned before, it can be understood that foreign policy is less predictable and sometimes more difficult to plan on the long term. In that way, the outcomes of elections tend to impact more limitedly on the daily, on-the-field foreign policy actions, especially where it concerns issues of security and defence.

While it is true that these 'structural differences' – making foreign policy different from domestic policy areas – do not exempt such foreign policy from democratic scrutiny (Sjursen

2011b, 1072); we should not overlook how they impact on the way in which democracy can and will be assured. Indeed, as argued before, foreign policy has consequences for citizens and therefore may be expected to be democratically answerable. Yet, even when we demand such democratic answerability with good reason, we should keep in mind that it can likely not be realized in precisely the same way and through exactly the same channels as other, domestically oriented policies….

3. A democratic foreign policy

If foreign and security policy were to be democratic, what would it look like (Sjursen 2013b, 143)? In other words, when could a foreign policy, normatively, be called democratic? Which standards does it have to meet? In modern politological literature, a large variety of normative democratic criteria have been developed. Depending on different ideological or theoretical backgrounds, different norms have been put forward which a system or policy must meet if it wants to be classified as democratic (cf. Lord 2008; Stie 2008; Held 2006; Barber 2003; Lijphart 1999; Dahl 1989). However, classical paradigms – focusing mainly on elections and the involvement of the people – tend to apply less to foreign policy than they do to other – domestic – policies. Moreover, just as for other, domestic, policies, the sole fact that the foreign policy in question is laid down by an elected executive is thereby, I believe, an inadequate guarantee for its democratic legitimacy. That is, just like Gerry Mackie (2009, 129) or Karl Popper (1971, 120-25), I do not agree with the one-sided focus on leadership selection we find in the writings of Max Weber (1968, 1450-51) or Joseph Schumpeter (1994, 269-73). In modern, liberal societies, the competitive election of decision-makers can – although a necessary – not be a sufficient foundation for democracy (cf. also: Rothstein 2009). Therefore, also other ways need to exist to make a foreign policy democratic and criteria – without direct reference to law-making or popular control of the agenda, and a recognition of the more limited impact of elections – are needed to judge this policy's democratic quality.

To provide such criteria with valid foundations, explicitly anchoring them in democratic theory, the next chapters will proceed by advocating for *democratic auditing* as an assessment method. Starting from a normative argument for democracy (cf. Merkel and Bühlmann 2011, 34; Saward 1994, 6-7) – which will also help to reinforce the claim that there are no sufficient grounds for exempting foreign policy from the basic democratic principles that rule other policy domains – a set of further democratic conditions will be argued for. These conditions, in fact, are requirements, or criteria, that a foreign policy must arguably have incorporated in its actual

working to be classified as normatively democratic. They are minimum standards against which to judge a foreign policy. To enable their actual assessment, I then will formulate specific indicators for each of them.

4. Conclusion

Foreign policy has particular traits, making it different from other, domestic, policies. However, the democratic exemption that historically has been argued to follow out of these particularities increasingly lost its pertinence. Although foreign policy indeed presents a less central role for law making, has limited possibilities for agenda setting, and is less defined by elections, given that it impacts on the lives of citizens just like other policies, foreign policy is nowadays commonly expected to respond to certain democratic norms. In Chapter IV, I will discuss criteria that enable us to assess how well a foreign policy lives up to such norms.

III. Auditing democratic legitimacy

Summary: *The evaluation method underlying the assessment of the EU's foreign policy's normative democratic legitimacy used in this thesis is essentially that of a democratic audit. This chapter therefore discusses this method by looking at its origins and key characteristics, while arguing why it presents a good evaluation tool, not only to assess overall political systems, but also more specific policy's, including foreign policy.*

1. Assessing democracy

The assessment of a polity's democratic qualities is an old idea. Having its early roots in the work of Aristotle on the comparison of different theories of government and existing regimes (cf. Beetham 1999, 567) to find the sort of political community that is superior to all (Aristotle 2013, 25), it also represents an important element in the writings of Alexis de Tocqueville who's *'De la démocratie en Amérique'* in a certain way presents a qualitative democratic assessment *avant la lettre*. However, it is especially in more recent times that (comparative) studies about the democratic nature of regimes and countries gained importance as a distinct field of political research. Starting with the work of Lipset (1959) on the socio-economic requisites for democracy and the early work of Robert Dahl (1956) in which he compares *Madisonian*, *populistic* and *polyarchal* democracy, we see the emergence of an increasingly complicated classification of different types of democracy (cf. Held 1987; Hendriks 2010) and the testing of existing systems against (one of) these models. This leads to both studies aiming to examine if, and to prove that democracies tend to fare better than non-democracies as well as quantified comparisons between different countries' levels of democracy. In addition, we also see how, since the last decade of the 20th century, the assessment of democracy has been increasingly driven by a more practical and policy-oriented purpose.

Thus, basically, three types of democracy assessment can be distinguished (cf. Beetham 2004, 2). First, there are those studies that focus on the link between democracy and various economic variables (cf. Maravall 1997; Diamond 1992; Waisman 1992). Secondly, we have the so-called league tables. Presenting a ranking of countries based on a quantified evaluation of their democratic or human rights record, these indexes such as the *Freedom House Index* (Freedom

House)[20], *Polity IV* (Centre for Systemic Peace)[21] or the *Democracy Index* (Economist Intelligence Unit)[22] are mainly developed by private organisations. Finally, there are the assessments of individual countries that essentially serve a policy purpose. Carried out, or requested by government agencies or international organisations, these studies do not only search to understand but also to give input to future policy. On the one hand, by identifying possible deficits of a democratic order in third countries and preconceiving their rectification as a political precondition for international cooperation or development aid, they (can) (help) define the way in which the evaluating entity approaches the country in question (cf. Sorensen 2013; Stokke 2013). In a similar vein the EU takes democracy as a precondition for accession and monitors its state and development in candidate countries[23]. On the other hand, such kind of policy-oriented assessments can also concern an internal self-evaluation. An example of this is the Dutch Legitimacy-monitor (Hendriks et al. 2011, 2013, 2016)

The emergence of these policy-oriented assessments, however, in turn also leads to a changing focus in academic research and stimulates a reorientation towards a more qualitative approach. That is, more fine-grained assessments emerge that take distance from the classical league tables which essentially chart a country's overall democratic performance relative to that of others; but do not so much tell how that country's democratic quality takes form and of what different aspects it is composed. Interesting examples of such elaborated qualitative assessments can be found with *Varieties of Democracy* (V-Dem), or with the *Democracy Barometer* (DB).

Varieties of Democracy concerns a large project co-hosted by the University of Gothenburg and the Kellogg Institute at the University of Notre Dame. It is a large-scale project that aims to conceptualize and measure the degree and types of democracy for all countries in the world (in June 2018, the dataset covers a total of 201 countries), over a long period of time (since 1900). Starting from the observation that we *"cannot mark [democracy's] progress and setbacks"* if we *"cannot measure [it] in sufficient detail and with the necessary nuance"* (Lindberg et al. 2014, 159), V-Dem at the same time acknowledges the complexity of democracy as a system of rule that goes beyond the simple presence of elections. The project

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[20] freedomhouse.org/reports [08.12.17].
[21] systemicpeace.org/polityproject.html [08.12.17].
[22] eiu.com/topic/democracy-index [08.12.17].
[23] European Commission, *Conditions for membership* ec.europa.eu/neighbourhood-enlargement /policy/conditions-membership en [07.12.17].

thus adopts a multidimensional and disaggregated approach. More concretely, it takes into account seven Key Principles which *"taken together offer a fairly comprehensive accounting of the concept [of democracy] as employed today"* (Coppedge et al. 2017a, 3-4). While each of these principles represents a different variety of, or approach to democracy, and none of them embodies on its own all meanings of democracy; together they essentially cover what democracy in all its diversity has been- or is understood to be. These principles are: (1) electoral, (2) liberal, (3) majoritarian, (4) consensual, (5) participatory, (6) deliberative and (7) egalitarian. For each of these main types, the researchers then have defined some 50 components and sub-components. These in turn are evaluated through a total of around so far 450 indicators (there are no indices for majoritarian and consensual democracy yet). These indicators are of three types. First, there are those that concern observable facts and that can be found in existing secondary sources. They do not require additional coding. Approximately a quarter of the indicators are of this type. Secondly there are indicators for which data is gathered from country-specific sources (approx. a quarter of the indicators). And finally, there are indicators that are evaluated through country specific expert knowledge (approx. half of the indicators).

Together with the previously mentioned long-scale historical approach, it is especially this last group of indicators that makes for the particularity of the V-Dem project (for a comparison with other measurement projects, see: Coppedge et al. 2017b). These indicators are namely essentially assessed by country experts – mainly academics or policymakers who are nationals of and/or residents in a country, with profound knowledge about that country and of a specific substantive area (usually 15-20 per country)[24]. Moreover, in contrast for instance with the previously mentioned Democracy Index, V-Dem shows clear transparency with regard to who these experts are.

The Democracy Barometer, for its part, is developed by the University of Zurich and the Social Science Research Center Berlin. It starts from an explicit critique on established democracy measurements such as *Freedom House* or *Polity IV*. These classical indexes are said to suffer from a major shortcoming: as they are based on a too minimalistic – or on the contrary, too detailed – democracy concept, they are insufficiently differentiated to grasp the nuances between established democracies (Bühlmann et al. 2012, 118). The DB therefore proposes a

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[24] Varieties of Democracy (V-Dem) pol.gu.se/english/varieties-of-democracy--v-dem-/data [17.10.17].

new democracy index. Based on a middle range concept of democracy, it especially focuses on the evaluation of established democracies. Important thereby is that the Democracy Barometer takes the time to extensively explain its normative and theoretical foundations. Taking into account elements of both liberal and participatory models of democracy, it starts from the premise that a democratic system searches for a balance between the interdependent values of freedom and equality and therefore requires control. From these three constituting principles of democracy the Barometer subsequently derives nine functions, from whose degree of accomplishment the democratic quality of the system depends. To concretely evaluate these accomplishments, the DB operationalizes the nine functions by disaggregating each of them in two components (total: 18), which then finally are measured through several sub-components (total: 51) and indicators (total: 100)[25].

The Democracy Barometer does not look at concrete policy outputs to evaluate a system's democratic quality. However, it is interesting to note that it does not only look at formal rules neither, but also at actual democratic praxis (Merkel and Bühlmann 2011, 34). Besides, the Democracy Barometer recognizes the inherent complexity of democracy by acknowledging that the simultaneous maximisation of the nine functions is – although theoretically desirable – most unlikely (Bühlmann et al. 2012, 123). Thus, the Barometer has – starting from a 'best practice' scale developed on the basis of a blueprint of 30 established democracies[26] – examined the quality of 70 established and new democracies while measuring the differences that exist between them, both at the level of individual functions as well as the overall, aggregated state of democracy.

In that way, the Democracy Barometer offers an assessment of democratic quality that runs deeper than most other measurements. By arguing for a well-defined concept of democracy, while at the same time fully recognizing the inherent and multivariable complexity of democracy, the DB has the advantage of being both comprehensive and discriminatory. Thus, the Barometer makes it possible to understand better how democracy internally takes form and offers a greater understanding of the democratic strongholds and weaknesses of a given polity. On the other hand, however, just like V-Dem, the Democracy Barometer ultimately stays a quantifying exercise, in which qualitative assessments are translated in numerical values. Such

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[25] democracybarometer.org/concept_en.html [11.08.17]
[26] That is all countries that have constantly been rated as full-fledged democracies by both the Freedom House and the Polity index from 1995 to 2005 (Bühlmann et al. 2012, 527).

'quantification' indeed could claim validity from a methodological point of view because it facilitates comparison between cases. Yet, we can agree with Beetham (2004, 3) that *"there is considerable room for subjectivity, not to say arbitrariness, in translating qualitative judgements into quantitative measures"*. Also, in that way, the rich data and extensive assessment risks to be pushed into the background, until in the end only the overall numerical score of a country will be remembered.

Showing important similarities with the Democracy Barometer where it concerns the argumentation for a clear democracy concept, and with both V-Dem and the Democracy Barometer regarding the selection of numerous indices through which to measure the different elements of a democratic order is democratic auditing. This more radically qualitative – but therefore also less comparative – approach searches for a profound assessment of democratic quality. As the assessment of the EU foreign policy's democratic legitimacy carried out in this thesis applies this method, the remainder of this chapter will deal with this Democratic Audit in more detail.

2. Democratic audit: a different way to measure democracy

The idea of a democratic audit originates with a research project set-up at the University of Essex in 1991. Funded by the Joseph Rowntee Charitable Trust, the project's main purpose has been to conduct a systemised inquiry into the democratic quality of the UK's public life and institutions, and to provide more rigorous evidence about the country's state of democracy on the eve of the millennium. Said otherwise, the DA aims to construct a 'balance sheet' about the democratic condition of the UK and to ascertain the enduring strengths and failings of its political arrangements that lie beyond the individual character of policy and politicians (Beetham and Weir 2002, 4). Such a first assessment, then, can also serve as a benchmark; that is a point of reference to assess future democratic developments. As a theoretical starting point, the audit defines democracy in terms of two related principles, being *public control* and *political equality* (cf. Chapter IV, 1, 2 *infra*). As, however, these principles are too general to be effectively measured as such, they are separated into four distinct yet overlapping dimensions. Each dimension then deals with a set of so-called Democratic Audit Criteria (DACs) through which these basic principles can be assessed in practice (Beetham 1994, 28-31). These dimensions concern (1) the presence of free and fair elections, (2) an open, accountable and responsive government, (3) guaranteed political and civil rights and freedom, and (4) a publicly active citizenry. In that way, in total 30 DACs are put forward. Formulated as a question ("how

far", how equal", "to what extent"), each audit criterion deals with a specific feature of the UK's political system and public life and searches the data that are required to evaluate how democratic this feature is (Beetham 1999, 570-71, for an overview of the audit criteria: 1994, 36-39). The data that are used are generally of three kinds. First, there are legal rules that govern the rights, powers and responsibilities in a specific area. Secondly, there is the evidence about how (well) these legal rules are implemented in practice. And, finally, the DA of the UK looks for negative indicators, pointing out specific democratic deficiencies or failures. As a standard against which to measure these data, the UK's audit departs from international standards of good practice, however with respect for the local context and the interdependencies that (can) exist between the different constitutive elements of a democratic political system. In addition, where such good practice standards are less developed or accepted, standards are also derived from rules and principles defined by international organisations or treaties (Beetham 1999, 571-74). In practical terms, given the size and the complexity of the endeavour, the actual audit takes form through different studies each focussing on another dimension of democracy as defined through the theoretical outline of the concept (Beetham 2002; Weir and Beetham 1999; Klug 1996).

Given that the idea of democracy underlying the UK audit and the criteria that are used are not specific to the British political system but generic for democratic systems in general, they can be applied to assess democracies elsewhere. Building on the Democratic Audit of the United Kingdom, a do-it-yourself audit package has therefore been developed by the International Institute for Democracy and Electoral Assistance (IDEA). Allowing citizens to answer the *simple* questions *'How democratic are our country and its government'* and '*What are the strengths and weaknesses of our democracy?'* (Beetham et al. 2008, 18), citizens in any country can use it to assess their own country's level of democracy. Basically, the method proposed for IDEA's State of Democracy Assessment Framework (*SDAF*) is similar to the UK audit. Starting from the same principles of public control and political equality, it also looks at different aspects of the democratic life. It moves away from a focus on the simple existence of democratic institutions but looks at their performance too. Yet, at the same time, the actual audit framework has undergone important revisions. These are introduced to grasp better the considerable variation that exists with regard to the practical, organisational forms of democracy. Hence, in the course of the process of developing the SDAF, the four dimensions used in the UK audit became fifteen (for an overview, see: Beetham et al. 2008, 26), yet with fewer questions for each. Where it concerns the interpretation and emphasis given to each questions of the

framework, the selection of evidence and the final judgement, this has been a matter for the country assessors as they think appropriate (Beetham 2004, 5). The same goes for the choice of benchmarks and standards against which to measure the evidence. After all, the framework may well be guided by the premise that democracy is a universal value and aspiration; it also recognizes that the actual organization of a democratic system is context-sensitive and results from various historical processes and regional differences (Beetham et al. 2008, 20, 285). In that way, since its launch in 2000, the framework has so far been used in 24 countries[27] – ranging from what are traditionally recognized as established democracies, such as Australia (Sawer et al. 2009) or the Netherlands (Andeweg and Thomassen 2013), and relatively new democracies like Latvia (Rozenvalds 2005) or South Africa (Calland and Graham 2005), to less evident cases such as Mongolia (Landman et al. 2006) – to assess (parts of) their democratic organisation and system. Hence, similar to the *Democracy Barometer* or *Varieties of Democracy*, the IDEA audit offers a wide-range assessment tool, applicable to developed and developing democracies alike.

Not using the IDEA framework, yet also explicitly referring to the democratic audit approach as its method of assessment, is Christopher Lord's (2004) study about the democratic state of the European Union. Starting from the observation that the EU is commonly criticized for being a political system in democratic deficit, the question is asked about the nature of that deficit. More specifically, the audit aims to determine if this deficit is brought about by any actual democratic shortcomings. In other words, it looks at the democratic qualities or deficiencies that pertain to the EU's overall political system or to some of it parts in particular (Lord 2004, 1). In doing so, this research is the first attempt to apply democratic auditing beyond the specific framework of the State. Again, this audit starts from the same basic definition of democracy. Following an account about why the European Union ought to be democratic and a reflexion on the particularities and complexity of the EU's governance system, as well as on which models of democracy should be applied to the EU, it derives indices of democracy through a series of clearly argued steps. Concluding that the dominant cleavage on what would count as a democratic European Union is one between different visions of consensus democracy, and in reference to Ferry's (2000, 10) argument that European integration has to have/ has a 'double normative reference point' – to know, both national democracies and individual citizens – it presents 12 'European Democratic Audit tests' (*EUDA's*), organised along five attributes of

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[27] idea.int/data-tools/tools/state-democracy-assessments/assessments-worldwide [11.08.17]

democratic governance. These are *citizenship*, *authorisation*, *representation*, *accountability* and *constitutionalism* (Lord 2004, 25-29). For its actual assessment, then, it looks at specific procedures and instruments, each institution of the Union, the three pillars (of which the Union was officially still composed at the time of appraisal), as well as the EU as a whole and processes of institutional design. In that way, a picture is drawn of the EU's democratic situation that takes distance from the classical generalisations for or against the presence of a democratic deficit. Thus, the audit evaluates the performance of the Union with regard to the different democratic attributes and the relation that exists between them. By doing so, it considers the EU's democratic quality in a more comprehensive way.

3. Democratic audit: main features

What, now, are the main features of democratic auditing, and why do I contend that it is a useful approach for the assessment of the EU's foreign policy's democratic legitimacy?

Looking at the above account of the methodology's subsequent applications, democratic auditing can be defined as *"a systematic assessment of institutional performance against agreed criteria and standards, so as to provide a reasonably authoritative judgement as to how satisfactory the procedures and arrangements of the given institution are"* (Weir and Beetham 1999, 4). It concerns a systematic and comprehensive appraisal of the democratic state of affairs of a political system and, in that way, does not so much look at *if* something is democratic, but *how* it is democratic (cf. Baker 1999, 2). Democratic auditing implies an in-depth and comprehensive scrutiny of the state of democracy of a given system.

In that way – and although it shares some common features and methodological problems with other forms of democratic assessment – democratic auditing is different in a number of significant aspects (Beetham 1999, 568). Essentially, we can distinguish four key features that are decisive for democratic auditing as an assessment method:

- Although many attempts to determine a coherent assessment framework for democracy exist, these discussions traditionally tend to be embedded in a detailed and well-outlined vision on what democracy ought to be. Based on an understanding of democracy as for instance competitive elitist (Held 2006, 157; Lijphart 1999, 10-25) or deliberative (Held 2006, 215; Stie 2008)[28], competing sets of assessment criteria have been proposed. In

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[28] For an interesting summary of different models of democracy, see: Hendriks 2010, 25.

the end, however, these first and foremost evaluate how well a political system agrees with that specific, presupposed model and not how democratic it is from a larger perspective. Democratic auditing, however, is more **model-unspecific**. Admittedly, in the concrete applications discussed before, there is reference to liberal democracy (UK audit, IDEA) or to consensus democracy (EU audit), but these concepts are used as a generic starting point, rather than as a precise and clearly demarcated objective. Democratic auditing does not put forward an idealised vision of democracy. It does not understand democracy as an all-or-nothing affair but recognizes that *the species* democracy shows considerable variations (Beetham 1999, 577) which may have been realised through very different institutional forms (cf. Beetham 2004, 13). Thus, democratic auditing offers a generalizable method of appraisal that in the end could enable us to evaluate different forms of democracy without philosophical presumptions about which of them is better.

- In line with the above, it follows that the democratic audit method is also more **flexible with regard to the actual audit criteria**. First, as criteria are not derived from a specific model, but from a generic conception of democracy, *the evaluator* has more liberty regarding their selection. In fact, (s)he is invited to take argued responsibility over the criteria that (s)he judges most appropriate for the assessment of a given political setting (Beetham 1999, 578, 579; cf. also Baker 1999, 4). Furthermore, criteria are formulated in generalizable terms (Beetham 1994, 31). Thus, they allow the assessment of how well – that is to what extent, and not only *if yes or no* – distinct democratic practices do live up to them. After all, if what counts as democratic is less definitive and open to legitimate variation between political systems, criteria must be sufficiently general to evaluate these different practices in their own right. Criteria are rules against which to test concrete practices, not definitions of or descriptions for such practices. Hence, they *"must be couched in sufficiently general terms [that] enable us to distinguish those differences that comprise legitimate variations of practice from those that constitute deviations from a given standard of democracy"* (Beetham and Weir 2002, 17).

- Departing from the *"conviction that a functioning democracy requires many interdependent elements which, though separable for analytical purpose are all necessary to the effectiveness of the whole"* (Beetham 2004, 8), the democratic audit method scrutinizes democracy in a **holistic manner** without losing out of sight its different, constitutive parts. While looking at both individual attributes of democracy as

well as the overall state of affairs of a democratic rule (Beetham and Weir 2002, 4; Lord 2004, 4), the Democratic Audit addresses both strengths and weaknesses of structures and procedures, and the interactions and trade-offs that can exist between them. It goes beyond a one-on-one discussion of different democratic characteristics and assesses them in an interconnected way, though without aggregating these assessments into one overall single score of democracy (Beetham 1999, 569). By doing so, democratic auditing fully acknowledges the inherent complexity of democracy.

- Finally, democratic auditing involves the combination of a normative understanding of democracy with empirical findings. It is a normative approach in that it starts from a basic definition of democracy, based on which different normative criteria are identified; but it proposes an empirical assessment that connects these normative criteria with findings on the concrete practices of an actual political system. Drawing on a mix of qualitative as well as quantitative resources, it assesses actual democracy. In that sense, it can be classified as an '**applied normative analysis**' (Beetham 1999, 577).

Taking into account these characteristics, the audit process then materializes through a combination of five, more or less consecutive research phases. Much like, for instance, also the Democracy Barometer, a democratic audit starts by arguing for an inherently defensible concept of democracy based on clearly articulated democratic values. As we have seen, these concern the key principles of *public control* and *political equality* (for a discussion about why exactly these principles, cf. Chapter IV, 1, 2 *infra*). As these principles, however, are too *large* to serve as precise assessment tools (Beetham et al. 2008, 21) they should be made measurable. Although the different audits mentioned before can be somewhat confusing on this point – as they differ with regard to the procedure through which they deduce measurable assessment criteria, as well as their choice of wording in this regard (cf. Chapter IV, 6 *infra*) – the point here is that the evaluator needs to come to a comprehensive set of concrete units of assessment through which to assess how these key principles shape and define the actual institutions, procedures and practices of the political system or policy in question. Thirdly, the benchmarks of assessment need to be determined. That is, the evaluator needs to argue for the standards of measurement: how will (s)he make his/her judgement about how well the criteria are lived up to? Subsequently, a large deal of time and effort will have to go to the collection of the relevant information and evidence that will enable such judgement. Finally, these data then must be reviewed in light of the criteria and measurement standard defined before in order to reach a systematic assessment.

4. Democratic audit and the EU's foreign policy

So far, the democratic audit method has been used to assess the overall democratic quality of individual countries, and the EU. These audits have looked at the *democraticness* of a political system, and have only considered specific policies, where this is judged relevant to the evaluation of said system. In that sense, the focus of current democratic auditing essentially lies with what Hendriks et al. (2013, 7, 11) have called *system legitimacy*. Yet, following these authors in their distinction between such system legitimacy and two other objects of legitimacy, namely *actors* and *policy*, I contend that democratic auditing also could be used to assess the democratic quality of a specific policy domain. Being an integrated combination of possible laws and actions coming from one or more public authorities, linked to proper budget lines and a distinct administrative structure, guided towards a more or less clearly defined set of objectives (cf. Rose and Davies 1994, 54), distinct public policies are, in fact, political subsystems which therefore can be expected to meet certain democratic standards as well, independently from the global political system from which they emanate. Hence, they should be evaluated accordingly.

That is why I consider the method particularly appealing to assess European foreign and security policy. First of all, given the presence of different democratic traditions within the European Union, it is unrealistic to suppose the presence of a commonly agreed model against which its democratic quality could be evaluated (cf. Lord 2004, 6). This seems even more the case where it concerns its foreign policy. National foreign policies are strongly embedded in distinct identity images present within the different EU Member States and have developed according to contrasting narratives (Tonra 2011). Therefore, their factual functioning as well as the way this will be democratically perceived, vary widely. That is why measuring the European Union, and in particular its foreign policy against a specific, previously decided idea about the concrete form of democracy will prove unsatisfactory. Furthermore, foreign policy has some particularities that make it difficult to apply classical paradigms of democracy that we find in most established democracy models (cf. Chapter II *supra*). All of this, however, does not mean that the EU and its foreign policy cannot be democratic and should not be evaluated in that regard. Democratic auditing allows us to do so. Given its model-unspecific approach and its inherent flexibility regarding the actual indices of assessment, democratic auditing enables the appraisal of the democratic qualities and shortcomings of European foreign policy in a realistic way. Besides, the applied normative approach the method advocates corresponds

with the empirical focus on normative democratic legitimacy that I previously argued for (Chapter I, 2 *supra*).

Regarding this last point, an additional clarification about the concept of *normative democratic legitimacy* and its use in this thesis, is appropriate. Where previous audits say to assess the *quality of democracy*, or the *state of democracy*, I explicitly opt for the use of *democratic legitimacy* in its normative sense as the focus of assessment. I do so in order to keep reminding what exactly it is that we are evaluating. That is, when assessing the quality or the state of democracy, we are in fact looking at its inherent acceptability and, thus, at but one of two dimensions of a larger concept. So, even where for the fluidity of the text I will talk about *quality of democracy*, *state of democracy* or even simply use *democracy*, it should be kept in mind that ultimately, these concepts refer to *normative democratic legitimacy*.

Finally, two further remarks are also in order about the exact topic of study.

First, previously, I briefly discussed the development of the European Union's foreign security and defence policy over time (cf. Introduction), and I repeatedly explained how this thesis is interested in evaluating this policy's normative democratic legitimacy. In this context however, it should be understood how the idea of a democratic audit essentially concerns a snapshot. The first audit carried out about the UK looked at the country's state of democracy *"at the eve of the millennium"* (cf. *supra*) and other audits too dealt with democracy at a given point in time. Based on different subsequent audits, one could engage in a discussion about the democratic evolution of the system or policy in question over time; but every audit as such is about the democratic state of affairs at a given moment (cf. Chapter XV, 1 *infra*). In this study, the focus lies on the Common Foreign and Security Policy/ Common Security and Defence Policy as it results from the last treaty reform. That is, the democratic assessment will be one of this policy, as it emerged from the changes introduced in Lisbon. Operational for more than seven years now, this post-Lisbon EU foreign policy is sufficiently established to have developed its proper dynamics. As such, it increasingly manifests an identity distinct from pre-Lisbon times. While the post-Lisbon CFSP may not yet be a fully-fledged, *mature* policy sub-system, it certainly is a *nascent* one (cf. Sabatier 1998, 111). Therefore, it deserves attention in its own right. Pre-Lisbon aspects will, of course, get attention and be taken onto account where relevant to this democratic assessment. But, the focus will be on the institutions, procedures, decisions and actions as they are currently in place. Concretely, the audit covers the European foreign policy for the period 2010-2016, with some date going to 2017.

Besides, I wish to emphasize how the focus of this research lies with the *CFSP as a policy* of the European Union, and not with the *European Union as a system*. Just as system-oriented audits do not so much look at specific policies when they reflect on these systems' democratic legitimacy (cf. supra), this audit will not directly concern itself with more general questions about the democratic legitimacy of the EU's overall system, processes and structures. As I mentioned in the introduction, a lively debate indeed continues for many years about the democratic legitimacy of (aspects of) the EU in general. These discussions look at (elements of) the constitutional structure of the EU (i.a. Risse & Kleine 2007; Fossum & Menéndez 2005), at individual institutions such as the Commission (i.a. Tsakatika 2005; Matláry 1998) and the European Parliament (i.a. Wessels & Diedrichs 2002; Scully 2000; Niedermayer & Sinnott 1998), or at the electoral process (i.a. Bol et al. 2016; Piedrafita & Renman 2014; Norris & Reif 1997). Over the course of many years they brought together various (and repeatedly very different) views about the presence or not of a democratic deficit. Yet, whereas they deal with the democratic legitimacy of what the EU *is*, this thesis looks at the democratic legitimacy of what the EU *does* in a specific field of action. While in first instance this distinction between the democratic legitimacy of the EU in general and the democratic legitimacy of a specific EU policy field could seem somewhat artificial or arbitrary, I believe it is the best way to find the democratic particularities of the policy in question. To understand democratic strengths and weaknesses that are linked to the CFSP as such, we must focus our discussion on that CFSP, without mixing it up immediately with questions about EU democratic legitimacy more in general.

5. Conclusion

In this chapter, I argued for the use of democratic auditing as the method of assessment to be used for the appraisal of the EU's foreign policy's normative democratic legitimacy. Although different approaches of democratic assessment exist, democratic auditing seems particularly promising in this regard. The DA does not start from a very precisely elaborated definition of democracy but refers to the general principles of *public control* and *political equality*. These principles are essentially shared in some form or another by different manifestations of democracy. Starting from these principles, the method invites us to use of a more flexible assessment framework. Democratic auditing does not presuppose fixed criteria but asks the evaluator to argue for a set of criteria that (s)he judges most suited to assess the presence of both key principles within the context of the concrete political object under study. In that way, democratic auditing enables us to assess polities as well as policies even if they are of a rather

atypical kind, as is the case for European foreign policy. In the following chapter, I will turn to presenting the actual assessment framework through which the democratic legitimacy of European foreign policy will be audited.

IV. Auditing the democratic legitimacy of foreign policy: establishing the criteria

Summary: This chapter offers an audit framework for the assessment of the normative democratic legitimacy of foreign policy. It presents the theoretical underpinnings of such framework and elaborates on concrete criteria and indicators of assessment.

In the previous chapter, I mentioned as one of the main features of democratic auditing that it does not work based on predefined, standardized assessment criteria linked to one specific model of democracy. Yet, *"[t]he starting point of a democratic audit is to find a defensible conception of democracy from which specific criteria for assessment can be derived"* (Beetham 1999, 570). Such a conception has been found in the concise definition of democracy as "public control with political equality". Summarizing the idea that in a democracy, public decisions on questions of law and policy should be directly or indirectly controlled by the citizens of the community, the vast bulk of whom have equal political rights[29], this definition limits itself to presenting the key attributes of democracy that are present – under whatever form this may be – in the various manifestations of democracy that exist. However, the actual audit criteria that follow out of this definition still must be decided. Depending on the historical and cultural background and the particular experiences of a system or policy, we can imagine the presence of various value preferences for how the attributes of the definition should and can be delivered (Lord 2004, 10). This means that the argumentation for the criteria lies with the auditor, who must make an authoritative claim for the criteria (s)he considers most appropriate in the given case of evaluation.

In what follows, I start by elaborating on the **key principles** of democracy that lie at the basis of the democratic audit. After reflecting upon the philosophical foundations of these principles,

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[29] The extended definition I propose here pays tribute to the wording used by Albert Weale (2007, 18), but it differs from it on an important aspect. Where I follow the idea of *public control* as a key attribute of democracy, Weale speaks out for *public opinion*, while putting aside the claim of public control as too strong a requirement. The basis of his argument lies in the observation that elections – considering them a central element of any democratic system – in many cases such as coalition-based governments do not really determine who is to govern. Elections, so he continues, *"simply record the aggregated judgements of […] citizens, they cannot determine a coherent set of principles of public action, which is what would be required for the notion of popular control"*. However, as I am about to argue (cf. *infra*) for a set of multiple criteria that together clearly exceed the simple notion of democracy as elections, this doubt about public control as key principle of democracy, loses its pertinence.

I discuss their practical implications for the study of democracy. On the basis thereof, I will propose a set of **democratic criteria** for the evaluation of (European) foreign policy. Finally, the chapter discusses **empirical indicators**, enabling the concrete assessment of each criterion.

1. Searching for a definition of democracy: why democracy?

Assessing the democratic legitimacy of a system or policy requires assessment criteria that enable such a judgement. Together, these criteria should aim to embrace what is needed to deliver democracy. Underlying these criteria, however, we need a clear vision about what is to be understood by *democracy* (cf. Lauth et al. 2000, 12). That is, we must be explicit about what exactly the criteria are meant to evaluate. In that context – as already pointed out before – this study follows previous democratic audits (Lord 2004, 10; Baker 1999, 4; Weir and Beetham 1999, 6-9) in their use of "public control with political equality" as the fundamental definition of democracy (also: Beetham 1994, 28; Hadenius 1992, 9) and the starting point for the elaboration of an argued set of relevant democratic criteria. Yet, why exactly can we take this to be the basic definition? On what grounds can we argue that 'public control with political equality' is a comprehensive conception that goes to the essence of all democratic experiences, independent of their actual particularities or form? And what exactly does it imply?

Except for the idea that democracy is about a form of politics that links government to the people – and given the inherently vague nature of this *"people"* – the understanding of what characterises a democracy has varied widely through time and space. Democracy means different things to different thinkers and people (Tilly 2009, 73; also: Dahl 1998, 3), and therefore it is said to be impossible to provide a definition of democracy that everyone accepts (Bollen 1991, 5). This, however, we can contend, does only concern the definition of democracy in terms of its concrete form of organisation, but not its basic, philosophical meaning (cf. Beetham 1994, 27). The existence of various and sometimes even contradicting manifestations of democratic organisation does not mean the absence of a theoretically solid and internally coherent conception of democracy, underlying these different manifestations.

To grasp democracy in this essential way we can start from the simple question of *why democracy*? What are the fundamental arguments in favour of democracy, justifying its moral claim of superiority over other forms of political organisation and decision-making? In that regard, two main justification categories can be distinguished. That is, in philosophical terms, democratic argumentation basically develops along two dimensions: *intrinsically*, in reference

to its inherent qualities, and *consequentially*, in reference to its outcomes (Christiano 2015; Rosanvallon 2008, 14; Lord 2008).

Intrinsic justifications contemplate the democratic procedure as such. Considering Immanuel Kant's (1785, 87-88) "supreme principle of morality" that is the autonomy of the will, and the liberal claim that individuals – *"being all equal and independent"* (Locke 1821 [1689], 191) – are morally autonomous agents entitled to judge for themselves what is good and right, it can indeed be argued that these individuals should be able to control all decisions affecting their own lives (Rawls 1993, 38). Given, however, that such decisions often deal with issues transcending the individual, and concern the many, we need a system of governance that would enable individuals to take control collectively over the organization of their own life and the world they are living in (Cohen 1971, 26-70). Democracy is said to be such a system. Therefore, as an ideal of self-determination (Bohman 2007, 66), it is intrinsically right and its realization a value worth aiming for.

Consequentialism in turn, locates the value of democracy with its substance. From this point of view, democracy as a decision-making method is essentially justified as a means to uphold other values (such as peace, freedom, prosperity and all kinds of rights) against arbitrary or corrupted rule (Pettit 2003, 242-46; Moravcsik 2002, 606; Ryan 1998, 392). The absence of democracy, on the contrary, contributes to poor and damaging government (cf. Beetham and Weir 2002, 6). So, this instrumental account sees the importance of democracy not so much in its inherent, moral necessity but rather in the presumption that its operation over time produces better results for the people than any feasible alternative mode of governance (Arneson 2003, 122).

Although difficult to conceal in their radical forms of *pure proceduralism* and *instrumentalism*, modern democratic thinking generally refers to both strands of arguments to justify that a system or policy is democratic and therefore legitimate. On the one hand, the substantive critique to pure proceduralism as being susceptible for irrational and low-quality outcome (Peter 2009, 66), indeed must be taken seriously. But, on the other hand it is rightly understood that a consequentially pursued instrumental logic will prove untenable; as it departs from the impossible premise that there is an ideal outcome that can be identified independently of the democratic process (Peter 2016). Therefore, most current democratic thinking bases its argumentation in favour of democracy on a balanced conjuncture of both procedures and

substance. In this sense, democracy is both an end in itself, as well as a means towards other ends.

2. Defining democracy: Public control with political equality

It is from the combination of the two main justifications categories that the fundamental definition of democracy from which the audit starts can be derived; as notwithstanding their different philosophical starting points, both types of justification have in common that they require **public control with political equality**.

2.1 A concise, but comprehensive definition

On the one hand, the combination of these two principles indeed assure a decision-making process in which the public will be able to author its own laws (cf. Habermas 1992, 57). Once we accept the idea that all men are created equal and hence recognize that *"none are so defintely better qualified than the others that they should be enthrusted with making the collective and binding decisions"* (Dahl 1989, 98), it arguably follows that, in the end, all men should be able to control in an equal way those decisions that affect them. Said otherwise, from men's inherent autonomy, follows his right to control, not only the decisions that concern him individually, but also those that bind them collectively with other individuals. As each individual has these same rights, they have an equal right to control collective decisions.

On the other hand, also when we locate the value of a democracy in its ability to produce policy outcomes that are non-arbitrary and respecting the rights of all, such democracy can be but a system in which there is a right of control, equaly shared by all. After all, starting from Lord Acton's (1907 [1887], 504) presumption that *"power tends to corrupt […]"*, it first of all follows that the power to make collectively binding decisions should be controlled if it is not to favour the individual interests of those holding such power (and those that are close to them) over the interest of the community at large. Secondly, for as long as the ability to control is not equally shared by all, there will always be some that can suffer arbitrary rule that does not respect their rights. Therefore, the power to control *"should be distributed as widely and as evenly as possible"* (Heywood 2002, 68).

Thus, 'public control with political equality' can be argued to be the most suited to satisfy both intrinsic and consequential justification standards of democracy and therefore can be seen as a concise but comprehensive definition of democracy (cf. Beetham et al. 2008, 20-21). Besides,

the centrality of *public control* and *political equality* as the key democratic values also finds validity in an historical account of democracy. Throughout history, always when demands for democracy were made, essentially these two ideals gave the inspiration; and precisely these principles posed problems for the opponents of democracy (Beetham and Weir 2002, 8). In relation to this definition of democracy, a system or policy hence can claim normative democratic legitimacy to the degree that it complies with the two basic principles. That is, normative democratic legitimacy is present, when a polity or a policy in some way or another answer to the fundamental demands of public control and political equality.

2.2 A system- and model-unspecific definition

First, it t should be noticed that, looking at the above argument, there indeed is little reason why this definition would only apply to polities, and not also to more particular policies. Furthermore – and this is even more central to the endeavour of this thesis – given this idea of democracy, it seems truly an indefeasible claim that democracy should only apply to internal, domestic matters; as none of this could indeed argue for an exclusion of foreign policy from the basic democratic principles of control and equality. Neither can it be maintained that the people should not themselves in an equal way determine how they want to organize their relation with other peoples and the world outside the borders of their own polity; nor is it reasonable to claim that democracy is the best means to uphold certain values, but only at a domestic level. After all, how could democracy keep up – as it has been claimed (cf. De Tocqueville 1864, 460-69; Paine 1920 [1776], 53-54; Singer and Wildavsky 1993, 194) – such values as peace and security, when it would not play a role in the development of a polity's actions on the international scene, i.e. when it does not matter in foreign policy?

Furthermore, the definition of democracy as public control and political equality indeed shows independence towards actual political institutions and practices. It only premises that in a democracy the political power of the elites must be minimized and that of the non-elites maximized (cf. Bollen 1980, 372) and that there needs to be public control of such political power, without for that matter presenting a precise prescription of how this should be attained. Thus, the definition does not express a preference for a particular political model. In that sense, we could say that it incorporates the idea that it does not matter if the democratic cat is white or black, as long as it catches mice… That a system or policy functions along the lines of, for instance, a direct democracy, a deliberative democracy, a consociational democracy, or a combination between different approaches, in the end, is not essential. For as long as it assures

both the key requirements of democracy, it is normatively acceptable. In that sense, it is also worth noting that neither this definition, nor its philosophical justifications, unilaterally links democracy to the State. Intrinsically, the people shall decide themselves how much public control and political equality they wish to attempt beyond the State. Consequentially the question is simply which political level is most suited to produce the democratic outcomes wished for (cf. Lord 2008, 4-5). Again, different approaches may well exist about how decision are (to be) taken at the international level; in the end, the question is if the approach (or the combination of approaches) in place respect(s) and assure(s) the basic requirements of democracy.

3. Public control and political equality in the context of European integration

This last point deserves particular attention in any debate about democracy and the EU (and by extension about democracy and EU policies).

Throughout the process of modern European integration, and especially since the 1970's, a debate has evolved between so-called intergovernmental- and supranational accounts of said process (Eilstrup-Sangiovanni 2006, 201). Being both theories of integration and methods of decision-making in international organizations (McLean and McMillan 2009), these approaches do not only represent different theoretical views about how European integration *is happening*, but also political views about how it *should happen*. The terms of 'intergovernmentalism' and 'supranationalism' indeed have been given different meanings in the literature (Bickerton et al. 2015, 705; cf. also the subsequent discussion: Schimmelfennig 2015; Bickerton et al. 2015). However, on a basic level they concern different visions about the role and involvement of people and States at the international level. On the one hand, the **intergovernmental** perspective sees the process of integration and international decision-making as one in which States (can) fully control the situation and conditions, as well as the result of cooperation. On a practical level, these States are represented by their governments, which are considered the paramount actors at the international level. Given that unanimity is required, no decision can be forced upon a State. This means that national sovereignty is not directly undermined (cf. Nugent 2017, 436) and that each participating State can ultimately decide the nature and extent of the international action. In an intergovernmental context, there is in fact no autonomous policy-making at the international level but only an agreement to act together if all States involved wish to do so. **Supranationalism** on the other hand, sees a transfer of authority and decision-making power to the international level (cf. Hurrell 2018).

Said otherwise, it defines a situation in which there exists an authority that is higher than that of a State (Heywood 2002, 148). It involves States working together in a way that does not allow them to retain complete control over developments; they may be obliged to do things against their preferences or will because they do not have the power to stop decisions taken at the international level (Nugent 2017, 436).

3.1 Intergovernmentalism and supranationalism: theoretical implications for democracy

Returning to the basic definition of democracy, it is obvious that the differences between both approaches have consequences for where and how to assure public control with political equality. The primary concern of intergovernmentalism or supranationalism does not lie with how to democratically organise the EU. In practice, however, their concrete implementation of course has different implications for that democratic organisation.

Given that under **intergovernmentalism**, the supreme authority stays within the realm of the individual State, so too can public control with political equality. Due to the absence of autonomous decision-making at the international level, democracy can essentially be assured by separated national citizenries each controlling their respective government at the national level. Whereas however from a *national point of view* democratic legitimacy is obtained when individual citizens indeed have an equal opportunity to control their government; from the *overall, international point of view* an additional step is necessary. For a common international action to be considered democratic, people should not only exercise equal public control at each national level, but this control by each of the different peoples should be equally assured with regard to the final decision. For this last one to be the case, the States that represent them should be equal. In that way, under intergovernmentalism, *'political equality between people'* translates itself on the international level in *'political equality between States'*. It is in relation to this last kind of equality that unanimity finds its full democratic importance and becomes more than just an arrangement between States at the international level. Because of the considerable differences between resources and powers of different States, unanimity in the end is necessary to assure their equality. Just as in certain cases measures beyond the simple maxim of one-man-one vote are introduced or argued for to assure actual equality between individuals[30], unanimity avoids that certain States – and therefore their people – could be

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[30] We can think for instance about the obligations for political parties to put a minimum number of women on their electoral lists, or an assured number of seats in a legislative attributed to a national minority.

structurally overplayed and their considerations not be taken into account. Thus, summarized, Intergovernmentalism incorporates 'public control with political equality' through a two-step approach: citizens control their government at the level of the national community and because of the unanimity rule they can be reassured that their control counts as much as that by the citizens of the other national communities.

Under **supranationalism** on the other hand, things are more straightforward. Once the State-level is no longer the ultimate level of authority, and common decisions can be taken beyond the will of individual governments – as is the case in a situation of supranationalism – citizens' control of their respective government at the national level (either directly, or through means of a body of elected representatives, i.e. a parliament) does no longer suffice to assure their actual control over the final direction of policy. Given that the locus of decision-making exceeds the national level, so should its public control. Therefore, more direct channels of public control of the international level are necessary, for instance by means of an international representative assembly. Within the European Union, the European Parliament can play an important role in this regard. But also the institutionalized cooperation between national parliaments can be a way to assure *supranationalized* public control.

3.2 Intergovernmentalism and supranationalism: practical implications for European integration and European foreign policy

In practice, the European Union has long crossed the threshold of being a mere intergovernmental regulatory agency (Wiesner 2008, 117). Hence, it cannot be upheld – as had been argued by authors such as Majone (1998) or Moravcsik (2002) – that the question of European democratic legitimacy can be answered exclusively through the State level. As there are limits to how far a political system can be controlled through the democratic institutions of another (Lord 2004, 181-82), today's democratic legitimization of the EU can no longer be laid solely by its constitutive Member States (Bärenreuter and al. 2008, 1).

This is also true for the specific field of European foreign and security policy. While foreign policy continues to follow an integration-logic of its own in which unanimity remains an important rule (cf. art. 24.1, art. 31.1 TEU) and the role of supranational institutions is still limited, the constant and various interactions between actors at national and European level makes foreign policy-making less distinct from other EU policy areas than before (cf. Vanhoonacker and al. 2010, 3). So, notwithstanding that it has been less supranationalized than most other European policies, foreign security and defence policy cannot claim to have

remained completely intergovernmental neither (cf. Sjursen 2011a). Even more so since the introduction of the Lisbon changes, European foreign policy has essentially become a multilevel governance system in which both intergovernmental and supranational actors and procedures are involved (cf. Introduction). This is important, and must be recognized as such, when evaluating this policy's democratic credentials. Given that the EU's foreign policy-making exceeds a purely intergovernmental method, both the intergovernmental and supranational dimension will have to be taken into account. And, this should not just be done separately, but also together, as part of an integrated approach that does justice to the policy's intricate nature. In practice, we must look at the actual structures and procedures for what they are. Without a value judgement about their intergovernmental or supranational character as such, the primary question we must ask ourselves is if they respect and assure the overall democratic legitimacy of European foreign policy; and what their democratic qualities and shortcomings are.

Formulated in this way, this seems self-evident; yet a look at both the ideas of practitioners and the literature shows us that, apparently, it is not. For instance, among the 15 CFSP-officials interviewed by Fanoulis (2017, 147-50), six (directly or indirectly) categorize this policy as clearly intergovernmental, being solely decided and democratically controlled by the Member States. In the literature, on the other hand, the problem is not that there is no attention for the supranational level, but rather the contrary… As Helene Sjursen (2013b, 143) accurately points out, existing literature on democracy and EU foreign policy focuses almost exclusively on the role of the European Parliament (cf. also the previous remark on this point; Introduction, 2). In doing so, the specific nature of the EU's foreign policy has not always been paid much attention. The comprehensive assessment in this thesis could contribute to remedy this.

4. **From defining democracy to developing a democratic assessment framework**

As explained earlier, the principles of public control and political equality are too general to be directly applied as assessment tools. To be assessed, these principles are to be operationalized. Therefore, this section presents a set of further democratic criteria. The next section then will formulate specific indicators that enable the actual assessment of each of these criteria.

Given that previous democratic audits deal with political systems, they have chosen their assessment criteria accordingly. In that way, the Democratic Audit of the UK, inter alia, proposes six Democratic Audit Criteria to assess the public control and political equality of the

election process, or contains seven DAC's related to *a democratic society*. Or, Lord's audit of the EU proposes Democratic Audit tests that relate to *citizenship* or general *representation*. Yet, as this study focuses on a foreign policy, this requires some changes in the reflection on democratic criteria. After all, these criteria no longer concern popular control of a system under conditions of political equality but must help us assess how well a specific foreign policy – that is its procedures, as well as the institutions and actors involved – is equally controlled by the public.

4.1 A preliminary note on the selection of the assessment criteria

On a practical level, the eight criteria and related indicators that were finally retained and will be presented hereafter, result from an evolving process of selection (cf. Beetham 1999, 575). As such, they follow from both an extensive reading of democratic theory and previous audits, as well as recurring discussions and exchanges with other researchers on this topic.

On a theoretical level, the selection of the criteria has been guided by a normative democratic approach to foreign policy in accordance with the Kantian principle (i.a. 1880 [1787], 550) that 'ought implies can'. That is, I looked for criteria that are not only philosophically defendable, but also practically feasible (cf. Weale 2007, 8-9).

'Practical feasibility', however, should not mean 'practical existence'. It is not because something is not yet done or does not yet exist, that it cannot be reasonably expected or imagined. Or in line with John Rawls (2001, 5), *"the limits of the possible [should] not [be] given by the actual"*. Hence, instead of confining our expectations to the realm of the existent, 'ought implies can' should encourage us to search for what may be reasonably desirable. To make things concrete: from a normative point of view, it could for instance arguably be asserted that for a foreign policy to be democratic it is desirable for non-elected public officials to be under direct parliamentary control. If there cannot be found insuperable practical objections making this desire conclusively unreasonable, it should be considered 'practically feasible' and therefore in line with the precept of "ought implies can". The fact, then, that so far, such extensive parliamentary control over non-elected officials does not actually take place – i.e. the observation that no, or at least very few political systems do implement such kind of control in their actual working – does not inherently constitute an argument against it. Of course, practical inexistence can be an argument against a desired rule, in the sense that it can be an indication for such rule to have been already proven unreasonable. But, this, then, should be examined and demonstrated – and not just supposed – by those who oppose the desired rule. This

understanding of the 'can' in 'ought implies can' as something that could be theoretically possible and not just as the realities that already exist, moreover, prevent us from a self-fulfilling status-quo biased outlook on what might be possible… (cf. Valentini 2014, 790-91, also : 2017, 23-25) After all, if what is considered possible always depends on what already exist, then we ultimately would be trapped in a circular reasoning in which 'something is impossible because it does not yet exist and therefore is impossible'.

4.2 The assessment criteria

Based on David Easton's (1965) system theoretical approach; a policy can be analysed as a circular process, in which (1) input leads via (2) throughput to (3) output; and the feedback to this output as well as the observance of the throughput to new input (Wiesner 2008, 97). Notwithstanding the exceptionalities of foreign policy, this process essentially also applies to this policy area (Lauwerier 2009, 27; Ginsberg 2001, 23). Linked to the above outlined definition of democracy **this entails that for each of these three policy phases people must have an equal chance to ultimately control its development**. Hence, the question here concerns the ways and means through which the organisation of a policy gives effect to the key principles within each policy phase. Although, in that regard, there is no definite rule to conclusively determine the totality of such means, I argue here for a set of generally recognized properties or attributes of democracy that are logically entailed by the key principles of democracy. These requirements, we can say, are more precise conditions of democracy that need to be met to realize the basic principles. Inherently, they may not be fundamental, philosophical principles of democracy, but they are commonly accepted as relevant and important criteria of it. Given their more precise scope, the way each of these democratic criteria is lived up to, and hence contributes to *equality* and *control*, then, can be appreciated through a set of concrete indicators. It is through the combined testing of the way and level to which the democratic criteria are lived up to, that the overall democratic legitimacy of the policy in question can be assessed and appreciated.

Starting with the input side of the policy process, we can distinguish four such criteria. In the first place, as the possibilities of the people to define the foreign policy agenda as such are strongly bounded (cf. Chapter II, 2 *supra*) – the people can difficultly determine *what may be acted upon* because of the highly volatile international environment which often asks for rapid, case-specific action – its democratic role regarding the foreign policy's input, is significantly reduced to that of the ultimate authorizer. This first of all implies that the people must, in one

way or another, keep control over who may act in their name, i.e. who will have the authority to decide. It is crucial that the public has at least the final say regarding who gets the **license to govern**. However, as indicated before, on its own, this popular control over the selection of decision-makers is not a sufficient guarantee of democratic quality. Another dimension of authorization – not dealing with the personnel having power, but with an indispensable means of power – therefore concerns the policy's **budget** and how it is defined, executed and controlled. Besides authorization, input is also about **participation** and **public debate**. Given the more limited role of elections in the context of foreign policy mentioned earlier, participation deals with the degree to which *normal* people or their representatives can influence the decision-making process in the field of foreign policy through other means. Public debate emerges as a significant tool in this process (Sunay 2012, 34).

To substantiate such participation and to nourish the public debate, it is important that the foreign policy's throughput – i.e. the process of actual policy-making – is sufficiently visible to the outside world. Such a need for visibility leads in the first place to a demand for **transparency** – for instance by giving access to relevant documents. But, also **reason-giving** – i.e. the practice of providing reasons for decisions by those who make them – can help to increase the visibility, and in that way, enable an equal public control of the foreign policy. In connection to the particularities of foreign policy, the relevance of these criteria is certainly determined by the restricted agenda-setting problem. In light of the reactiveness and rapidity often inherent to foreign policy and because of which foreign policy does not (always) follow from a long public process, transparency and the communication of those reasons that lie at the basis of the policy actions in question are all the more crucial to give the public an equality shared possibility to exercise control.

Finally, to further secure the democratic quality of the foreign policy, there is also need for a-posteriori control. After all, not only should the people, à priori, control the nomination of power holders and the delegation of power; but also, afterwards – once those nominated have used the power bestowed upon them and have decided on concrete actions – there are no principled reasons to deny the people the equal exercise of their role of supreme authority. Hence, public control of the output first of all means **oversight** – the act of monitoring the execution of a task or activity – by a legislative body or societal actors. This completes on a more active level the public access to the foreign policy's throughput. Besides, control over the output also means that there exists an ultimate possibility of **overrule**; i.e. the possibility to alter or even undo a decision.

So, where the previous criteria of authorization, participation and visibility are mainly characterized by an ex-ante approach – i.e. they concern equal public control before a decision is taken – there is also a need for control of the result of the foreign policy process, i.e. control of the actual policy, once it is implemented in the field. Here again, we see a link with the previously cited special characteristics of foreign policy. Bearing in mind that foreign policy is less defined by classical law-making procedures, this changes the role of the parliament which normally, as direct representative of the people, plays a central role and even has the last word. As this is different in foreign policy, oversight and overrule are crucial to assuring public control.

Thus, we distinguish three clusters of democratic criteria, depending on the policy phase to which they are mainly linked. First, there are the input-related demands of **authorization and participation** – (1) licensing, (2) budgeting, (3) participation and (4) public debate – secondly, we have the throughput-dimension of **visibility**, which involves the criteria of (5) transparency and (6) reason-giving, and finally the output-criteria of **a-posteriori control** – (7) oversight and (8) overrule. Together, these criteria cover the whole policy process.

However, as Madison (1788, §51) already pointed out, *"In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself […] experience has taught mankind the necessity of auxiliary precautions"*. Therefore, in addition to these three clusters of democratic criteria, an *independent* and encompassing principle of *legal security* should be considered when proceeding for a comprehensive evaluation of a policy's democratic legitimacy. While not being an element of democratic legitimacy in and of itself, the existence of a formal, **legal basis** is important to each of the previously presented democratic properties. Being a central feature of the modern *Rechtsstaat* with which liberal democracy, as we know it today is indissolubly connected, the presence of a set of clear legal rules providing a codified basis to the concrete implementation of the above criteria guarantees their lasting character. This legal anchorage is necessary to prevent those in power from subverting the democratic rules in place (cf. Riker 1982, 250) and indispensable to secure the continuity over time of "public control with political equality". In other words, it assures durability of democratic commitments.

This brings us to the following **overview of democratic criteria** (Figure 2):

Figure 2: Democratic criteria
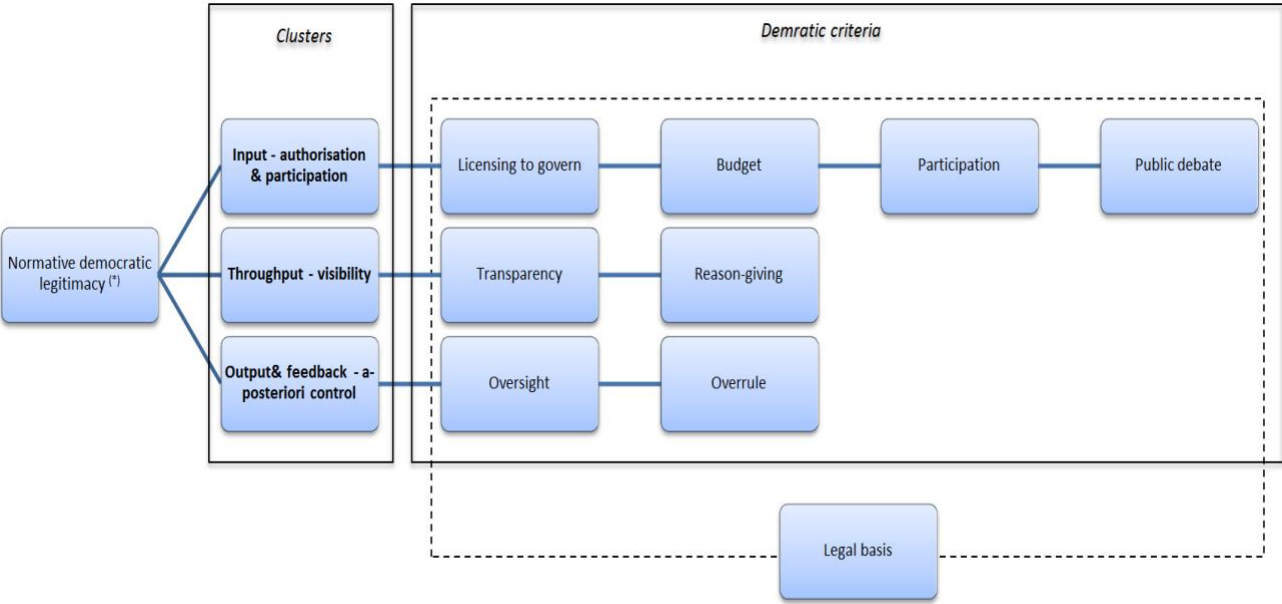
* = presence of public control and political equality

4.3 Some additional remarks on the assessment criteria

First, it should be noted that notwithstanding the singular characteristics of foreign policy, the democratic criteria outlined here are essentially non-specific. As explained before, their concrete relevance indeed may be impacted by the particularities of foreign policy. Essentially, however, they concern policy related attributes of democracy which as such are not only pertinent for, or linked to foreign policy, but which are selected and (re)formulated in such a way as to cope with the particularities of foreign policy and to compensate for the more difficult applicability to policy-making of classical, more system oriented, paradigms. At the same time, their general character and the comprehensive, open, way in which they are formulated, avoids that they are too case-specific. After all, as said before, the democratic audit calls upon the evaluator to argue for those (sets of) criteria that (s)he deems most appropriate for the assessment of a concrete political context. In extremis, however, this could lead to an assessment framework that only applies to only one case. This is not ideal. Better therefore is to argue for criteria though specific enough to cover a specific case, that are formulated in general terms; hence making them suitable to assess at least somewhat similar cases.

Secondly, I also wish to underline here that I do not presume these criteria and the indicators through which they are to be assessed to be of exclusive relevance to State-originated foreign policies. As neither intrinsically, nor consequentially it can be upheld that democracy should

only apply to State-level politics (cf. *supra*); and given the fact that action on the international scene is nowadays no longer the sole prerogative of State actors (cf. Coolsaet 2006, 254-59); it follows that democratic criteria ought to apply to non-state foreign policy – such as for instance supranational foreign policy – too. Finally, whereas the criteria represent distinct components of democratic legitimacy on a theoretical and analytical level, we cannot expect them to occur in a clear-cut manner once we turn to their empirical evaluation. Hence these criteria of democracy are not mutually exclusive, but completing and building on each other (Stie 2012, 49); and, in the end they should enable us to reach an overall inclusive appreciation about a (foreign) policy's normative democratic legitimacy. In that way, the added value of the evaluative scheme presented here lies, I believe, precisely therein that it transcends the single focus on just separated manifestation of democratic legitimacy, but instead looks at them in an encompassing and interconnected manner.

Finally, a note should be made about the use of the concepts of *input*, *throughput* and *output* as elements of the assessment framework. This understandably could bring readers to assume a simple equivalence with the ideas about input- and output-legitimacy put forward by Fritz Scharpf (1970, 21-28; 1999, 16-28) and throughput-legitimacy introduced by Vivien Schmidt (2013, also: 2014). Yet, as a matter of fact, this is not the sense in which I use them here. With regard to these concepts, I essentially use them as practical stepping stones for the selection and structuring of criteria that together cover the whole process of foreign policy-making and -governance, and not in terms of different channels of legitimacy. As pointed out before (this Chapter, 4.2), the aim of the criteria is to help us assess if people have an equal chance to control the foreign policy, and this along the whole chain of its development. In reference to the legitimacy-trichotomy mentioned just previously each of the criteria in that sense relate to either *input-legitimacy* or *throughput-legitimacy*. This becomes especially relevant in relation to the output-related criteria. Legitimacy in relation to output is commonly conceived in an essentially consequential manner as the – perceived – effectiveness and desirability of a policy-outcome for the people (cf. Scharpf 1999, 16, 20-22). In that way, *output-legitimacy* is about the content of a policy and this content's acceptance. However, this is not how it is to be understood in the present assessment framework. As part of a democratic audit that concerns itself essentially with the quality in terms of the normative acceptability of procedures and arrangements (cf. Chapter III, 3 *supra*), the output-criteria do not concern the content of the output as such. Rather they deal with ways through which such output can be - and actually is subject to equal public control. In other words, they are criteria of output-control, not of output-content.

In the next section, I will proceed by discussing the democratic criteria in more detail, while outlining concrete, empirical indicators for each of them.

5. From democratic criteria to empirical indicators for foreign policy

As the idea of this audit is not one of a simple yes-no judgement (cf. Chapter III *supra*) but an assessment of how (well) the EU's foreign policy performs in relation to public control under political equality, the indicators that follow are of such kind as to enable us to measure to which degree each criterion indeed (helps to) meet(s) these principles.

5.1 Input – authorization, participation and public debate

5.1.1 Licensing to govern: delegation of power

Contemporary society is too complex and polities are often too vast for each public action to be decided by the whole of the population or even by one single body of representatives. Therefore, it became common that *"those authorized to make political decisions, conditionally designate others* [what I call here licensing] *to make such decisions in their name and place"* (Strøm 2000, 266).

The conditional nature of licensing implies that it contains an effort of screening and selection, helping to sort out good from bad agents and nominating those that are believed to be the most suited to act in the people's name (Lupia 2006, 45). While such an endowment of another party with the discretion to act (Brandsma and Schillemans 2012, 1) principally involves the selection or removal of those holding public office by the public at large through electoral nomination – especially regarding those having primary political responsibility – in no regime are all governmental offices filled by elections (Alvarez et al. 1996, 4). There are always situations in which persons are holding public decision-making power without being nominated through direct voting. This is particularly the case for bureaucratic officials. While the presence of such non-elected agents is surely not confined to the single domain of foreign policy, it can be especially tricky in this policy field. Given the already mentioned necessity of secrecy and the fact that foreign policy sometimes requires rapid and decisive (re)action, it can arguably be assumed that their decisional independence and impact tends to be more pronounced in this domain. That is why it is even more important that their nomination is somehow democratically controlled, when not by direct election, then through other means.

Questions therefore are how officials – certainly those in key positions – in the foreign policy administration (on headquarters or at diplomatic missions) are nominated for office. When not directly elected, who appoints them? By whom and how are they authorized to take decisions? When key decision-makers are not directly elected, it is crucial to look at how well the delegation of decision-making power to these actors is democratically controlled. So, in case that key decision-makers are not directly elected but appointed, does this appointment take place in an open and transparent manner, and can the people or their elected representatives scrutinize the chain of delegation through which such appointment takes place?

In addition, however, it is also important to know who defines the nomination procedures that apply to the actual licensing. After all, these procedures are in no way neutral and self-evident, but are the result of previous discussions and decisions. More generally, they are part of the foreign policy's overall governance structure. Therefore, it should be asked how this governance structure has come about. That is, who has been involved in the definition of, and the final decision about this governance structure?

Concretely, this brings us the following indicators:

1. Officials, holding key positions in the foreign policy decision-making structure are either directly elected by the people, or appointed in a transparent and open way.
2. There is room for close, popular or parliamentary, scrutiny of the procedure and process of appointment and removal.
3. When not the people directly, at least their elected representatives have a clear say in the development or the reformulation of the foreign policy's overall governance structure and the nomination procedures that are part of it.

5.1.2 Budget authority

Often overlooked as an aspect of (foreign) policy-making, the budget plays a crucial role in the democratic development of a policy. The budget is a key input element: he who has authority over the budget, controls in a significant way the policy based on that budget. Again, especially in the context of foreign policy, this is particularly relevant; reason for which I discuss it here as a distinct criterion for the democratic evaluation of foreign policy.

Given the more limited control over the foreign policy as such – and in addition to the possible selection of key foreign policy makers – it is through the authorization and control of the budget

that the people, or their representatives, can have some say in the day-to-day foreign policy. That is why for instance, the framers of the US constitution explicitly allocated the power to raise and support armies to the Congress, while additionally specifying that *"No appropriation of money to that use shall be for a longer term than two years"*[31].

So, opportunities for meaningful public involvement in the budget process are an important component of a stable democracy (NDI 2003, 5). Especially when considering that this budget is funded with taxpayer money, it is self-evident that public expenditure must, in one way or another be put under the control of those who pay for it. Therefore, it needs to be examined how this public involvement is organized with regard to foreign policy.

Ordinarily, the executive decides the budget, which subsequently needs the approval of the legislature. Although foreign policy expenditure will normally be enlisted in this budget, the situation is again somehow different from other policy fields. While in domains such as for instance education or agriculture, budget lines can be largely planned, this is less the case in foreign policy. Given the more crisis-driven character of this policy and the need for rapid action that suddenly can appear it is more difficult to define all expenditure in advance. This raises the following questions: who decides over the foreign policy budget, not only in general terms but also in case of urgent matters? Is foreign policy expenditure generally included in the normal budget and thus reviewed by the legislature, in the same manner as in other policy fields? And, what about sudden, urgent, funding? Who can decide about it, elected or non-elected officials? And, can a directly elected body check this expenditure in some way?

The following budget related indicators could thus be put forward:

4. In general lines, the foreign budget is integrated in the normal budget and overviewed by a directly elected body which has the final say on its adoption.
5. In case of necessary urgent spending, elected officials take the final decision; and a directly elected body can, at least ex-post, scrutinize this spending.

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[31] US constitution, section 8 – Powers of Congress gpo.gov/fdsys/pkg/CDOC-110hdoc50/pdf/CDOC-110hdoc50.pdf [09.05.16]

5.1.3   Participation

Participation is important to democracy in that it assures the possible involvement of those that are impacted by a decision to take part in its development. In its practical form, we can distinguish two ways through which such participation takes form.

First, following Joana Mendes (2011, 1849), participation can be understood as the possibility for non-institutional actors to take part in decision-making. Although it is true that such participation does not render foreign policy wiser, nor makes it more efficient, it helps including the viewpoints of the affected and competent parties (Stie 2008, 5-6). Therefore, it can be maintained that it makes it more democratic (Battistella 1996, 133). Under the condition that possibilities for participation are equally shared – both in rights as well as actual practice – it can help to increase public control under political equality. Hence, an important question pertains to whether there are possibilities for societal guidance of the foreign policy, given the limited impact of elections? In other words, (how) can the civil society make its *voice* be heard in the foreign policy debate; and does it do so? Do citizens, directly or through civil society organizations (CSOs)[32], have access to foreign policy makers and can they impact on (the direction of) foreign policy?

Yet, a second, representative form of participation should certainly be looked at too. Given that in today's large and complex polities, it seems neither practically feasible nor even ethically advantageous that everyone should participate directly (Gutmann and Thompson 2009, 31; also: Habermas 1992, 210) – and taking into account the particularities of foreign policy – it follows that (if there is) day-to-day participation (this) will mostly happen through elected representatives. Thus, in addition to non-institutional actors, also the involvement of non-executive institutional actors is of importance. That is, we must also look at means for parliamentary participation. Thus, subsequent measurements for this criterion are for instance if the foreign policy decision-making structure has implemented a system for regular consultation with a directly elected body (e.g. parliament or parliamentary committee for foreign affairs) and if such a body can influence the direction and concrete realization of the

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[32] Civil society organizations concern all kinds of civic organizations (popular movements, pressure groups, platforms, churches, trade unions, …). In that sense, the concept goes beyond what is commonly referred to as Non-governmental organisations (NGOs). While every NGO can be said to be a CSO, not every CSO is an NGO.

foreign policy in question. In contrast with subsequent criteria of oversight and overrule, participation is hence about an active involvement in the production of the foreign policy.

Resumed, this presents us with the following indicators:

6. (Popular participation) Individual citizens or civil society organisations have access to foreign policy makers and their visions and ideas are dully considered.
7. (Parliamentary participation) A directly elected body participates actively in the conduct of the foreign policy. Not only is this body regularly informed about the overall direction of the foreign policy as well as about specific dossiers, but it can also weight on the overall direction of the foreign policy.

With regard to popular participation, it should be pointed out, that as a criterion it in fact finds itself on the crossing between democratic legitimacy as acceptability and as acceptance. (The level of) participation, after all, could function as an indicator for the people's (lack of) acceptance. In this research, however, it will be looked upon as an element of acceptability. That is, I evaluate it here as an element that contributes to the normative democratic quality of a (foreign) policy, not as a(n) (possible) expression of the people's support for such policy.

5.1.4   Public debate

Indissolubly linked with (popular) participation – as it presents an important impetus to it – is the presence of an elaborated public debate. Such public debate can heighten people's eagerness and preparedness for participation. Public debate offers a communication channel among the people, as well as between the people and the decision-makers. It is through public debate that the people can interact and talk about (the same) political issues (De Vreese 2007, 5-6). As it presents the people with the diversity of views about foreign policy formulated by opinion makers or offered by interest groups, political parties, and other organizations; public debate can stimulate autonomous opinion formation and empowers the civil society to influence the decision-makers (Eriksen 2005, 342). That is why the existence and form of a public debate on foreign policy can be considered a pertinent criterion for this policy's democratic quality. Question then, is not only if there is room for public debate about foreign policy or if such a debate does take place; but also, how to measure this. Given that the availability and consultation of information are both a *sine qua none* for public debate to take place, as well as a sign that it actually is taking place, these are valuable means through which to evaluate the existence and nature of such public debate. In that regard, we first and foremost can look at

media coverage. As the media and their content play a crucial role in stimulating and organizing public debate – even to the point that this relationship often proves to be so indisputable that such media coverage can almost be equated with the public sphere (De Vreese 2007, 7; cf. also Risse 2015, 113-15) – I opt to focus on (the existence of) media coverage as a proxy for measuring public debate. Additionally, it could also be looked at if and how the public informs itself through other means; for instance, by actively consulting information provided for by the foreign policy's relevant political and administrative actors on social media platforms. In practice, this brings us to the following two indicators:

8. The foreign policy in question is spoken about in the media; the decisions, actions and actors of the foreign policy are reported on and discussed by different media sources.
9. The public can, and does, inform itself directly on the actions of the foreign policy actors and the development of the foreign policy.

5.2 Throughput –visibility

5.2.1 Transparency

Transparency has been increasingly referred to as an indisputable element of good governance. Both in scholarly and popular debate the case is made that it is a necessary precondition for public consent and accountability, and, by extension, for democratic legitimacy. In fact, the concept of transparency has become such a powerful, pervasive cliché of modern government, that Christopher Hood (2006, 3) even describes it as having attained quasi-religious significance (cf. also: Piotrowski 2010, 17). Simply defined as being the opposite of secrecy – with the last one meaning deliberately hiding your actions and the first one deliberately revealing them (Florini 1998, 50) – transparency is about enabling citizens to know what is going on inside the government and, in that sense, helps to bring those into power closer to the citizens (Rosanvallon 2008, 330; also: Den Boer 1998, 105). Being a formal right of access to documents and information about decisions or institutional practices and working methods (Curtin and Mendes 2011, 104; also: Asian Development Bank 2010, 9), it is argued to be a necessary condition for public opinion formation (Manin 2012, 214-15) and has been claimed to render more effective the use of other public and political rights, such as the freedom of speech, as well as to have a civilizing effect on deliberation and public decision-making (Naurin

2007, 11-39)[33]. More fundamentally, as a lack of transparency can give an advantage to certain resourceful groups – which have the means to obtain the information that concern them or at least is relevant to them, independent of its large public accessibility – it could be particularly detrimental for the fundamental democratic principle of political equality (cf. Bühlmann et al. 2012, 128).

Question however should be asked as to how to reconcile such transparency with the need of secrecy. Although the debate about transparency vs secrecy is not unique to foreign policy (for a general discussion, see Gutmann and Thompson 1998, 95-127) it certainly is of particular relevance to this policy field, as it is essential to its actual functioning. Given its particular sensitivities and a recurring need for decision-making speed, foreign policy can arguably not function well without – at least some – secrecy. As research indeed points out that secrecy has to be recognized as a useful, and in that sense often even necessary tool for foreign security policy to be successful (cf. Colaresi 2014, 45-65), this confronts us with a tangible tension between two seemingly incompatible demands. While transparency forms a well-substantiated element of democratic governance, and democratic governance arguably reinforces a foreign policy's success (cf. Chapter II, 2 *supra*); secrecy too holds a valid claim. It contributes to a foreign policy's efficiency and as such seems to be indispensable to this same success (cf. Thompson 1999, 182; also: Chinen 2009)[34]. Said otherwise, transparency may well contribute to a foreign policy's input legitimacy; secrecy helps assuring its output legitimacy.

To solve this *secrecy dilemma* (cf. Figure 3), we should abstain from a vision on transparency as an intrinsic value – i.e. abandoning its quasi-religious status – and understand it in an instrumental way (cf. Heald 2006; also Dror 2000). Accepting that transparency and secrecy are not antagonistic faces of a good-bad divide, but two sides of a continuum, helps us comprehend that secrecy should not be a problem. For as long as the general reasons for such secrecy are justified and communicated and its principles and guidelines are publicly debated and regulated; that is when the rules and reasons for secrecy themselves are transparent, secrecy

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[33] With regard to this last point, it should be noted that this claim is not without contestation. As discussed by Simone Chambers (2004), there is also the contrary argument of *plebiscitary reason*, telling that *"the glare of publicity makes it difficult to argue reasonably"*. This could lead to a public debate in which misinformation, flattery, or simply telling the audience what it wants to hear, become prevailing elements. From this point of view, rather than improving the quality of the public debate, (too much) transparency would hamper it.

[34] With "success" here defined as the degree of public benefit of the foreign policy in question; that is, how well the foreign policy in questions does serve the interest and well-being of the polity in which name it is executed.

can happen in a democratically legitimate way (Thompson 1999, 185). If this is the case, it is indeed reasonable to argue that *"actors may operate, when needed, within given parameters, in secrecy without violating democratic norms"* (Eriksen 2011, 1174).

Figure 3: the secrecy dilemma
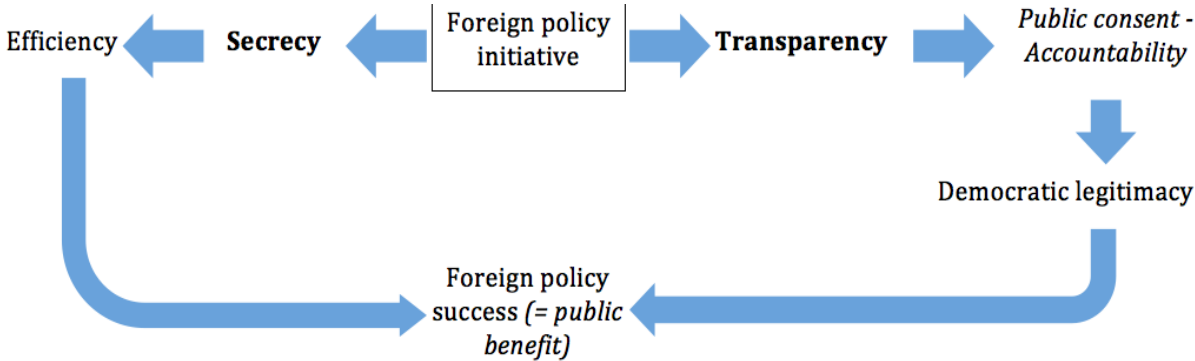
In practical terms, it should thus be asked how to organize transparency in foreign policy, both democratically valid and efficiently reasonable. To that aim, I contend for the existence of four rules which taken together assure transparency as well as democratically controlled secrecy and which can be used as indicators against which to evaluate a concrete foreign policy in this respect.

> 10. The public has access to all relevant foreign security related documents[35] according to the same rules and procedures applying to other, internal policy fields. In practical terms, there exist recognized procedures and institutionalized structures (such as for instance a digitally accessible register of documents) ensuring convenient access to documents related to the foreign policy in question.
>
> 11. If reasons of public or private interests justify the restriction of such access; that is, when the content or existence of documents is concealed from the public; clear-cut reasons are formally accounted for and publicly communicated, at least when asked for.
>
> 12. Restrictions do not simply result from executive discretion but have precise legal foundations[36]. The rules for transparency and secrecy are not defined by the executive holder of the document alone, but in active consultation with a directly elected body. Concretely this means that the decision to keep specific information hidden from the

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[35] Whatever their medium, cf. note *146 infra*.

[36] Cf. Right2Info, *Exceptions to Access - General Standard* right2info.org/exceptions-to-access/general-standards [24.03.16]

public may well result from the executive's own considerations, but the framework of such considerations and the boundaries of the executive's *space to conceal* are the result of democratic deliberation.

13. If confidential information is sealed from public access, at least some directly elected persons have access to these secret documents and highly secured information.

5.2.2 *Giving-reasons requirement*

Intrinsically linked with the previous condition of transparency, there is, what Martin Shapiro (1992) calls the giving-reasons requirement. Concretely, this means that policy actors must be able to explain why they are doing what they are doing. Or, as Pitkin (1967, 206) puts it, they must not only tell what is right, but also why it is right. Good reason-giving is supposed to show how it is that the action in question makes sense (Ferejohn 1993, 228). It must present a viable justification for the action. The underlying ideas is that by giving reasons for their decisions and actions, decision-makers commit themselves more closely to their policy (cf. Schauer 1995, 657). Hence, compelling them to give such reasons will reinforce the link between decision-makers and the results of their decisions and actions; which then can be judged in relation to these reasons. Following from this, the argument goes that decision-makers take better decisions when they are required to give reasons for them. In that way, it is a device for enhancing democratic influence on the administration (Zweifel 2006, 21). Again, this is a criterion that is of great importance for the specific domain of foreign policy as well as at odds with its inherent characteristics. The question of reason-giving focuses essentially on the availability of one specific kind of information, namely that about the origins and motivations behind foreign security policy programs and actions. It concerns the availability of documents or other sources enabling insight to the public about why a foreign policy is decided. Given the strongly executive driven functioning of foreign policy, clear reason-giving would certainly avail its democratic credentials; but, considering the need for secrecy, reasons cannot always made public. In situations such as peace treaty negotiations or when strategic/ tactical manoeuvres are concerned, it is understandable that concrete reasons often cannot be communicated. Hence, the right balance needs to be found.

Although it is not easy to put out encompassing rules, two general indicators could be formulated as follows:

14. Reasons for foreign policy decisions and actions need to exist and as long as their disclosure does not jeopardize the coherent and smooth execution of the foreign policy, or endanger public or private interest, they are made widely and easily accessible, for instance through public statements or in policy documents, on websites or through the mass media.

15. When however, secrecy is arguably justified, at least some elected representatives know about the reasons behind specific decisions.

5.3 Output and feedback –à posteriori control

Once a foreign policy has been put into motion and concrete actions have taken form, democratic concerns should still not be left aside. It is one thing to control the input and throughput of a policy process, but its results should escape equal public control neither. Hence, two criteria are added here which are essentially criteria of ex-post accountability. In contrast to those outlined before, these criteria are in nature retrospective; that is, they come into play once a policy is decided, and (first) actions are implemented.

According to Pelizzo & Stapenhurst (2012, 23), the concept of accountability shows two different stages: answerability and enforcement. Answerability – referring to *"the obligation of an accountee (government, agencies and public officials) to provide information about decisions and actions and to justify them"* – can be achieved ex-ante through for instance the above discussed obligations of budget-control, transparency or reason-giving; but could also be obtained through **oversight** after the facts. Enforcement, on the other hand, *"suggests that the public or the institutions responsible for accountability can sanction the offending party or remedy the contravening behaviour"*. A main tool of enforcement is **overrule**.

5.3.1 Oversight

Oversight exists in a relationship where an individual or an institution and the tasks they perform (*the overseen*), is subject to another's supervision (*the overseer*) (cf. Pelizzo and Stapenhurst 2012, 23). Departing from the axiom that no power should go unchecked (cf. Madison 1788, §51), such supervision relationship presents a key element of liberal democracy since long time past. Related to the fundamental obligation of a *"representative assembly […] to watch and control the government; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which any one considers questionable"* (Mill 1861, 104); and insofar the ultimate democratic principal, the people, cannot efficiently oversee the

executive themselves, **legislative oversight** – that is the oversight of the executive by the elected legislative branch – arguably is the democratically most important among these mutual, interinstitutional supervisions. In line with McCubbins & Schwartz (1984), Schick (1976, 519-20) or Harris (1965, 9) we can define such legislative oversight in a strict sense as *review after the fact*. It concerns the set of investigatory activities performed by a directly elected body to evaluate the implementation of a policy; it is about the procedures through which a parliament can discover that executive decision-makers (didn't) behave in an acceptable manner or (didn't) act according to general norms, the public interest, judicial rules, or prior agreements. Or, with reference to Mintz and DeRouen's (2010, 30) argument that *"a decision-maker is accountable if she must explain, or is expected to explain, a decision and believes that she can be rewarded or punished because of it"* (also: Bovens 2007, 450), oversight is about what the legislature does to obtain such explanations from an executive decision-maker and if it succeeds in obtaining them. It involves an ex-post dialog initiated by the legislature, which can force the executive to share with this legislature information that the later might not otherwise receive (Strøm 1994, 37). Following this definition, different parliamentary procedures and instruments can be discerned through which the legislature retrospectively can review the executive policy actors' actions and overall behaviour: meetings and debate, the organization of hearings, the possibility to ask questions and to make interpellations, or audits and reports.

Starting from the distinction between police patrol and fire alarm (McCubbins and Schwartz 1984), in which the second form builds on a possibility for *"individual citizens and organized interest groups to examine administrative decisions"*, it should however be noted that the legislative way is not the only channel of oversight through which to check the executive. In reference to the traditional distinction between horizontal and vertical accountability (Pelizzo and Stapenhurst 2012, 23-24; Stapenhurst and O'Brien 2005; O'Donell 1998, 1994, 61) – with the first referring to *"the capacity of State institutions to check abuses by other public agencies and branches of government"*, and the second to *"the means through which citizens, mass media and civil society seek to enforce standards of good performance on officials"* (Stapenhurst and O'Brien 2005, 1-2)[37] – we can discern an additional form of oversight,

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[37] It should be noted, that in that sense, this conceptualisation of *horizontal* and *vertical* clearly contrasts with the vision advocated by Mark Bovens (2005, 2006) for whom *horizontal* and *vertical* relates to the kind of hierarchical power relationship between an agent and the actor demanding accountability: in case of horizontal accountability the principal has no formal power over the agent; in case of vertical accountability it does.

emerging directly from society. This **societal oversight** more precisely consists of supervision executed by different actors, rooted in the larger society and operating outside the structures of government. Given their outsider position and different (specialised) backgrounds and working methods, they can act as *surrogates* to legislative oversight, naming and shaming problems in specific areas or revealing large-scale patterns of behaviour and action difficult to apprehend from within (Rubenstein 2007, 626, 628-29). Hence, they could add a significant dimension to the overall democratic oversight of a policy. Generally, four types of external watchdogs can be distinguished. First, being the most routinely among the societal actors of oversight (Rosanvallon 2006, 72), the media could play an important role as scrutinizer of public policy. Secondly, academic research too can fulfil this role: in a more hidden, but often also more in-depth manner, think tanks and research institutions can follow the daily operation of a specific policy. In doing so, they can expose what decision-makers are doing, hence offering guidance to a balanced an informed public debate. Thirdly, also specific Civil Society Organisations can *"closely examine government policy and approaches from their particular areas of expertise, drawing public and political attention to aspects and approaches that have been ignored, overlooked or misunderstood"* (Caparini and Fluri 2006, 14). A last kind of external oversight is directly by citizens. Of course, even if these actors exist, question remains if they will actually take up the role of external watchdog, *barking* when they *sniff fire*? Also, will their alarm be heard by enough other citizens who are not directly involved in the oversight activities themselves (and, in that way, could it help discouraging violations of whatever kind by an executive policy actor)? And, along the same line, it can be asked if it will serve as a fire alarm to the legislature? That is, will elected representatives pick up societal actors' alarm as source and stimulus to their own oversight work (cf. McCubbins and Schwartz 1984, 166)?

Such oversight as ex-post supervision by the legislature and societal actors is of particular importance in foreign policy. Because of the traditionally still strong foreign prerogative of executive power, and due to reasons of traditional secrecy and external agenda setting (cf. Chapter II, 2 *supra*), there is a tendency in foreign policy that the executive is better informed about specific issues and has better access to specialized information than the other organs of government, let alone the people. Following from this, the foreign policy executive risks doing as pleases him, without much consideration for general opinions and convictions present in society, or preliminary determined guidelines. More than in other, domestic public policies, there is an elevated risk of *executive discretion*; the departure of the executive actions from the initial positions agreed upon by the time of selection and delegation (cf. Calvert et al. 1989,

589). Given this particularity of foreign policy, ex ante accountability mechanisms (screening and selection, the definition of working procedures…) may have little appropriateness in containing possible agency loss. Oversight can compensate this. Based on the legislature or societal actors following as much as possible the daily foreign policy – even without necessarily having immediate access to all the information that led up to it or having the possibility to directly impact on its elaboration – it at least can reveal problems in the executive's actions and behaviour. Oversight hence could serve as a building block for assuring ex-post accountability.

Applied to foreign policy, I thus put forward four oversight indicators:

16. *(Legislative oversight)* There exists institutionalized monitoring by a representative legislature. Through regular meetings, (the possibility of) asking questions or formal hearings and audits, directly elected representatives can monitor the daily actions and behaviour of the foreign policy actors.
17. *(Societal oversight)* Through journalistic, academic non-governmental as well as individual citizens' supervision, problems within the daily developments of the foreign policy can be revealed.
18. *(Societal oversight)* The results of this oversight are (or at least can be) picked up by citizens who themselves are not directly involved in the oversight activities.
19. *(Societal oversight)* The legislature uses oversight by societal actors as fire alarm input to its oversight efforts.

5.3.2 Overrule

The concept of overrule represents a longstanding principle in political thought with reference to, inter alia, the writings of John Locke (1821, 370-401) on the dissolution of government and of Montesquieu (1777, 321) on the annulment of decisions. Building on pre-democratic ideas of consent and resistance (Rosanvallon 2006, 129-51), overrule is essentially about undoing or altering a previous decision. Also called *veto powers*, it is the most salient of consequences an actor may face when he is called to account, as it is the only one that with immediate effect impacts on the policy process[38]. In the fast-paced policy field that is foreign policy, it can therefore be argued to be the most efficient and far-reaching means to ensure ultimate public control. For that reason, I present it here as a distinct criterion.

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[38] The others being *deauthorization* and *imposing (pecuniary or other) sanctions* - Kaare Strøm (2006, 63).

Essentially, overrule it is nothing more than a plain and public revoking of a decision. In the case of overrule, the decision-making actor is in fact simply stripped from his right to decide, at least in a specific case. In a democratic constellation, this specifically means the possibility for the citizens to reverse decisions taken by their elected representatives; and for citizens or their elected representatives to reverse decisions taken by the executive. A good example of such overrule power in the context of foreign policy is the ratification procedure through which international treaties are ratified (or not) through referendum or by vote in the parliament. Furthermore, also the need for parliamentary approval before troops are sent on a mission abroad or regarding the prolongation of such a mission, could clearly be categorized as overrule. It becomes apparent from this account that o*verrule* connects with *participation* in that it deals with the possibility of active popular or parliamentary involvement in the policy process. However, where participation as described before deals with the input side of the decision-making chain; overrule, while focussing on output, is in fact a *participation of the last chance*. It is an ultimate chance for the people or their representatives to impact on the course of a policy, even after that policy has already been *executively* decided upon.

Question here is thus, if such overrule power exists. Do institutional checks subject particularly critical decisions taken by certain foreign policy actors to the veto power of other public actors or third parties (cf. Strøm 2000, 271)? More concretely, can the people directly, or a directly elected body in their name, suspend or reverse foreign policy decisions, when not agreeing with them? How is this overrule organized and with regard to what kind of decisions is it to be invoked? Although it could prove detrimental to the efficiency of a policy if such power should exist about each and every decision, when it comes to fundamental orientations of the foreign policy, it can be claimed as crucial to its democratic legitimacy.

Summarized, this brings us to the following indicator:

> 20. The people, or their elected representatives, hold the institutional possibility to overrule executive decisions with regard to the fundamental orientations of the foreign policy; or when issues of war and peace and the deployment of troops are concerned.

5.4 Legal basis

Finally, to the eight systemic criteria for democracy outlined before, I add a last, overarching principle that presents itself in the context of today's modern Rechtsstaat as *self-evident*;

namely, the existence of clear legal rules. Defining how for instance monitoring, appointment or participation in the context of foreign policy is formally organized, such rules can help avoid an all too easy undoing of these democratic settings.

Although the concepts of *Rechtsstaat* – to be understood as a polity in which the exercise of public power is regulated and constrained by the law[39] – and *democracy* are certainly not the same; in contemporary liberal democracies, they are inextricably linked. In that way, democracy is not only a necessary precondition for maintaining the Rechtsstaat (Habermas 1992, 13) but the Rechtsstaat in turn can also be seen as a fundamental insurance for democracy. The constitutional checks it provides for, protect the democratic system against the encroachment of government as well as the wants of the majority rule (cf. Hayek 1991, 221-25). So, a legal basis, setting in stone those principles believed to be important for a democratic way of government, should assure the lasting stability of the system and avoids the (democratic) dismantling of these conditions necessary for democracy. Their non-respect then, may lead to legal procedures before a competent and independent court. This is crucial, as *"without this, all the reservations of particular rights and privileges would amount to nothing"* (Hamilton 1788, §78).

With regard to a democratic foreign policy, this means that the above-mentioned criteria merit backing by constitutional or other legal provisions. First, it is important to know if such a formal codification exists. Do we find legally binding texts on this matter, and, if so, on which *legal level*? Are the rules outlined in a constitution (written or not), in a law or in other legal regulations? Is for instance, the nomination procedure of those holding foreign policy power, or the way their accountability is organized legally framed? Other questions are also what for instance a parliament could undertake if the executive does not respect its rights of consultation or participation in foreign policy. Or, if citizens or interest groups can initiate legal action when not at all agreeing with a foreign policy line or concrete action?

Hence, three additional indicators ensuring the durability of a normatively democratic foreign policy are:

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[39] Cf. Deutscher Bundestag, *Basic law for the Federal Republic of Germany*, art. 20(3): *"The legislature shall be bound by the constitutional order, the Executive and the judiciary by law and justice"* bundestag.de/blob/284870/ce0d03414872b427e57fccb703634dcd/basic_law-data.pdf [09.05.16]

> a. Licensing, budget control, participation, public debate, transparency, reason-giving, oversight and overrule are backed by clear legal regulations.
>
> b. Those who may be affected by it can denounce the non-respect of these legal rules.
>
> c. A competent court can scrutinize foreign policy under the same conditions as other – internal – policies.

It should be underlined that the presence of a clear legal basis is as such not an independent criterion for democracy but rather a transversal rule to be taken into account when looking at a policy's democratic state of affairs. When evaluating the EU's foreign security and defence democratic legitimacy, the legal dimension will not be discussed as a separated criterion, but, when relevant, be dealt with throughout the discussion of each individual democratic criterion.

6. Some further reflections about the assessment framework

I explained before how, in contrast to previous democratic audits, the focus of this assessment lies with a policy process and not with a political system, and how therefore an assessment framework had to be developed that is adapted to the democratic assessment of such a process. Yet, question can be asked as to how the democratic criteria of this framework relate to those argued for in previous audits; or for that matter in other assessment frameworks.

In this regard, some preliminary "words about words" (Dahl 1998) are in order. Just as I opted for the use of *normative democratic legitimacy* instead of *democratic quality* or *state of democracy* (cf. Chapter III, 4 *supra*), I have chosen for *criteria* and *indicators* as the units of assessment. This could lead to some confusion, when one would compare the assessment framework with those developed by previous authors, as various terminologies have been used to describe the different levels of assessment. Both the UK audit and the IDEA assessment framework for instance start by formulating a set of "mediating principles" or "values" that give more content to the key principles. Where it concerns then the actual assessment framework, the UK audit however continues by determining "Components" for each of which it specifies indices, called "Democratic Audit Criteria". The IDEA assessment framework, on the other hand, is based on sections of "Overarching Questions" (also called "Criteria") and "Research Questions". Christopher Lord, in his audit of the EU, in turn speaks of "Democratic values" and "EU Democratic Audit tests" (for a summary overview of different assessment frameworks and their respective units of assessment, see Annex 1). In this thesis, however, I opt for the use of "Criteria" and "Indicators" to describe the main levels of assessment. I do so,

because I believe that from a methodological point of view these are quite undisputed, intuitive concepts, the analytical meaning of which is generally understood without much need for further explanation.

When now, we compare the criteria with corresponding assessment levels within other frameworks (cf. Annex 1), we not only find obvious differences, but also unmistakable similarities between my criteria and those used before (whatever they may have been called). The reason therefore is not surprising, yet logically follows from what already has been said before. On the one hand, previous democratic assessments contain some criteria that clearly relate to the political system in general. As I have pointed out when introducing the assessment framework used in this thesis (cf. this chapter, 2 *supra*), this concerns criteria that focus on the *Election process* or relate to *Citizenship*. But also criteria of *Social rights* – a category proposed by Michael Saward (1994, 17), with conditions that concern the access to adequate health care and education – or *Individual liberties*, can be categorised as essentially polity related. While these criteria can be valid means through which to evaluate the democratic quality of an overall political system, they are less suited to evaluate the democratic legitimacy of a policy. With regard to *Control of the agenda*, proposed by Dahl's Polyarchy (1989, 112-14); and although this could well be used as a criterion for most internal policy processes, it has limited relevance in the particular context of foreign policy (cf. Chapter II, 2 *supra*). The same for instance also goes for *impartiality*. As a key feature of qualitative government (Rothstein & Teorell 2008, 166), impartiality is about treading people alike *"irrespective of personal relationships and personal likes and dislikes"* in the exercise of public power (Cupit 2000, cited in: Rothstein & Teorell 2008, 170). Given that the absence of such impartiality could lead to political inequality, this incorporates a valid demand when government actions are essentially directed towards the citizens of the own polity. In case of public policies in what we may call 'human processing areas' (such as education, healthcare or labour-marked programs), public authorities have considerable discretionary powers (Rothstein 2009, 314). In such a context, the predictability of what authorities can do to individual citizens indeed is highly important. Yet, foreign policy is not directed towards the own citizens. It does not search to organize social and political relationships within the own society, but to organise the actions to take and strategies to follow in a polity's relationship with others. In that sense, impartiality has less urgency here. On the other hand, the criteria I choose as relevant means to assess the democratic legitimacy in foreign policy, are not unique for foreign policy. They are general criteria for democracy, which however are of specific importance for foreign policy. Accordingly, also the indicators by

which each criterion is further operationalized are formulated with specific attention for the foreign policy context. In that way, these criteria and indicators – of course – do not stand apart from those proposed by others. If we look for instance at the first criterion of *Licensing to govern,* its link with *Authorization* – put forward as a "mediating value/principle" by the UK audit and the IDEA assessment framework, or as a "democratic value" in Christopher Lord's audit of the EU – is obvious. The same goes for *Transparency*, which we can directly retrace as a "mediating value" with IDEA and as a "function" within the Democracy Barometer; but which also links with the *Enlightened understanding* proposed as a "democratic criteria" by Robert Dahl, or the *Open government,* which is part of the UK Audit first "component". In that sense, even the criteria for which we do not seem to find some overlap with those proposed in other assessment frameworks – this essentially concerns *Budget* and *Reason-giving* – are not unique for foreign policy and of no use for the assessment of other policies or even a political system. Yet, both these criteria are – as I argued in their respective discussion – of particular importance to foreign policy, due to the inherent reactive nature of this policy.

So, when comparing the assessment framework used in this thesis with others, things can be summarized as follows: I have averted the use of criteria that are essentially system oriented and I have added criteria that are of particular relevance to the democratic legitimacy of foreign policy. Other criteria may well be found under one form or another in other democracy assessment, yet I have reformulated them for the specific case of foreign policy and defined their indicators accordingly.

With regard to this last point, I recall here the previous remark about the focus of this research (cf. Chapter III, 4). While the criteria presented here as part of the assessment framework could indeed be used to assess the democratic legitimacy of a political system in general, this is not what they will do here. To make things concrete, with regard to transparency for instance the focus will be with how (well) it is lived up to in the context of the EU's foreign policy and not so much with EU transparency in general. The same goes for the role of specific actors or institutions. Thus, the question here is less if and why for instance the European Council as such may (not) be considered democratically legitimate, but rather if and how the role and actions of said Council as an actor of the EU's foreign security policy are democratically legitimate.

7. Conclusion

To enable the systematic democratic audit of the EU's Common foreign and Security Policy, this chapter did three things. First, it elaborated on the basic conception of democracy that underlies such audit. Starting from this definition it subsequently argued for the relevant criteria of evaluation. Finally, it elaborated in more detail on each of these criteria while presenting concrete indicators for the measurement of each of them.

In line with previous democratic audits, I adhere to a concise definition of democracy as "*public control with political equality*". Starting from the fundamental question of *why democracy*, I followed the argument that such public control with political equality answers most convincingly to both the intrinsic and consequential demands for democracy. So, I opt for this definition on the argument that it describes in the most basic way the key principles of democracy, commonly shared by different, factual manifestations of such democracy.

Understanding public policy as a circular process, I subsequently looked at how such public control with political equality can be assured throughout the different phases of this process. For each phase – input, throughput and output –criteria were put forward in this regard: *Licensing to govern*, *Budget control*, *Participation* and *Public debate*; *Transparency* and *Reason giving*; and finally *Oversight* and *Overrule*. One transversal criterion – *Legal basis* – was added to capture the endurance over time of the democratic criteria.

Finally, attention turned to the practical measurement of these criteria. Therefore, their theoretical and philosophical reasons were looked upon in more detail and for each criterion, empirical indicators were proposed. These indicators will enable the practical assessment of each criterion.

A schematised overview of the complete assessment framework can be found in Annex 2.

In follow up to this discussion of criteria and indicators, the next chapter will deal with some methodological choices underlying the data - and information gathering that will be used for the actual assessment of the EU's foreign policy's democratic state; hence concluding the first, theoretical part of this thesis.

V. Evaluating a foreign policy's democratic legitimacy: what, how?

Summary: This chapter deals with the methodological questions and choices that underlie the democratic audit. It explains the method of measurement, and why it has been chosen for. It also discusses the problem of scaling; that is the question about the standards against which the results of the measurement will be appreciated. Finally, it also explains the main channels of data gathering that lie at the basis of the empirical assessments and how to aggregate and connect the results of such assessments to come to a more comprehensive understanding of the EU's foreign policy's democratic legitimacy.

Having conceptualized 8 systemic criteria and 20 indicators, comprehensively anchored in democratic theory, and one transversal rule, how exactly to use them for an assessment of the democratic quality of a foreign policy? How to proceed concretely? Under this heading, I reflect upon the overall measurement system and standard, and present the way of data gathering. In doing so, this chapter completes our reflexions on the democratic audit method, hence closing the first part of the thesis.

1. Method of measurement

Most established democracy indexes, such as the Freedom House Index[40], the Bertelsmann Transformation Index[41] or the Democracy Index[42] are quantifying measurement systems. Although they start from a qualitative level of analysis, they continue by *translating* the gathered data into numerical values, based on a detailed codification system.

Although such an approach certainly could prove advantageous when dealing with a large set of cases to evaluate or to compare – such as all the countries in the world in case of the Democracy Index – it is less appropriate when attention goes to a single case. When focussing on the democratic quality of one political system or working on a distinctive dimension or policy – especially when the democratic research on this policy is still rather limited, as is the case of foreign policy – an overall qualitative approach indeed seems more suited. Hence, in line with previous audits, I propose to apply a qualitative measurement. Though rather a blunt

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[40] freedomhouse.org/report-types/freedom-world [22.11.16]
[41] bti-project.org/de/startseite/ [22.11.16]
[42] eiu.com/ [22.11.16]

measurement, a qualitative approach has the advantage that it applies well to a single case, such as the evaluation of the democratic quality of a specific foreign policy, *i.c.* the Common Foreign and Security Policy. Due to the in-depth, contextual and holistic character of qualitative research (Cambré and Waege 2003, 318), it makes it possible to combine various kinds of data and information in a meaningful way. Based on the proposed model of 8 criteria and corresponding indicators, it enables us not only to determine how well (1) an individual indicator is met; but, by looking together at the results for different indicators, we can also assess the *democratic success* of (2) a criterion, (3) a policy phase and, finally, (4) the normative democratic legitimacy of the overall foreign policy. Such a qualitative approach, however, brings with it important implications, both in relation to the data that are to be collected and studied, as well as to how precisely to evaluate these data in light of the indicators, criteria and key principles. This last point, more specifically, confronts us with the question of the measurement standard(s) that are to be/ can be used.

2. Measurement standard

An important question remains how to know that a foreign policy does – or does not – live up to a specific indicator, i.e. what is the standard against which the results for an indicator are measured? Bühlmann et al. (2012, 131-33) distinguish in this respect between three different types of standard: (1) an ideal typical reference, in which case the results for a criterion are tested against a theoretical democratic norm; (2) neutral, international standards, based on for instance UN recommendations or international law and (3) standards distilled from an overall evaluation of best- and worst practices. I agree that the first option is lacking political realism (cf. Geuss 2008, 8-9) and the second is problematic because such international standards are not always available (Bühlmann et al. 2012, 132). Therefore, I am favourable to the third. Yet, given the rather limited research about the democratic legitimacy of foreign policy currently available such a best-worst practice standard is difficult to apply. Apart from research about EU foreign policy, only few studies deal with the democratic dimensions of specific foreign policies (cf. Blick and Weir 2009; Born 2002) or for that matter with the democratic legitimacy of foreign policy in general. Besides, as pointed out before (cf. Introduction), the existing research on European foreign policy rarely looks at democratic legitimacy in an encompassing, interconnected way. It generally focuses on one specific expression or element of democracy, mostly the role of the European Parliament or the legitimacy of EU's military action. Given this absence of a comprehensive body of previous research on the democratic legitimacy of

different foreign policies, a best-worst scale would show limited workability for the evaluation of a foreign policy's democratic legitimacy. So, where an audit looking at an overall system, could still depart from international standards of good practice (cf. *supra*, Chapter III; Beetham 1999, 571-72), trying to use such externally derived standards would prove rather dissatisfying in this study.

I therefore propose to use what we could essentially call an ***argumentative standard***. That is, as a useful external standard is, yet, missing, the allocation of a measure will have to be rooted in a profoundly argued and well-established study of the foreign policy in question. In that sense, it is for the assessor to define what (s)he thinks to be a good level of attainment (Beetham 2004, 10; also: Lauth et al. 2000, 14). The standard of measurement is essentially the result of the personal judgement of, and assessment by the evaluator. Based on personal evaluation and argued investigation, the allocation of a value judgment, then, is an exercise deriving its worthiness from its internal coherence and persuasive potential. We should be aware of possible shortcomings and pitfalls of an evaluation based on such personal judgments, as in the end it could be seen as subjective, if not to say arbitrary. But, when used with precaution and modesty, such an approach has the advantage of being able to work in the rather unexplored territory that is the study of the democratic legitimacy of foreign policy. As long as the researcher explains his/ her choices and takes responsibility over them, this should not be a problem. And, in any case, such a critique, in fact, should always be anticipated, no matter what approach – qualitative or quantitative – or which measurement standard is used. After all, *"any democracy assessment is inescapably judgmental in character"* (Beetham 2004, 5); and in that sense, it is in any case *"essential that empirical evidence on which judgements are based should be sound and the normative and other assumptions involved should be transparent and publicly justified"* (ibid.). When the researcher's inherent subjectivity on which the attribution of a value is based on a soundly argued, coherently embedded argumentation, supported by externally verifiable data (Lord 2004, 9), then such a method is certainly defendable.

3. Data gathering

Another, and most crucial, step is to find the data that will allow me to reach a judgment. That is, to find the information that can help develop a well-founded argument about whether or not (and how) the EU's foreign policy complies with the indicators and hence how well it scores on each criterion. The question thus is, which data to collect and where to find them.

First of all, we need information about the **formal rules** that apply to the EU's foreign and security policy. In reference to the transversal principle of *legal basis*, the study of the rules and structures in place, and a clear understanding of how they incorporate the democratic principles, is indispensable throughout the analysis. In this regard, the relevant sources essentially concern official documents. Among these documents that can offer relevant information about the formal rules and organisational structures are the EU-treaties, the rules of procedure of the relevant institutions, interinstitutional agreements, decisions of the High Representative and of other actors such as the (European) Council or the Parliament. But also, organisational charts, budget related documents, official reports or policy documents concerning concrete lines of action should be looked at. While many of these documents are directly available on the EU website, others will have to be obtained through formal demands for access and informal contacts with the relevant, responsible, actors. Relying on an evaluation of official practices as described in these documents (in whatever format they are available), I thus will examine how well European foreign policy formally fulfils the predefined norms.

However, notwithstanding formal procedures will indeed help us to evaluate the democratic quality to a certain degree, they certainly do not tell everything. In fact, they only present the formal, legal basis of the democratic situation. Yet, there can be a gap between the *de jure* compliance of the foreign policy to the outlined democratic rules and the de facto realization of these principles (cf. Beetham et al. 2008, 34; also: Bühlmann et al. 2012, 131). Hence, we also must consider the reality of the **everyday practice**. Or, as Mathur & Skelcher (2007) accurately point out, only looking at *democratic hardware* is not enough, also the *democratic software* – the informal day-to-day practice – must be taken into account. This is even more important because the aim of the audit is not so much to establish *if* the foreign policy is democratic, but *how* democratic it is (and how this democracy is actually made for). For instance, when dealing with issues such as participation or transparency it does not make much sense to only look at if they are formally present. It should also be looked upon if and how they are concretely implemented and used. To that end – and in addition to the different documents mentioned before – three further sources will be taken into account. First, different kinds of publically available sources, such as, inter alia, parliamentary questions and debates, but also press articles from newspapers and other media sources; as well as reports originating for instance from NGOs, research organisations or public (non-EU) institutions will be scrutinized for information about if and how European foreign policy complies with the democratic criteria. Also relevant is metadata about the data obtained from these sources; to be obtained from third

sources or to develop myself. By this I mean statistical data on for instance parliamentary questions, media references, or the NGO's participating in the EU's foreign policy. Such metadata can help gain an understanding that goes beyond the individual case, as it provides us with more systematic information about overall trends or recurring patterns in the European foreign policy's normative democratic qualities and shortcomings. Secondly, and especially useful to bring our understanding beyond a simple reading of formal rules, is primary information from relevant political, administrative, or civic players. Such information really brings the daily democratic practice into the evaluation. Essentially, it concerns here information that will be obtained by e-mail or telephone from (members of) EU-institutions and other relevant actors, as well as through a systematic survey among national parliaments. Finally, of course also existing academic literature will be scrutinized and its findings integrated. This will help avoiding a reinvention of the wheel: where previous, recent research contains clear empirical findings about specific democratic aspects of the EU's foreign security policy, this, of course, forms a useful input to the audit. In reference to the above typology of research about the EU's foreign policy (cf. Introduction), useful literature in this regard can mostly be situated within all first three strands, focusing on the CFSPS internal decision-making, its performance and results and the role of Member States; as well as – of course – with those authors that have already dealt with (aspects of) democratic legitimacy in European foreign policy before. With respect to this last strand of research, the comprehensive approach of the thesis has the advantage that it brings together and combines the different sub-literatures that I previously explained to exist in this regard (cf. Introduction).

Table 1, summarizes the different types of data that will be used and why or how to obtain them.

Although a rich variety of data can be obtained by combining these different sources, I admit that here too modesty should be in place. First of all, it should be recognized that the data will not so much concern the *"best that could be imagined*, but the *best that are available"*. As it is unlikely that I will find or obtain all the data that I wish for, it is indeed *"more likely that [I] will have to settle for making the best possible use of the limited and flawed data"* (Lord 2017; cf. also Hendriks et al. 2013, 17-18). Furthermore, an additional challenge inducing modesty, lies in *"the sheer size and complexity of the audit task if it is to be comprehensive and carry authority for the weight of its evidence"* (Beetham 1999, 575). This certainly applies to this project. Most previous audits are rather large scale, government-led or society-led multi-

authored projects (cf. Beetham et al. 2008, 291). This research, however, concerns the work of one author. It essentially concerns a desk study carried out by an individual agent of assessment.

Table 1: Information and sources - overview

Kind of information	Possible sources	Where, how to find sources

Formal rules	Legal documents:
	    EU treaties
	    EU legal acts (regulations, directives)
	    Rules of procedures EU institutions
	    Interinstitutional Agreements
	    Decisions (High Representative, Council, European Parliament)
		EU website

	Other public documents:
	    Organisational charts
	    Information notes
	    Budget
	    Reports
	    Policy documents
		EU website, formal demands for access, informal contacts (e-mail, phone), questionnaire *(for national parliaments)*

Everyday practice	*Inter alia:*
	    Parliamentary questions
	    Debates
	    Press articles
	    NGO/ research organisation reports
	    First-hand information
		EU website, formal demands for access, informal contacts (e-mail, phone), questionnaire *(for national parliaments)* , academic litterature

4. Aggregating

A last question concerns how exactly to go from the assessment of a single indicator to a criterion and so further to an inclusive appreciation of democratic legitimacy. As appraising how well the EU's foreign policy scores on a single indicator, is not the same as appraising the overall democratic legitimacy of this policy, it is important to reflect for a moment about how to combine the assessments of different indicators when looking at a higher level of analysis, such as a criterion, a policy phase, or the overall foreign policy. Said otherwise, how to aggregate separated findings into a general assessment of democratic legitimacy?

Theoretically speaking, aggregation is about *"whether and how to reverse the process of disaggregation that was carried out during the conceptualization phase"* (Munck and Verkuilen 2002, 22). A way to do this is by looking at the indicators' and criteria's mutual connections and interdependency (cf. Bühlmann et al. 2008, 119). The different criteria do not stand completely independent from one another, yet present different characteristics of a same policy. Hence, probable shortcomings in for instance licensing, could maybe be compensated

by a good score on transparency (cf. Strøm 2000, 265-66). If so, this should be taken into account in the overall evaluation of the democratic legitimacy. Therefore, a double, normatively balanced aggregation has to apply: from indicators to criteria and from criteria to the overall democratic legitimacy, both based on a case-by-case evaluation. For the same reason that I have opted for a*n assessment standard* that basically relies on the researcher's inherent opinions and personal judgement – namely the earlier mentioned lack of an extensive research corpus with regard to the issue of democratic legitimacy and foreign policy – I believe that in first instance the balancing of the different indicators and criteria and the evaluation of their respective weight in the analysis of the overall democratic legitimacy has to be conducted according to the researcher's soundly argued, *coherently embedded opinion.* This means that the aggregation of the results for the different indicators and hence the evaluation of the foreign policy's overall democratic legitimacy, will be based on the researcher's arguments rather than on previously outlined rules. In this context, it is important to keep in mind how a simultaneous optimization of all the democratic criteria could prove rather implausible in practice (cf. Chapter III, 1 *supra*) and how thus *"the exact balance between [the criteria] must be a matter of judgement and emphasis"* (Beetham and Weir 2002, 11).

5. Conclusion

Before finally getting to the actual assessment of the EU's foreign security and defence policy's democratic legitimacy in the second part of this thesis, this chapter dealt with some final methodological aspects of the audit method. It more specifically discussed four points, being the measurement method, and the issues of scaling, data gathering and aggregating. Common to these methodological attributes is the essentially qualitative way in which they are approached. Summarized this means that, essentially, the evaluation will follow out of the researcher's - *in concreto my* – argued judgement. Such an approach of course could be criticized for being too personal, and hence automatically biased. But, I contend here that this has not per definition to be the case – and as such not more than with other approaches – at least not as long as it refers to clearly defined criteria and is based on verifiable evidence and internally coherent argumentation. Hence, such a qualitative approach can present a valuable way to assess the democratic legitimacy of a concrete case such as European foreign policy that is until now scarcely studied in a comprehensive way.

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Part II: Application

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Assessing the democratic legitimacy of European foreign policy

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This second part of the thesis contains the actual democratic audit of the EU's foreign security and defence policy. Using the assessment framework developed before, this part presents an evaluation of this policy's democratic legitimacy.

But why in fact do so? After all, in line with Bellamy's and Castiglione's (2000, 65) observation that *"much of the empirical literature just assumes what is by no means self-evident, namely that the EU ought to be democratic",* one could say the same about the EU's foreign policy…

However, two arguments, do indeed justify such an assessment. First, as has been pointed out before (Chapter IV, 2.2), neither the principal democratic idea of 'public control with political equality', nor its philosophical justifications, unilaterally link democracy to the state. Therefore, also policies beyond the state, such as these developed within the framework of the EU, should respond to certain democratic principles. In the same vein, I have explained why foreign policy cannot be exempt from basic democratic rules applying to other, domestic policies. As the democratic exemption that historically has been argued to follow out of the particularities of foreign policy increasingly lost its pertinence, foreign policy indeed should comply with certain democratic norms (Chapter II). Bearing in mind this double argument, European foreign policy – about which Ronald Bieber already noticed that the *"forms of [its] activities […] do not differ fundamentally from the instruments at the disposal of other subjects of international law"* (cf. also Smith 2002, 1) – should in no way be an exception. Recognizing the aforementioned arguments as theoretically valid means admitting that European foreign policy has to function along the same democratic baseline as every other set of public actions. This becomes all the more important, when considering that *"foreign and security policy appears as the last great hope for those anxious to foster progress towards 'ever closer Union'"* (Bickerton et al. 2011, 2), and has been *"invoked as a way of countering the internal legitimacy problems faced by the EU in recent years"* (Bickerton 2011, 101), thus occupying an increasingly important position in the construction of the EU's political identity (cf. also Fanoulis 2017, 5-6). Besides, certainly a policy claiming to *"consolidate and support democracy"* (art. 21.2 (b) TEU) can be expected to demonstrate itself adequate democratic foundations (cf. Lord 2011, 1138-39). Or, with

reference to Michael Smith (2008, 185), as European foreign policy represents the interest of hundreds of millions of Europeans, its democracy quality certainly is worth great attention from both the public and academics.

Therefore, the following chapters will look more precisely whether and how the EU's foreign security and defence policy assures public control with political equality within its structures and processes. Each of these chapters will deal with one of the eight, previously outlined democratic criteria.

VI. Licensing to govern in EU foreign policy

Summary: This chapter assesses licensing within the EU's Common foreign security and defence policy. Therefore, it looks at the appointment of the central political actors, being the High Representative, the European Council and its permanent president, and the Council of the EU; as well as the nomination of key administrative officials within the EEAS, the Political and Security Committee and Coreper II. It also discusses how the current CFSP governance structure has been developed.

Multiple political and bureaucratic actors play a role in the elaboration and daily execution of the EU's foreign security and defence policy. As we will come to see, none of these actors is appointed as the result of a direct electoral process – i.e. general elections that, among others, determine such appointment. Yet, as argued in the foregoing discussion about licensing to govern (cf. Chapter IV, 5.1.1 *supra*) this should not mean that these appointments are not to be; or cannot be democratically controlled. This chapter evaluates how this is done in case of the CFSP. The first section deals with the actual appointment procedures (indicator 1 and 2). In the second section then, I look at the development of the CFSP's overall governance structure (indicator 3).

1. How are key CFSP officials appointed?

Since Lisbon, a central political role in European foreign policy is first of all officially reserved for the **High Representative** of the Union for Foreign Affairs and Security Policy. Art. 18 TEU stipulates that The European Council, acting by a qualified majority, with the agreement of the Commission president, appoints this High Representative. As a member (and even vice-president of the Commission) the HR is also required, following his/her nomination by the EC, to appear for the appropriate European parliamentary committee - in case the Foreign Affairs Committee (AFET)[43]. Although the Parliament officially only decides on the investiture of the Commission as a whole (art. 17.7(3) TEU), it showed its informal strength in these matters. In 2004 it forced, for instance, Commission president Barroso to replace the Italian candidate

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[43] European Parliament, *Rules of Procedure* – Rule 106, Annex XVII europarl.europa.eu/sides/get
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[27.04.16]

Buttiglione after a negative hearing[44] and in 2010 it prompted Rumiana Jeleva to step down as Bulgarian commissioner designate[45]; but also constrained Jean-Claude Juncker to reshuffle his team after refusing the former Slovenian prime-minister Bratušek as new Commission vice-president for energy[46]. Yet, at the same time, the case of the HR, however, seems different. Following an intergovernmental bargain[47], Ashton was not so much the nominee of one country, but the result of a collective decision of the heads of State and government and part of a sensitive equilibrium of European top jobs (cf. Barber 2010). So, notwithstanding the results of Ashton's parliamentary hearing were rather ambiguous[48], there was no formal protest against her nomination. Many MEP's seemed unconvinced of her qualifications for the job, but it showed out that they had little room for manoeuvre. Given that the nomination of the Commission was already strongly delayed, they did not want risking to cause a new crisis by unravelling the agreement reached by the heads of State and government[49]. As to Federica Mogherini, Ashton's successor in the Juncker-Commission, the setting was not different. She was a choice made by the European Council about which the Parliament had nothing to say. The fact that, following Mogherini's hearing of 6 October 2014, AFET seemed at least more positive towards her nomination by the heads of State and government[50], in that sense does not make any real difference. The 'special position' of the HR in comparison to his/her Commission-colleagues by the way also comes forward from his/ her possible dismissal. Where, under normal conditions the Commission president can ask the resignation of an individual commissioner (art. 17.6 TEU), and the EP could push him/ her to do so through the adoption of a resolution asking the individual commissioner to resign, matters are less straightforward where it concerns the High Representative. The relevant provisions of the

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[44] European Parliament, *Evaluation letter Rocco Buttiglione* europarl.europa.eu/hearings /commission/2004 comm/pdf/lt buttiglione en.pdf [27.04.16]

[45] EUObserver, 19.01.10, "EU commission vote delayed as Bulgarian nominee steps down" euobserver.com/news/29296 [03.02.16]

[46] *Euractiv*, 08.10.14, "Cañete safe after EPP-Socialist deal, but Bratušek is out" euractiv.com/ sections/eu-priorities-2020/canete-safe-after-epp-socialist-deal-bratusek-out-309041 [27.04.16]

[47] Cf. EUObserver, 19.11.09, "Little-known British peer emerges as top candidate for EU foreign minister", euobserver.com/institutional/29022 [27.04.16]

[48] European Parliament, *Evaluation letter Catherine Ashton* event.europarl.europa.eu/hearings /static/commissioners/eval/ashton eva en.pdf [27.04.16]

[49] De Morgen, 11.01.10, *"EU vertegenwoordiger buitenlands beleid overtuigd niet"* demorgen.be/ dm/nl/990/Buitenland/article/detail/1052692/2010/01/11/EU-vertegenwoordiger-buitenlands-beleid-overtuigt-niet.dhtml [27.14.16]

[50] European Parliament, *European Parliament's hearings: Federica Mogherini: High Representative of the Union for Foreign Policy and Security Policy - 6/10* ephearings2014.eu /post/99339258991/federica-mogherini-high-representative-of-the [18.03.15]

Treaty regarding the termination of the HR' mandate provide for three different procedures which may trigger his/her resignation. First of all, the previously mentioned article 17.6 TEU gives the Commission president the right to ask for resignation. Secondly, art. 17.8 TEU and art. 234 TFEU give the European Parliament the possibility to vote a motion of censure of the Commission which when accepted would also lead to the resignation of its VP, the High Representative. Finally, art. 18.1 TEU gives the European Council the possibility to end the HR's term of office by the same procedure as that applied to his/ her designation. Where the first two provision both concern the mandate of the HR as Vice-President of the Commission, the last one on the other hand deals with dismissal as regards the other functions of the HR. However, the Treaty is silent both on the consequences of the termination of the HR only in her capacity as Commission-VP as regards the other functions of the HR, as well as the other way around. While in theory one could therefore conclude that the HR could continue to exercise his/her remaining mandates not directly affected by the resignation, depending on which procedure is followed, this would raise a number of practical difficulties because the three main functions of the HR are closely interrelated from an institutional point of view and form an integrated part of the institutional architecture introduced by the Treaty of Lisbon (EEAS, e-mail 07.06.18). In practice, therefore, it seems that as a matter of fact we will not really know what happens in case one of the competent actors involved wishes for the HR's resignation for as long as this situation does not emerge…

Of course, as the High Representative is being nominated by the European Council - bringing together the most high-ranking, elected, Member State politicians - it could be argued that this sufficiently ensures his/ her democratic appointment (cf. Ludlow 2002). But, doubts could be raised about the validity of this argument.

First of all, as the EC does not decide with unanimity on the matter, but with qualified majority (cf. *supra*), the intergovernmental argument of equality among MS (cf. Chapter IV, 3.2 *supra*) caves in. Even in case of unanimity, the equal power of each participant in the previous discussion could of course be questioned; but in the end, they all must agree. This altogether assures an equal say over the final decision. Yet, once the unanimity rule abandoned and decisions can be taken against the will of a limited number of national governments, this disproportionally disadvantage less powerful Member States. Where it concerns the actual vote, the loss of veto power may well be the same for all Member States; with regard to the foregoing discussion, the position of those representing smaller Member States is unequally hampered. To make it obvious: when Germany or France would have problems with a particular candidate,

it can be doubted that the European Council would proceed to a vote. If, however, Malta or Luxembourg were to be opposed to someone's nomination as High Representative – and given that unanimity is not necessary – it can be wondered how much their position would even be considered. In that sense, the use of QMV threatens the sovereignty of Member States that unanimity protects (cf. Sieberson 2010, 922). As QMV introduces a certain autonomous decision-making at the level of the Council, it incorporates a move towards supranationalism. Yet, given the above account of the EP's bounded hands with regard to the HR's nomination, this move is so far not accompanied by an equal development of supranational control. The situation here is different from QMV within the context of the ordinary legislative procedure. The ordinary legislative procedure concerns supranational decision-making under the community method. In that case, the final vote by the Council concerns a proposal by the Commission and is part of a comprehensive legislative process in which also the EP is involved as direct representative of the people. And, in the end, even national parliaments could intervene by means of the subsidiary control mechanism (the so-called yellow or orange card).

Furthermore, when these leaders decide on the appointment of the political head of the European diplomacy behind closed doors without subsequently leaving to the public some conclusions of their meeting (de Schoutheete 2012, 47-48), this obviously hampers public control. Formally, conclusions are published after each European Council, but these are of a general declaratory nature. They give no insight whatsoever in the EC's decision-making process. Regarding the appointment of the HR, they only mention the appointment, and not, for instance, if – and in that case which – heads of State and government were opposed[51]. All of this means that, with respect to the appointment of the High Representative, these heads of State and government can difficultly be controlled at their respective national level.

These heads of State and government, in their capacity of the **European Council**, are the other key political decision-makers of the CFSP. Upgraded by the Treaty of Lisbon to the status of a formal EU institution (art. 13 TEU) – thus confirming the EC steady ascent as the virtual centre of European governance (cf. Puetter 2011, 27-28; also: Pernice 2004, 33) – they can be seen as the top of the CFSP decision-making hierarchy. In that sense, they not only appoint the High Representative, but they also define the CFSP as such (art. 24 TEU) and identify the strategic interests of the Union (art. 26 TEU). Hence, they act like a *collective head of State* (de

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[51] See for instance for the appointment of Mogherini in 2014: Special Meeting of the European Council (30 August 2014) – Conclusions data.consilium.europa.eu/doc/document/ST-163-2014-INIT/en/pdf [15.12.17].

Schoutheete 2012, 60). Each of them is - just as the members of the **Foreign Affairs Council** (bringing together the ministers of foreign affairs of the Member States) - elected in his or her respective country. As to the **permanent president** of the European Council, (s)he is nominated with qualified majority by the European Council itself. Neither the European Parliament or national legislatures, nor any other directly elected body can formally influence his/her appointment. Although it could be argued that a body of course should have the right to decide internally who shall preside it, in this case such argument is flawed. Given that according to art. 15.6(d) TEU this president *"shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its [CFSP], without prejudice to the powers of the HR"* his/her role exceeds that of a simple secretary or coordinator within the European Council, but gives him/her a clear political capacity in context of CFSP decision-making. In that way – and similar to what has been said previously about the High Representative – this permanent's president nomination currently lacks the necessary democratic control.

Not well suited for the role of daily executive of the CFSP/CSDP, the European Council however has to leave this task to the Foreign Affairs Council and the High Representative (Devuyst 2012), as such assisted by the **European External Action Service**. This foreign service - considered as one of the most significant changes introduced by the Treaty of Lisbon[52] - is composed of officials coming from the Commission and Council, as well as diplomats seconded from the Member States, and committed to assist the HR in fulfilling his mandate (art. 27.3 TEU). Although in general the European Parliament quite successfully flecked its muscles where it concerned this new service (cf. *infra*), about the appointment of key EEAS officials it had to climb down. Eager to install US congressional-like hearings, a parliamentary proposal written by Elmar Brok and Guy Verhofstadt called for a system in which appointees to senior EEAS posts, including key EU ambassadors, but also EU Special Representatives (EUSRs)[53], would be compelled to appear before the relevant parliamentary committee before taking up their duties[54]. The HR, however, made clear already during her hearing before the

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[52] Council, *Conclusions of the 3010th Council Meeting*, Press Release, 26.04.10, 8967/10 (Presse 89), p.8 consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/genaff/114045.pdf [09.06.14]

[53] Not introduced into the EEAS formal hierarchy but appointed by the Council they are an important foreign policy instrument at the disposal of the Member States, cf. Tolksdorf (2012).

[54] European Parliament, *Proposal for the establishment of the EEAS. Working document by Elmar Brok (AFET), and Guy Verhofstadt (AFCO), rapporteurs on EEAS*, 06.04.2010, p.5 europarl.europa.eu/meetdocs/2009_2014/documents/afco/dv/working-doc-eeas-final-06/working-doc-eeas-final-0604.pdf [27.04.16]

Parliament that she *"remain[ed] unconvinced of the idea of hearings for top posts"*[55]; a vision reiterated by the Council decision of 26 July 2010, establishing the organisation and functioning of the EEAS, which states that *"the High Representative will be the appointing authority"*[56]. The HR's *Declaration on political accountability* (DPA) of 3 August 2010 further clarifies this position. Newly appointed heads of delegations to countries and organisations which the EP considers as strategically important, as well as EUSR's, may be invited to appear before AFET for an exchange of views before taking up their posts. But, as the DPA states explicitly, these exchanges of view are no hearings and they will take place in a format agreed with the HR[57]. Early October 2010, in the lead up to the nomination of EU-ambassadors to China, Georgia, Japan, Lebanon and Pakistan, the European Parliament tried to hold public exchanges of views before their formal appointment. Ashton intervened by cancelling the meetings, while recalling that these must take place after the appointments and behind closed doors. She reminded everybody that these hearings are in no way so-called Congressional-style hearings and that she is the appointing authority[58]. Thus, public exchange of view may be organized by the EP, but such hearings are purely informal. MEP's have no formal power whatsoever to veto the nomination of EEAS senior staff when not satisfied by the results of a hearing. The High Representative can nominate her staff without the need for any legislative approval. Given the HR's own democratically doubtful appointment, this arguably can be considered a democratic shortcoming. But then again, on the other hand, it can indeed be supposed that - as AFET chair Elmar Brok claimed - *"If someone goes before the European Parliament and it is a total disaster, then it will be difficult for Ms Ashton to keep them"*[59].

Finally, when looking at todays overall CFSP governance structure, we have to recognize that although key roles may officially well have been taken by the HR and the EEAS, the European Council and its permanent president, and the Council; this is not the whole story. In the CFSP's complex *institutional soup* (Sjursen 2007, 2), two rather hidden, bureaucratic organs should not

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[55] European Parliament, *Summary of the hearing of Catherine Ashton – Foreign Affairs*, 11.01.10 europarl.europa.eu/sides/getDoc.do?language=en&type=IM-PRESS&reference=20100108IPR66978 [09.06.14]

[56] Council, *Decision of 26 July 2010* (2010/427/EU) eeas.europa.eu/background/docs/eeas_decision_en.pdf [09.06.14]

[57] *Draft Declaration by the High Representative on political accountability*, OJ C 2010, 03.08.10, pp.1-2, point 5.

[58] *EUObserver*, 18 .11.10, "Game, Set and Match to Ashton on Diplomatic Hearings" euobserver.com/24/31300 [09.06.14]

[59] *EUObserver*, 01.09.10, "EU parliament to arm-twist Ashton on appointments" euobserver.com/institutional/30712 [09.06.14]

be forgotten: The **Political and Security Committee** (PSC, art. 38 TEU) and **Coreper**[60] (art. 16 (7) TEU). Holding a linchpin position in the EU's foreign policy-making system (cf. Duke 2005), both the PSC and Coreper are composed of Member State representatives at ambassadorial level. They have the assistance of a seemingly uncountable number of working groups and specialised committees[61], situated within the Secretariat of the Council and composed of representatives of the MS. Not created by the Treaty, but established by Council act[62], the most central amongst these are the *EU Military Committee* (EUMC) and the *Committee on civil aspects of crisis management* (CIVCOM). Other important behind-the-scene roles in the daily conduct of the CFSP are played by the *EU Military staff* and the *Policy Planning and Early Warning Unit*. Albeit being located within the EEAS, these are also composed of personnel seconded from the Member States. Although the creation of the EEAS arguably laid down the foundation for an increasing *Brusselization* of foreign and security policy (cf. Cini and Borragan 2016, 249; Juncos and Pomorska 2013, 30) – a *Brusselization* also reinforced by the increased possibilities for enhanced cooperation (art. 20 TEU), which since Lisbon also may apply to defence matters – the presence of these diplomatic bodies and their preparatory groups and committees seems to confirm the still important intergovernmental touch of this policy (cf. Introduction, 1; Chapter IV, 3.2 *supra*). With regard to their appointment, each of the members of these organs is nominated at his or her own national level. Although in that sense it is difficult to give a common appreciation about how this is done, it can be arguably concluded that this is generally an executive prerogative. There is indeed no standard way in which national parliaments are engaged in European security affairs (Peters et al. 2010, 9) but an enquiry among national parliamentary chambers[63] teaches us that European national parliaments arguably have no role in the appointment of senior foreign policy officers. PSC and Coreper II nominations are no exception to this rule. Except for Hungary, were the approval of the National Assembly is necessary, or Germany and Latvia where the parliament must be consulted about both nominations, and Poland where a hearing is organised for Coreper

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[60] In its composition of COREPER II, prepared by the so-called Antici group.

[61] For a detailed view of these committees and working groups, see: General Secretariat of the Council, *List of Council Preparatory Bodies*, 5183/16 POLGEN 3, 18.01.16 data.consilium.europa. eu/doc/document/ST-5183-2016-INIT/en/pdf [03.05.16.16]

[62] Other preparatory bodies are set up by, or with the approval of, Coreper (cf. EU Council RoP, art. 19.3, also: consilium.europa.eu/en/council-eu/preparatory-bodies/ [26.01.16])

[63] In the autumn of 2016, I sent an online questionnaire to each of the national parliamentary chambers (cf. Annex 3), with one questionnaire being sent to both chambers of the Spanish *Cortes Generales.* Together, this made for a total of 38 questionnaires that have been sent out. 31 chambers from 25 Member States answered. Where data coming from this questionnaire are being used, I will henceforth refer to it as "*Questionnaire among MSP*".

II appointees (but not for the PSC); national parliaments appear to have no role in the appointment of their country's PSC or Coreper ambassador. Different to the US Senate which has – as it has been mentioned before – the power to reject presidential nominees to ambassador posts[64], European parliaments are overall excluded from any appointment power in this matter.

In light of the above-mentioned formal bureaucratic and intergovernmental character of these bodies this should, as such, not be problematic. Yet, especially where it concerns the PSC, the problem is that it can be reasonably doubted if it is just that... While Coreper may still be categorized as the Council's preparatory body[65], this is more difficult the PSC. The PSC is a key policy-shaping instrument (Howorth 2010, 3), which according to the Council's own communication on the matter, is not only *"responsible"* for the CFSP and CSDP, but more explicitly so, *"ensures political control and strategic direction of the EU's crisis management operations"*[66]. Thus, while *"the PSC ambassadors remain under the hierarchical control of their respective Ministry of Foreign Affairs, their capacity to influence thinking and opinion both at home and in Brussels is considerable"* (Howorth 2010, 18). In that sense, the Committee has even been characterised as *"governing in the shadow"* (Juncos and Reynolds 2007). From this point of view then, the limited parliamentary control exercised over their appointment becomes more problematic. When the PSC indeed is no longer a purely intergovernmental body, the members of which just represent the interests and preferences outlined by their own governement; but a body that does take political decisions outside *"the charmed circle of diplomacy"* (Juncos and Reynolds 2007, 144; also: Howorth 2014, 141-47); then it(s) (appointment) should be controlled accordingly. Considering that this is currently not the case – neither at the European, nor at the national level – this is an important democratic licensing-flaw in the EU's foreign policy. If possible, the fact that a representative of the HR now chairs most of these CFSP working groups, including the PSC - but with an exception for Coreper [67]

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[64] US *Constitution, Art. II, Section 2, §2* <u>gpo.gov/fdsys/pkg/CDOC-110hdoc50/pdf/CDOC-110hdoc50.pdf</u> [09.06.14]

[65] Council of the European Union, *Corper II* <u>consilium.europa.eu/en/council-eu/preparatory-bodies/coreper-ii/</u> [26.10.17]

[66] Council of the European Union, *Political and Security Committee (PSC)* <u>consilium.europa.eu/en/council-eu/preparatory-bodies/political-security-committee/</u> [26.10.17]

[67] According to art. 19.4 EU Council RoP, Coreper is continued to be chaired by the country holding the rotating presidency and the PSC by a representative of the HR (cf. Council Decision 2009/937/EU, OJ L 325, 11.12.2009, p.35). With regard to Coreper it should of course not be forgotten that this is not a CFSP-specific body, but a preparatory organ of the EU Council in general. For the other preparatory bodies art. 19.4 RoP refers to the above-mentioned *List of Council preparatory bodies* (cf. note 61 *supra*). Except for the *European Military Committee* and the *Military Committee Working Group* – which are neither chaired by the rotating presidency, nor by

– complicates things even further. After all, in this way, these formally intergovernmental bodies now are chaired by a supranational official, the appointment of which happens without much parliamentary (let alone popular) scrutiny (cf. the earlier mentioned lack of EP involvement in EEAS nominations).

Finally, three EU agencies exist in the context of foreign security and defence (Rehrl and Weisserth 2010, 47): the *European Defence Agency* (EDA), the *EU Institute for Security Studies* (EUISS) and the *European Satellite Centre* (SatCen). These are decentralized bodies, each delivering specific informational tasks in support of European foreign policy. Although the EP has long expressed a desire to be involved in the appointment of the heads of these bodies, their director (in case of the EUISS and SatCen) or chief executive (in case of EDA)[68] is appointed or designated by the steering board of the agency on a proposal of the MS and the HR[69]. This happens without any parliamentary involvement. The rationale behind this is triple. A 2011 study on the oversight of security and intelligence agencies, commissioned by the European Parliament, argues that these bodies are meant to be autonomous and non-political and therefore the EP's involvement risks undermining their independence. Besides, so it is substantiated, the selection process involving representatives of the MS is already cumbersome and involving the EP would only complicate this further. Finally, the report brings forth the intergovernmental argument according to which the involvement of the MS assures sufficient control (Wills and Vermeulen 2011, 22-23)[70]. The validity of these arguments, however, is questionable. First of all, it is unclear how exactly it is that these agencies would be more independent when there is no parliamentary involvement in the nomination of their directing officials? How is that someone nominated through a diplomatic bargain would be more independent, autonomous, and non-political; especially in the European context where mutual balances of influence and interests between 28 capitals must be taken into account throughout such diplomatic processes? Democratically even more dubious are the two other reasons for

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a representative of the HR, but have an elected chair – the CFSP/CSDP relevant preparatory bodies are chaired by a representative of the HR.

[68] Formally speaking the HR is head of EDA, the chief executive is the head of staff and legal representative of the agency. See: *Council decision defining the statute, seat and operational rules of the European Defence Agency and repealing Joint (Council Decision 2011/411/CFSP, OJ L 183, 13.07.2011, pp.16-26).*

[69] Interinstitutional Working group on regulatory agencies (2010), *Analytical Fiche No 7 – Appointment and the dismissal of the director*, p.1 europa.eu/european-union/sites/europaeu/ files/docs/body/fiche_7_sent_to_ep_cons_2010-12-15_en.pdf [15.08.17]

[70] Notwithstanding this report deals with intelligence and security agencies, there seems no reason to suppose that these arguments would not apply to foreign policy agencies too.

excluding the Parliament. Although understandable from an efficiency point of view, the cumbersomeness of a nomination process should not be a reason to downsize democratic control over it. In line with what has been said about the limited control by national parliaments and government's executive prerogative concerning the nomination of senior officers, also the intergovernmental argument can be disclaimed as contradicting truly democratic licensing.

2. How is the CFSP overall governance structure defined?

Where it concerns the **overall institutional architecture** of the CFSP (cf. Wessels and Bopp 2008, 16), since its creation by the Treaty of Maastricht, it has evolved gradually and seemingly without much concrete parliamentary backing (Keukeleire and Delreux 2014, 93-95). Although, the EP has to a certain degree been involved in the Intergovernmental Conference (IGC) preceding each treaty reform (cf. Christiansen 2002, 43-46), it must be recognized that key evolutions in CFSP, **especially regarding CSDP**, mainly result from an ad hoc process initiated by national governments only to be formalized in the Treaty afterwards. With the *Declaration of Saint-Malo* (December 1998), France and the UK launched a European cooperation in the field of security and defence which was welcomed a week later by the European Council of Vienna. The concrete implementation was afterwards outlined by the European Council of Cologne (June 1999) and Helsinki (December 1999). Subsequently, this important, new aspect of foreign policy was only to be introduced in the EU's *constitutional* setting by the Treaty of Nice (art. 17). In this process, neither the European Parliament, nor the national parliaments seemed to have played a significant role. Besides, at least at the initial stage, it can be wondered what the concrete say by other governments has been. The declaration was agreed upon by France and the UK with little or no advance notice to anyone. Yet, it was already welcomed by the other heads of State and government shortly after (Hunter 2002, 31-32). Therefore, a profound common debate seems to have been rather unlikely; at least so where it concerns the basic principles and direction.

Does the same pattern hold after Lisbon?

In terms of substance, the Lisbon treaty as such has expanded the range of activities which falls within the scope of the CSDP. However, the treaty again merely formalizes existing practice (Koutrakos 2012, 201). Subsequent evolutions, however, seem to indicate a more inclusive development, not solely defined by Paris and London. In November 2010 defence cooperation

between France and the UK was deepened out with the so-called *Lancaster House Treaties*[71] . Although this bilateral agreement does not set this out as an objective (even to the contrary one could argue), at least from the French side it seems to be understood as a possible stimulus for European defence in the long term (cf. Kandal & Perruche 2011, 25). And, while it is valid to assume that the initiative indeed pushes for further EU defence integration (Jones 2011); it seems more than *Saint-Malo* part of a larger discussion. This could be due both to the fact that *Lancaster* itself so far has produced rather little, if it were not *"[the] birth [of] a new sub-field and research agenda in Europe, with an array of conferences, seminars, journal special issues and PhD theses"* (Panier 2015); as well as the presence nowadays of many other actors expressing their voice on the matter. Not only the European Council and individual (or groups of) Member States, but also the EEAS, the European Commission, the European Parliament or the Interparliamentary Conference on CFSP/CSDP expressed their opinion and/ or launched their own ideas (Legrand 2016, 5-10).

Furthermore, the European Parliament for its part has taken up a more decisive role regarding the main two institutional CFSP novelties introduced by Lisbon, the *new* High Representative and most of all the **European External Action Service**. As Lisbon is silent on the specifics of this service's organisation – the distribution of posts amongst the different institutions and the MS, the scope of policies it shall oversee, the authority structure and appointment procedure as well as its precise functioning in the conduct of the EU's foreign affairs are initially left open (Koutrakos 2012, 197) – vehement turf-wars have been fought over its establishment[72]. A central discussion during the negotiations on these new CFSP actors dealt with the conception of the EEAS. Main question was if it was to be an intergovernmental body, working under Council auspices or a supranational organ within the Commission structure (Radtke 2012, 48). Throughout the debates leading up to Lisbon, the European Parliament emphasized the importance of a HR and EEAS under scrutiny of the EP and integrated into the Commission[73]. When however, it got clear that at least this last claim would not be acceptable for the Member

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[71] Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic for Defence and Security Co-operation gov.uk/government/uploads/system/ uploads/attachment_data/file/238153/8174.pdf [09.12.14]

[72] Cf. Euractiv, 09.03.10, "The EU's new diplomatic service" euractiv.com/future-eu/eu-s-new-diplomatic-service-linksdossier-309484 [27.05.16]

[73] European Parliament, *Resolution on the annual report from the Council to the European Parliament on the main aspects and basic choices of CFSP, including the financial implications for the general budget of the European Communities - 2003 (8412/2004 - 2004/2172(INI))*, art. 9 europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2005-0132+0+ DOC+PDF+V0//EN [09.06.14]

States[74], the Parliament started to investigate alternative ways to hold its grip over this new institution (Raube 2012, 70-74). Backed up by art. 27 (3) TEU - stating that the EP should be consulted about the set-up of the EEAS - the Parliament saw it fit to put strong pressure on the newly appointed HR Ashton to enhance its leverage over the external service. Eventually this leaded up to two - although informal - politically important texts: the before-mentioned Declaration on Political Accountability assuring an enhanced - although still restricted - EP's involvement in CFSP affairs[75]; and a *Statement by the HR on the organization of the EEAS Central Administration* (SCA) confirming some central base lines of the EEAS structure as were asked for by the Parliament[76]. As urged for by the EP[77], the SCA i.a. assures the appointment of a Director General for Budget and Administration within the EEAS administration. Finally, in October 2010, the EP consented with the launch of the diplomatic service by approving its staff regulation, financial regulation and its 2010 budget[78], however not after having obtained additional concessions on financial oversight[79]. It follows from this outline that the EP took part in the negotiations from the beginning and its influence on the EEAS-structure obviously goes beyond the *simple* consultation provided for in art. 27§3 TEU (cf. Wisniewski 2013, 91-101).

3. Conclusion: licensing to govern in CFSP, normatively democratic?

Does the EU's foreign and security policy show to be democratically legitimate where it concerns licensing to govern? The picture is rather mixed. Notwithstanding for instance the European Parliament has since Lisbon obtained increased leverage over the appointment of the High Representative through the fact that the nominee for the position must appear before

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[74] Cf. EUObserver, 20.10.09, "Poland sets out vision for EU diplomatic corps", euobserver.com /institutional/28851 [10.06.14]

[75] *Draft Declaration by the High Representative on political accountability*, OJ C 2010, 03.08.10, pp.1-2

[76] Council, *Elements for the statement given by the High Representative to the plenary of the European Parliament on the basic organisation of the EEAS central administration* (12401/10 ADD 4), 20.06.10 register.consilium.europa.eu/doc/srv?l=EN&f=ST%2012401%202010%20_ADD %204 [09.06.14]

[77] European Parliament, *European Parliament legislative resolution of 8 July 2010 on the proposal for a Council decision establishing the organisation and functioning of the European External Action Service (08029/2010 – C7-0090/2010 – 2010/0816(NLE)* - P7_TA(2010)0280) europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2010-0280+0+ DOC+PDF+V0//EN [09.06.14]

[78] Euractiv, 21.10.10, "EEAS to be born on Lisbon Treaty anniversary" euractiv.com/future-eu/eeas-born-lisbon-treaty-annivers-news-498990 [09.06.14]

[79] *European Voice*, 14.10.10, "MEPs win concessions on EEAS", europeanvoice.com/article/ imported/meps-win-concessions-on-eeas/69147.aspx [09.06.14]

Parliament in the same way as this was previously already custom for the other Commissioners; the investiture of the first incumbents also showed the Parliament's limits. In both cases, that of Ashton and Mogherini, it was clear that the Parliament had not much to say about their initial appointment. While in the concrete context of the HR's appointment by the European Council, the intergovernmental argument is called into question because individual governments do not seem to hold ultimate control over the process, the actual nomination of the High Representative so far involves rather weak democratic scrutiny. Given however the fact that Ashton and Mogherini are the first HRs *new style*, it is difficult to draw general conclusions from this. The same can be said about the permanent president of the European Council, being only created under Lisbon. After all, before the last European elections it was for instance not at all certain that the Parliament would succeed its coup de force regarding the nomination of the Commission president and yet a precedent could have been created[80].

When looking at key EEAS office holders, at first sight, the Parliament's role seems even more constrained, lacking any formal power about their appointment. However, when compared to classical State practice still common in EU MS, the EP seems not doing so bad after all. Hence, more problematic are the other, intergovernmental CFSP-organs. Where the European Parliament could be said to have at least some informal control over major appointments within the EEAS; the appointments for PSC and Coreper II and their advising committees – and for that matter also the three independent agencies – seems lacking any parliamentary backing. Being the real centroid of daily decision-making, they seem to hold more political power than formally recognized. Although, executively appointed in their respective country, it can be wondered – especially in case of the PSC – to what extend the members of these bodies are simple country representatives, just expressing the will and preferences of their respective governments. In that regard, it may be questioned if these organs actual independence from any control by the people or their directly elected representatives does not pull away the decisional centre gravity from those who are democratically speaking the supreme principal. The EU's foreign policy-making system has assured some democratic scrutiny of the EEAS; yet the fact that the selection and appointment of the other central day-to-day actors of the CFSP – the intergovernmental PSC and Coreper and their advisory committees – stay out of popular or

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[80] Cf. EUObserver, 23.01.18, "Spitzenkandidat system here to stay, MEP's warn capitals" euobserver.com/institutional/140656 [28.01.18]

parliamentary reach has incriminating consequences for the democratic legitimacy of the EU's CFSP overall licensing.

Where it concerns the policy's general governance structure, it must be admitted that it has been developed for the largest part without citizens or parliamentary input. Especially the CSDP has mostly grown on national governances' initiative without much involvement from the European Parliament or the national parliaments. While recently some changes are maybe under way (with a more proactive attitude from other actors, including the EP or even the Interparliamentary Conference on CFSP/CSDP), the overall initiative in this policy lies with (key members of) the European Council. This could be problematic, not only for public control, but also for political equality. Although the members of the European Council are elected, or parliamentary controlled at their respective national level, it can at least be wondered how exactly they are democratically licensed to act as the *definer* of the EU's CFSDP and the *identifier* of the EU's strategic interests. If the European Council acts as a collective head of state, it does so following which elections or based on which mandate? Each member of the European Council indeed has a national mandate, but it is not clear where their common, European mandate comes from[81]. After all, national parliaments may well select or control their government, *"but they rarely do so EU politics"* (Auel et al. 2015, 284).

Regarding the CFSP more in general, however, the European Parliament has gained influence in the process in the run-up to Lisbon. Especially the construction of the EU's Foreign Service, the Parliament has successfully pushed through some of its visions, thus obtaining for itself a stronger grip on the EEAS than initially probably had been thought possible. In light of what has been said other, intergovernmental bodies holding a role in Europen foreign policy that actually exceeds the one they are formally appointed for; this can be considered a positive evolution.

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[81] Ewoud Lauwerier, "Pourquoi les leaders nationaux ne font pas de bons leaders européens", *Sauvons l'Europe*, 27 November 2013 sauvonsleurope.eu/pourquoi-les-leaders-nationaux-ne-font-pas-de-bons-leaders-europeens/ [09.06.14]

VII. Budget authority in EU foreign policy

Summary: *Under this heading, I look at the way the EU's foreign security and defence budget is decided. I discuss the normal budget procedure and the funding of the EEAS, as well as the rules that apply to operational expenditure with military of defence implications. Regarding this last point, both the "costs lie where they fall" principle and the Athena mechanism are considered.*

Where it concerns its financing, the CFSP is confronted with a typical problem of democratic foreign policy. For reasons of its – at least partially – reactive nature, it is not possible to preview completely how, when and where expenditure exactly will emerge. Ergo, these expenditures can prove difficult to be defined in advance. Also, the complex multilevel character of this policy – in which the EU - and Member State levels have to interact very closely and are sometimes even difficult to distinguish – becomes particularly concrete where the budget is concerned.

In line with the two budget-indicators previously established (indicator 4 and 5) the following discussion looks at both the normal budgetary procedures as well as the one applying to expenditure that is not included in the general budget. Yet, given the complex *interwovenness* between, on the one hand, these two budget lines, and, on the other hand, the EU budget and Member State expenditure; both indicators are discussed together.

1. How is the CFSP budget determined and organized? What in case of urgent spending?

Where it concerns the foreign and security budget, Lisbon didn't make any changes to the **general procedure** for financing of expenditure connected to the CFSP[82]. The overall rule iterates that administrative as well as operating expenditure to which the implementation of the CFSP gives rise is included in the Union budget; except for operating expenditure with military or defence implications, or when the Council unanimously decides otherwise. In these cases, the costs shall be charged to the Member States in accordance with their GNP[83] (art. 41 TEU). Given that the EU does not dispose any 'common' defence capabilities, in terms of a European army, this military – non-military expenditure distinction is indeed somehow logic

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[82] *Summaries of EU legislation: Common Foreign and Security Policy* europa.eu/legislation summaries/institutional_affairs/treaties/lisbon_treaty/ai0025_en.htm [31.03.16].
[83] Again, unless where the Council acting unanimously decides otherwise.

(Miskimmon 2012, 163). Though, it follows that there does not exist a single mechanism for financing the CFSP. The CFSP budget instead forms a complex and fragmented structure, combining different, supranational and intergovernmental, financial rules and procedures (cf. Terpan 2015, 222-23).

When expenditure is covered by the normal Union budget, the budgetary procedure established under art. 312-9 TFEU does apply. This means that the European Parliament and the Council jointly exercise budgetary functions (art. 14.1, 16.1 TEU, art. 314 TFEU), as they both must give their approval about a proposition from the European Commission. So, especially since Lisbon formally abolished the traditional distinction between compulsory and non-compulsory expenditure[84] which the *Treaty establishing the European Community* (TEC) had previously established in art. 272.4, the Council and the Parliament are formally on an equal footing about the decision on the entire EU's annual budget, including the financing of the CFSP (Sautter 2011, 573). Besides, following the 2006 Interinstitutional Agreement (IIA), the EP has to be kept informed at least five times a year about civilian CSDP missions and operations and their implications for the CFSP budget. This happens through the organization of so-called Joint Consultation Meetings (cf. Chapter XII *infra*). In that way, the EP's budget power in CFSP certainly is substantial – it could even be argued that the "hardest" competencies of the EP in CFSP are in the budgetary field (Diedrichs 2004, 38) – and the Parliament is not afraid to yield it, if needed to the point of using it for "democratic blackmailing" (Thym 2006, 113-17).

As to the **EEAS**, after strong discussions the European Parliament successfully obtained for the integration of its financing in the overall EU budget and thus ensured itself full budgetary power[85]. While the intergovernmental financing of this service was initially an option (Vanhoonacker and Reslow 2010, 14-15; cf. also the previous discussion about the build-up of the EEAS, Chapter VI, 2 *supra*); art. 8 of the Council decision of 26 July 2010[86] confirms that the EEAS' operating, as well as administrative expenditure falls under the regular EU budget. Hence, a section of the EU budget is now foreseen for the EEAS' administrative expenditure

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[84] European Parliament, *Fact Sheets on the European Union. The Union's expenditure* europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_1.5.2.html [31.03.16]

[85] Cf. European Parliament, *EU foreign service: EP links budget approval to agreement on EEAS organisation*, Press release, 16.04.10 europarl.europa.eu/sides/getDoc.do?pubRef=-//EP //TEXT+IM-PRESS+20100416IPR72928+0+DOC+XML+V0//EN [31.03.16]

[86] *Draft Declaration by the High Representative on political accountability*, OJ C 2010, 03.08.10, pp.1-2, point 5.

and its operative costs remain within the Commission section of the budget[87]. Also, the High Representative committed herself to giving the Parliament full budgetary oversight over her service, including signing off on its yearly budget[88]. This gives the Parliament a decisive and direct voice in the yearly establishment of the EEAS financing. Although the extent to which this right gives tangible policy leverage to the Parliament is (still) unclear – as *"refusing approval for the EEAS' budget is a 'nuclear option' that would shut down the service completely and is unlikely to be contemplated even in the most serious of crises"* (Furness 2013, 114) – at least within certain limits, the Parliament seems not afraid to actually use it. During the last budgetary procedure [2016] for instance, the Parliament has used its budgetary power over the EEAS to bring the HR towards a rebalancing between EU officials and national officials within the service's corps, or to reinforce its strategic communication and counter-propaganda capacities; as well as tried to push (yet without success on this point) for greater coherence between EU delegations and EUSR's (MEP, e-mail 13.02.17). In that way, budgetary oversight could certainly constitute a very important political instrument for the EP to control the HR (Raube 2011, 15).

As however indicated before, not all European foreign policy related expenses are covered by the general EU budget.

First, the situation is clearly different in case of **operational expenditure with military or defence implications**. Essentially, the Member States bear these expenses according to the so-called "costs lie where they fall" principle. Agreed upon by the Council of 18-19 February 2002 in the context of the EU Police Mission in Bosnia & Herzegovina[89], this has become an established practice, meaning that – comparable to NATO-practice – every participating State covers the expenditure related to its own personnel and equipment. Since 2004, this principle is complemented by the so-called *Athena-mechanism*[90] covering some overall expenses such as

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[87] See for example: *Definitive Adoption of the European Union's General Budget for the Financial Year 2013*, (2013/102/EU, Euratom), 08.03.13, Section III – Commission: Titel 19 – External Relations (II/239), and Section X – European External Action Service (I/515) eur-lex.europa.eu/ budget/www/index-en.htm [31.03.16].

[88] *EUObserver*, 24.03.10, "Ashton makes concessions to parliament on diplomatic service" euobserver.com/news/29748 [31.03.16].

[89] Council, *2409th Council meeting - General Affairs - Brussels, 18/19 February 2002*, 6247/02 (Presse 30 - G), Annex 4, art. 3 europa.eu/rapid/press-release_PRES-02-30_en.htm [31.03.16]

[90] The mechanism is revised every 3 years. Currently. Cf. Council Decision (CFSP) 2015/528, OJ L 84, 28.03.2015, pp.39-63.

headquarters or transport to the theatre of action[91] (cf. von Ondarza 2008, 21). Approximately this covers some 10 to 15% of all costs[92]. The mechanism is financed from the Member States' national budgets in accordance with their respective GNP[93]. Eligibility for common funding assumes that there was unanimous support in the Council and means that the costs in question are met by all MS (except Denmark, which has an opt-out[94]), whether they participate in the operation or not[95]. It has, however, to be emphasized that this common funding is in no way subjected to the normal EU budget procedure but continues the intergovernmental logic of the "costs lie where they fall" principle. All of this implies that the responsibility for these expenses lies at the national level. Thus, similar to the appointment of the members of the intergovernmental CFSP/CSDP committees (cf. Chapter VI, 1 *supra*); the national level should be taken into account too in order to evaluate the normative democratic quality of the CFSP budget procedure.

Doing so, presents us with an ambivalent picture, as there are great interstate differences budgetary authority in the context of security and defence. Looking for instance at the on-going military CSDP mission, EUTM Mali (launched: 18 February 2013)[96], we see a completely different approach between the two largest contributors to this mission. France (initially 207 soldiers) and Germany (initially 71 soldiers)[97], together providing more than 50% of the total number of troops, proceed in almost opposite ways where it comes to the follow up of the mission, and especially the way the own expenditure is internally defined and controlled. In Germany, the federal government sends an official proposal to the Bundestag on 19 February 2013, requesting permission for the deployment of German soldiers in the context of EUTM Mali. This government proposal also contains detailed information on the expenditure this will

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[91] *Summaries of EU legislation: The mechanism for financing military operations (Athena)* europa.eu/legislation_summaries/foreign_and_security_policy/cfsp_and_esdp_implementation/l 33281_en.htm [30.03.16].

[92] European Parliament, *European Parliament Resolution of 21 May 2015 on financing the Common Security and defence Policy (2014/2258(INI))*, P8_TA-PROV(2015)2014, art. 22 europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0214+0+DOC +PDF+V0//EN [31.03.16]

[93] Unless the Council acting unanimously decides otherwise (cf. art. 41.2 TEU).

[94] *Protocol on the position of Denmark*, Part II, art. 6. OJ C 304, 10.11.1997, pp.101-102.

[95] Ministère de la Défense, Delegation for Strategic Affairs, *How does CSDP work?* defense.gouv.fr/english/das/international-relations/european-defense/how-does-csdp-work/ how-does-csdp-work [02.07.14]

[96] Cf. EEAS, *EUTM Mali* eutmmali.eu/ [30.03.16].

[97] EUTM Mali, *Conférence de presse du Général Lecointre à Bruxelles*, 11.03.13 eutmmali.eu/?p=211 [30.03.16].

bring about for Germany[98]. On 28 February 2013, the Bundestag decides in favour of the proposal[99]. In France on the other hand, the parliament is largely set-aside in this question. Only on 16 January 2013, five days after the start of the French intervention, the *Assemblée Nationale* is officially informed[100]. Where it concerns the French participation in the subsequent EU mission, even when Prime Minister Ayrault, according to art. 35 of the French constitution[101], on 22 April 2013 officially asks for the prolongation of the French participation to the Mali mission, no concrete budget whatsoever is mentioned[102]. The French case is far from an exception. Only a minority of national parliaments does have to approve the budget for participation. In Hungary, Luxemburg, the Netherlands and Poland, the parliament is only informed about the costs of participation after the mission has been launched, and in the case of Austria, Greece, Malta and Portugal, the parliament seems even not to be informed at all (Questionnaire among MSP, cf. Table 2). These findings correlate with an earlier DCAF study (Born et al. 2008, 15-31) which also demonstrates that in multiple Member States the parliament has not to approve at all the country's participation in CSDP missions. In that way, it seems clear that Lisbon did not made a change. National parliaments' budget powers in this matter are often limited to an annual approval of funds for external operations, as part of the overall national defence budget (cf. Table 2, also: Gourlay 2004, 195) and do not concern specific missions.

From a democratic point of view, this is not only dubious within the specific context of the Member State in question, but also at a European level. Linked to the account of what the basic definition of democracy as public control with political equality implies in an intergovernmental context, it is obvious that this situation hampers the equality dimension. Not everyone (through the intermediary of his/ her elected representative(s)) has the same rights and opportunities to control the budget of military missions that, after all, are carried out in their name. This is all the more relevant, as the missions in question do not concern simple case-by-

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[98] Deutscher Bundestag, *Eintrag der Bundesregierung*, 19.02.13 dip21.bundestag.de/dip21/btd /17/123/1712367.pdf [31.03.16].
[99] Deutscher Bundestag, *Plenarprotokoll 17/225*, 28.02.13, p.27974 dip21.bundestag.de/ dip21 /btp/17/17225.pdf [31.03.16].
[100] Premier ministre, *Discours à l'Assemblée nationale relatif à l'intervention militaire au Mali*, 16.01.13 gouvernement.fr/premier-ministre/discours-a-l-assemblee-nationale-relatif-a-l-intervention-militaire-au-mali [04.06.13].
[101] Art.35 stipulates that when a foreign intervention exceeds 4 months, the government shall seek approval of the National Assembly for this mission assemblee-nationale.fr/connaissance/ constitution_11-2011.pdf [04.06.13].
[102] Assemblée nationale, *Compte rendu intégral. Séance du lundi 22 avril 2013* assemblee-nationale.fr/14/cri/2012-2013/20130224.asp [04.06.13].

case coalitions between independent States but are actions developed as part of a comprehensive common policy, carried out under EU flag (cf. Chapter XIII, 1 *infra*). In that sense, these inter-State difference become structural inequalities as to how the people can control that policy.

Table 2: budget competencies of national parliaments in EU military or civilian missions

TOTAL	Question	Austria	Belgium	Bulgaria	Czech Rep.	Croatia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Luxembourg	Malta	Netherlands	Poland	Portugal	Slovakia	Slovenia	Spain	Sweden	UK
11	The parliament is informed about the costs of participation, before a mision is launched.	0	0	1	1	1	0	1	1	0	1	0	0	1	0	1		0	0	0	0	1	1		0	1
10	The parliament is informed about the costs of participation, after a mision is launched.	0	1	0	1	0	0	0	1	1	1	0	1	0	0	0	1	0	1	1	0	0	0		0	1
9	The parliament has to approve the budget of participation in a mission (as part of an overall aproval, or in a seperate act) in plenary.	0	1	1	1	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0
7	The parliament's competent committee has to approve the budget of participation in a mission (as part of an overall aproval, or in a seperate act).	0	1	0	1	1	1	0	0	1	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
	Comments:	(a)		(b)	(c)		(d)			(e)					(f)	(g)	(h)		(i)					(j)	(k)	(l)

1 = yes, 0 = no, empty = not answered. In case of a bicameral parliament and where both the houses answered, I combined the results.

(source: Questionnaire among MSP)

a. *Budgets are discussed by the National Council as part of an overall approval of the annual budget (in the Budget Committee and during budget plenary debate)*
b. *The competent committee can discuss an executive proposal for participation, considering all aspects of such participation, vote an internal decision and send a report to the plenary.*
c. *Chamber of Deputies: costs of military operations are discussed at committee level (usually, in the FA - and the Defence Committee) – Senate: one Committee on Foreign, Defence and Security Affairs which discuss military mission (and budgetary implications). The decision on the budget is a part of the decision on the deployment of military forces. Therefore, the Senate is informed prior to the approval. An ex post information is not automatically provided, but may be requested by the Senate.*
d. *If not foreseen in the overall budget law, the competent committee has to approve for the contributions.*
e. *The National Assembly approves costs of EU missions as part of the general vote on the defence budget.*
f. *A draft budget is sent to both Chambers for an opinion of both the responsible Committee and the Committee dealing with financial matters, to be delivered within 20 days. Should the Government not be willing to comply with the Committees' recommendations, it can express further remarks for the Committees to rule again within 10 days. After the 10 days term is expired, the Government can adopt the budget. Until such time as the above-mentioned procedure is completed, Ministries are authorized monthly expenditures proportional to what has been solicited from Parliament.*
g. *The competent committee prepares approval of the budget, decision is taken by plenary.*
h. *The Chamber is not systematically informed; no specific law or regulation about the costs of the mission is to be adopted. The costs can be controlled in the bill concerning the implementation of the budget.*
i. *The Defence Committee often requests information on the cost of the missions.*
j. *Pursuant to Article 66.2 of the Spanish Constitution -whereby the Cortes Generales shall adopt the State's Budget-, Article 4.1 of Organic Act 5/2005 on National Defence confers upon the Cortes Generales the function of approval of the relevant budget appropriations also in the field of Defence.*
k. *The Riksdag approves the Government's overall budget in each expenditure area on a yearly basis.*

l. *Government expenditure is approved by the House of Commons as a whole, but the cost of individual missions would not be separately approved. - The House of Lords EU External Affairs Sub-Committee scrutinises such budgets but the Government takes the decision.*

As to the common costs of such missions, financed through the Athena-mechanism, the EP's concern that this mechanism lacks transparency and *"does not afford an overview of all the financial implications of missions conducted under the CFSP"* surely points out a certain democratic budget weakness. In that way, also after Lisbon, it seems still the case that *"there is a lack of democratic control over military policy activities and the related spending"* (Bendiek and Withney-Steele 2006, 2). This is problematic, as it can indeed be argued that the democratic control of the financial aspects is *"one of the most important issue[s] when it comes to [...] comprehensive [parliamentary] participation in CFSP/CSDP"*. And, in this context, it may indeed be asked if *"the creation of large common budget, especially for conducting and common participation in civil/military missions and operations is [not] the most appropriate approach and the right way to actively involve all the European countries in this most important area of common European interest"* (Questionnaire among MSP, 16.12.16).

Secondly, also in case of civilian crisis operations, the situation is somewhat particular. Notwithstanding such missions are generally funded through the regular EU budget, in practice the hands of the European Parliament are bound, as it is the Council that decides on their actual launch (art. 28 TEU). Since 2006 the Council commits itself to send the European Parliament an estimate of the costs envisaged, whenever it adopts a decision in the field of the CFSP entailing expenditure, and this no later than five working days following the final decision[103]. However, it is not clear what the Parliament can do with this information other than taking note of it. Besides, the Council can always unanimously decide to finance such civilian missions outside the EU budget (art. 41 (2) TEU), i.e. by means of national contributions. Of course, this makes control by the EP virtually inexistent. In such a case of national funding of civilian operations, we see ourselves confronted with a situation similar to the one that was described before for military missions, namely the existence of great inter-State differences how these expenses can be democratically controlled by a body of directly elected representatives at each national level.

Where it concerns urgent spending needs, we essentially see the same opposition between the overall, supranational, rule and an intergovernmental approach where it concerns military and

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[103] *IIA of 17 may 2006*, replaced by: *IIA of 2 December 2013, OJ C 373*, 20.12.2013, pp.1-11, art. 25.

defence expenditure. Art. 41.3 of the Lisbon Treaty foresees the establishment of specific procedures for urgent financing in the context of CFSP by urging the Council to take, in consultation with the European Parliament, the necessary measures. The Council, however, has not yet decided on either mechanism. Neither the Specific procedures for guaranteeing rapid access to appropriations in the Union budget, nor the Start-up fund have been taken care of until now (cf. *infra*). Hence, civilian crisis operations are normally paid through the regular EU budget, which provides financing for emergency cases as well as preparatory measures through two distinct budget lines (article items 19 03 01 05 – Emergency Measures – and 19 03 01 06 – Preparatory and Follow-up Measures). In case of military rapid response operations, however, costs are again borne by Member States. According to art. 26 of the Athena-mechanism MS can pay contributions in advance, or within five days following the Council decision to launch the mission.

In reaction to the complexities of the CFSP budget, a review process has been launched by the European Council of 19-20 December 2013. Initially mostly an affair of the EU's administration – within the Council and the EEAS – and of the Member States, the European Parliament seems to have seized the opportunity and since 2015 assumed a more prominent role in the debates[104]. A report on financing the Common Security and Defence Policy, written by the Committee on Foreign Affairs and the Committee on Budgets was adopted in plenary on 21 May 2015[105]. In this report, the EP – although *"acknowledg[ing] that military operations are financed by the Member States outside the EU budget and that their common costs are covered by the Athena mechanism"* (§ 22, also: MEP, e-mail 13.02.17) – deplores the limited progress that so far has been made, as well as *"calls on the Council to initiate, during the current budget year, the setting-up of the start-up fund (foreseen by Article 41(3) TEU)"* (§ 22). Yet, as the response of the Commission to the parliamentary resolution confirms that *"Member States are not keen on the creation of [such] a start-up fund for military CSDP financing[106]"*, nothing has changed so far. Given that the next revision of the Athena mechanism had been

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[104] European Parliament, *At a glance. Financing of CSDP missions and operations*, February 2016 europarl.europa.eu/RegData/etudes/ATAG/2016/577958/EPRS_ATA%282016%29577958_EN .pdf [30.03.16]

[105] European Parliament resolution of 21 May 2015 on financing the Common Security and Defence Policy (2014/2258(INI)) europarl.europa.eu/sides/getDoc.do?type=TA&language =EN&reference=P8-TA-2015-0214 [24.04.17].

[106] European Commission, 22 July 2015, SP(2015)470, p.4 europarl.europa.eu/oeil/spdoc.do? i=25593&j=0&l=en [24.04.17].

planned for 2017[107] but has not started at the time of writing, it is still to be awaited if, in the process, the European Parliament will search, and succeed, to assure for itself a reinforced position as budget authority.

2. Conclusion: CFSP budget, normatively democratic?

Where it concerns the democratic credentials of a foreign policy's budget, two simple questions can be asked: what about the general budget procedures, and what if rapid expenditure is necessary?

As to the first point, the CFSP budget – including the EEAS 'operating and administrative expenditure – is for the largest part integrated in the normal EU-budget. This EU-budget, proposed by the European Commission, is subject to approval of both the Council and the European Parliament. As the EU's budget includes both own resources and contributions from Member States as its sources of income, it can be understood as both supranational and intergovernmental. The double approval by both the Council (with unanimity for the multiannual framework and QMV for the annual budget) and the Parliament of the actual budget then assure the necessary equal public control at both the European and the national level.

Exceptions however exist where the normal budget procedure does not apply. These exceptions essentially concern military and defence related expenses; but can also apply to civilian missions. The essential difference with the normal budget procedure is the more limited role of the European Parliament. When these exceptions apply, expenses stay under direct control of the Member States. In that case, however, we see structural differences between Member States in relation to how these expenses can be democratically controlled and we see how in many Member States the parliament plays but a limited role. Given that such missions are not mere ad-hoc coalitions but are part of a common policy that binds the Member States together beyond the single case of just that mission, structural Inter-State differences about how their budget can be subject to public control, leads to inequality in the overall control of that policy all together. Due to the budget-system of EU military missions, and the role of these missions as an instrument of the EU's overall foreign and security policy, the actual public control that people

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[107] Ibid.

can exercise over this foreign policy can vary according to the national citizenry they adhere to.

More generally, the complex budget structures of the CFSP leads to an uncertainty that can be harmful for its democratic control. As explained, for example, while civilian missions are normally funded out of the normal EU budget, the Council can at any occasion decide otherwise and choose to finance them outside the EU-budget. This makes for a situation where it is never sure in advance where exactly the democratic control is to be situated and through which channels it will have to be exercised.

VIII. Participation in EU foreign policy

Summary: *This chapter discusses participation by citizens directly or by civil society organisations, as well as by both the European- and national parliaments. First, it looks at direct democracy at the national- and the EU-level and if or how this is used to impact on foreign affairs. Subsequently I use data from the EU's Transparency Register to assess the involvement of CSOs in matters of foreign security and defence. Regarding parliamentary participation, I turn to the general involvement of the EP, and the competences of national parliaments in case of the deployment of European military or civilian missions.*

As only the licensing of the policy makers cannot be deemed enough to assure democratic dominion and given the more limited impact of elections on foreign policy, other forms of citizens' involvement deserve attention. Therefore, question should be asked if (members of) the society at large can make their voice be heard, and in the end even influence the direction of the foreign policy. In that regard, I made the distinction between direct participation by citizens who find themselves essentially outside of the decision-making system (indicator 6) and participation by their elected representatives, *in concreto* organised in a parliament (indicator 7). The first section of this chapter deals with direct, *popular participation*; in the second section, attention turns to parliamentary participation.

1. Do citizens directly, or through CSOs have access to decision-makers?

Two ways can be imagined through which citizens themselves can, more or less directly, participate in the policy process. First of all, there could be access by means of direct democracy. Secondly, such access could be created through civil society organizations, channelling people's opinions and interests into concrete action, swaying the foreign policy decision-makers. Both at national and EU level procedures for direct democracy exist, meant to increase popular participation into policy-making. Among the Member States, only Belgium, Cyprus and the Czech Republic do not have any legal provisions for the use of **direct democracy at the national level**. The other 25 countries provide (at least some kind of) possibility for the use of such instruments. Yet, looking at their actual use, we see that these instruments are only very rarely employed in relation to foreign security and defence.

According to the *Direct Democracy Database*[108], developed by the Swiss Centre for Research on Direct Democracy; in the 28 countries, nowadays member of the EU, 221 referendums (all institutional types included) took place at the national level from 1990 to 2016. Thereof, 175 concern internal policies, 16 are about EU accession and 20 about other European issues such as treaty changes or the introduction of the Euro and 1 deals with other international regimes[109]. Hence, the last 27 years only 9 national referendums (organized by 6 countries) dealt with national foreign security and defence politics. Of these 9 referendums, 3 were about NATO-accession, 3 about the organization of civil service and the army in general and 1 on the withdrawal of foreign troops from the country's territory[110]. Finally, 2 referendums on nuclear weapons and military bases organized in Slovakia in 1997 did not reach the participation threshold. No referendum was organized about European foreign security and defence issues (cf. Annex 4).

At the European level, there does not exist the possibility for compulsory referendum or binding initiative. Only since the Treaty of Lisbon (art. 11.4 TEU, art. 24.1 TFEU) there has been introduced the so-called **European Citizens' initiative** (ECI), enabling one million EU citizens coming from at least one quarter of the Member States, to call on the European Commission to propose a legal act in all areas where the Member States have conferred powers onto the EU level. But, apart from the fact that this initiative-right is in reality very limited – as it does not contain a binding obligation for the Commission to act[111] – this right does not concern CFSP/CSDP. As a multilevel policy containing a considerable intergovernmental dimension, foreign security and defence policy is excluded from the initiative right the European Commission possess in other, *community* policy fields. Hence, as the Commission cannot make legislative proposals regarding CFSP/ CSDP, the ECI does not apply to it. Indeed, among the 44 initiatives launched, so far (May 2017)[112] none relates to foreign security and defence policy.

With regard to the second way of popular participation – through the intermediary of **civil society organizations** – it is said by the Treaty (art. 11.2 TEU) that *"[t]he institutions shall maintain an open, transparent and regular dialogue with representative associations and civil*

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108 Centre for Research on Direct Democracy (c2d), *Direct Democracy Databases* c2d.ch/votes.php?table=votes [05.05.17].

109 Irish referendum (2001) on the ratification of the statute of the International Criminal Court.

110 Lithuanian referendum (1992) on the withdrawal of Soviet troops.

111 As such, this European citizens' initiative is very similar to the Dutch citizens' initiative (*Burgerinitiatief*) or the German or Austrian petition right (Volksbegehren).

112 All initiatives included ec.europa.eu/citizens-initiative/public/welcome [05.05.17].

society". Since the last decade of the 20th century this has also led in the field of foreign security and defence to an increasing cooperation with a variety of organisations. Defined by the European Commission as *"the principal structures of society outside government and public administration"*[113], numerous NGOs, think thanks and lobby groups have mobilized around foreign and security issues at EU level (for a descriptive overview, see: Dembinski and Joachim 2014, 455–6). In so doing, they not only act individually, but also through networks and associations, such as the *European Network for Civil Peace Services* (EN.CPS), the *International Action Network on Small Arms* (IANSA) or the European Peacebuilding Liaison Office (EPLO). The EU from its side appears to have well understood the importance and advantages of cooperation with civil society[114] and seems increasingly open to – and actively stimulating – the involvement of CSOs in foreign security and defence policy[115] (cf. Dembinski and Joachim 2014; Rodekamp 2013, 122-25). However, when looking into more detail at this CSO involvement in European foreign policy, we (still) see important weaknesses with regard to their actual function as channels of active participation by European citizens.

First of all, CSO involvement relates to specific issues and topics rather than to the European security and defence as a comprehensive policy. There indeed are good examples of specific cases – especially related to humanitarian and development affairs[116] – where the role played by CSOs in EU foreign policy and the efforts made by the European institutions in this regard are undeniable (cf. Irrera 2013, 90-110; Joachim and Dembinski 2011, 1154), but so far, an overall coherent strategy seems missing (cf. Palm 2010). Besides, with regard to the concrete CSOs that are actively involved on the ground, it should be pointed out that many of them are not European organisations, but local players cooperating with EU delegations and missions on the ground[117]. The cooperation of these local players could help the EU's actions on the field

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[113] European Commission, *Communication from the Commission. Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*, Brussels, 11.12.2002, COM(2002) 704 final, p.6 eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52002DC0704&from=EN [08.04.16].

[114] Cf. EEAS, *Cooperation with civil society* eeas.europa.eu/human_rights/cooperation_with_ngo /index_en.htm [08.04.16].

[115] Cf. i.a. Council of the EU, *Recommendations for Enhancing Co-operation with Non-Governmental Organisations (NGOs) and Civil Society Organisations (CSOs) in the Framework of EU Civilian Crisis Management and Conflict Prevention* register.consilium.europa.eu/doc/_srv?l=EN&f=ST% 2015741%202006%20INIT [08.04.16].

[116] EEAS, *Human Rights – Cooperation with Civil Society* eeas.europa.eu/human_rights/ cooperation_with_ngo/index_en.htm [10.05.16]

[117] On the websites of many EU delegations to third countries there is a heading "Civil Society Dialogue", presenting the cooperation of the EU with NGOs and local civic organizations in that particular country.

(by providing for instance region-specific knowledge), and in that sense, could contribute to policy's local success. Yet, they are no means to reinforce the democratic quality of the EU's foreign policy's internal decision-making procedures and structures.

Figure 4: ETR - CSO fields of interest (06.2008 – 12.2016)
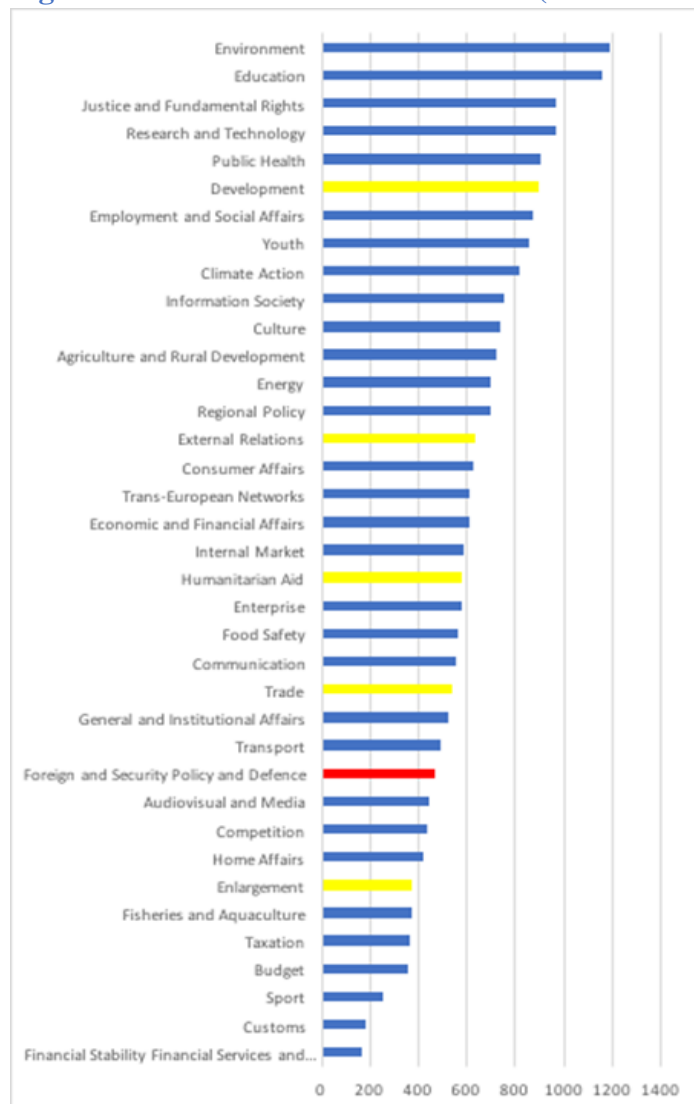
At this European level, we observe a comparatively rather modest interest in foreign security and defence issues amongst CSOs. The EU's Transparency Register gives us good evidence thereof. Operational since June 2008[118], this register enlists – so far still on a voluntary basis[119] – enterprises and lobbyists, but also a large variety of civil society organisations[120] lobbying the European Commission or the European Parliament. When taking into account the totality of 37 fields of interest among which can be chosen, we find *Foreign and Security Policy and Defence (FSPD)* at a 27th position (cf. Figure 4) and note that of the 2653

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[118] First a single Commission register. Since June 2011 a common Commission and Parliament register ec.europa.eu/transparencyregister/public/consultation/search.do?dataReport [14.08.17]

[119] This is about to chance. On 28 September 2016, the Commission proposed an IIA on a mandatory transparency register (COM(2016) 627 final), which aims to extend the register to the Council. It was welcomed by the Parliament on 5 October 2016. Yet, resistance from lobby groups remains high and so far (June 2018), this new transparency register has still not been put into place. But, interinstitutional negotiations started in April 2018.

[120] Upon registration, organisations choose one of six possible labels to define the type of organization they adhere to: I - Professional consultancies/law firms/self-employed consultants, II - In-house lobbyists and trade/professional associations, III - Non-governmental organisations, IV - Think tanks, research and academic institutions, V - Organisations representing churches and religious communities, VI - Organisations representing local, regional and municipal authorities, other public or mixed entities, etc.

registered CSOs[121] only 17.72% (470 organisations) mention *Foreign and Security Policy and Defence* as one of their fields of interests[122]. Compared to other fields of interest that contain an international dimension, *FSPD* is the second least chosen topic by CSOs. From the six fields with an essentially international dimension[123], *Foreign and Security Policy and Defence* ranks fifth (cf. Figure 4). The Lisbon Treaty, and the changes it implied for the EU's foreign security and defence policy (cf. Introduction), does not seem to make it a more popular field of interest with CSOs. With a maximum of 26.22% of the newly registered organisations mentioning *FSPD* among their fields of interests in 2011 (59 of the 225 CSOs that registered that year), clearly fewer organisations did so for the years that followed (cf. Annex 5). Besides, it must be taken into account that *"many of the organisations specializing in security issues and active at the European level, are more akin to think-tanks than to constituency-based organizations; they specialize in the provision of well-researched information, policy-advising, and consultation"* (Joachim and Dembinski 2011, 1164-65; also: Rodekamp 2010). Findings from the Transparency Register seem to corroborate that observation. Amongst the 470 CSOs that declared *Foreign Security Policy and Defence* a field of interest, a significant number seems focussing on research and reporting. 10 of these organisations describe themselves explicitly as a think-tank or research organisation and at least 29 others mention the conduct or promotion of research and analysis, or the provision of expertise (through publications, seminars or by other means) as a key activity[124]. As none of these organisations is of type V – Organisations representing churches and religious communities – this means that among the NGOs in the Register, almost 9% (39/443) has a main focus on research. Besides, organisations such as *Freedom House*, the *International Crisis Group* or the general secretariat of *Transparency International* amongst others can well be labelled as NGOs, in practice their first commitment lies indeed with conducting research and analysis and the production of elaborated reports. In that way, these organisations can certainly fulfil a watchdog function (cf. Chapter XII, 2 *infra*) but they do not act as grass-roots organisations, directly connected to civil society. Hence, it can be doubted whether and to what extent these organizations – just as formal think thanks and research institutes – are representative of or speak for the general public. Also, multiple

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[121] Selected on *III* and *V*.
[122] Based on the totality of entries in the register since its start on 23.06.2008, till 31.12.2016.
[123] *Development, External Relations, Humanitarian Aid, Foreign Security Policy and Defence, Trade* and *Enlargement.* These fields of interest relate mainly to policies with an extra-European focus.
[124] EU, *Transparency Register* – Search the Register. Based on systematic, manual, search through the details of the 470 selected CSOs, I only considered those organisations where research seemed to be one of their main objectives, not those where it seemed rather a step-up to other, clearly more central objectives.

organisations registered as NGO in fact search to defend specific sectorial interest rather than the general interest or the population at large. This is for instance the case for the *Deutscher Feuerwehrverband* (the umbrella guild of German fireman, already in the register since the early beginning) or *The British Academy* (the umbrella and charity organisation of the British humanities and social sciences) and *ChinaEU* (an international business association, working on cooperation in the field of ICT), which both registered as NGOs in 2015. These organisations may well be non-profit, their fundamental purpose does not ly with the promotion of a certain common good, but with the defence of specific interests.

According to Steffek and Nanz (2008, 8) CSOs can operate as so-called "transmission belts" between civil society and political institutions by giving voice to citizens' needs. Yet, looking at the reality of those CSOs involved, this cannot be confirmed for European Security and Defence Policy (cf. Rodekamp 2010, 24). Furthermore, given the increasing professionalization and integration into the European political system of these CSOs, we rather see ourselves confronted with a situation in which *"Brussels talks to Brussels"* and not one of mass participation (Greenwood 2011, 202-3). This is indeed not only so for the field of foreign security and defence but given the weak public debate (cf. Chapter IX *infra*) it can arguably be supposed to be widespread where it concerns this matter.

Besides, even if there should be real public interest in accessing and influencing European foreign policy makers, it can be wondered if this would prove very successful. Given that at the European level most lobbying happens with the Commission and the EP, this seems problematic in the context of CFSP. The Commission is largely absent in the definition of this policy and the Parliament only plays a minor role in its implementation (cf. *infra*). Indeed, the EU's FSDP is, as exemplified before (cf. Chapter VI *supra*), for an important part defined by the European Council and the Council of Ministers. This (European) Council now – keen to portray itself as an institution where no lobbying takes place (Pohl 2006, 24) – proves to be the least accessible of the EU institutions (Mazey and Richardson 2002, 124, 143-48; also: Dembinski and Joachim 2014, 454; Fazi and Smith 2006, 31). Given its multi-headed, intergovernmental character, the (European) Council as such is difficult to interact with and therefore indirect lobbying – through Member State representatives and at national governments level – has become the route of choice for lobbyists (Hayes-Renshaw 2009, 78). This fragmented approach dilutes the impact of CSOs in matters of European foreign security and defence. By preferring the *national route* rather than the *Brussels route* (Greenwood 2011,

23-52) the development of Europeanised civil society representations seems to be structurally hindered. National interests will mostly prevail when working with these national players, i.e. national interest groups try to influence "their" representatives. Hence, because of the dispersed approach of the CSOs, each trying to play just one member of a multi-headed body, their overall impact on the European foreign security and defence policy will be rather restricted and not pushing to one specific direction.

2. Is a directly elected body being regularly consulted on European foreign policy, and can it actively participate in its daily conduct?

Historically, the *constitutional* role of the European Parliament in CFSP is limited. Lisbon has not substantially changed this. Art. 36 TEU states that the High Representative *"regularly consult[s] 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"*. Besides, the HR is also said to ensure that the views of the Parliament are duly taken into consideration. But, although Lisbon thus explicitly extends the parliamentary consultation to CSDP and raises the plenary debate on CFSP from one to two per year (cf. Chapter XII, 1 *infra*), the legal position of the European Parliament in CFSP is still marginal. Indeed, it is to be noted that these consultation and information rights do not cover individual decisions concerning concrete foreign policy actions, but only the *"main aspects and basic choices*[125]*"* (Thym 2008, 221). Besides, the Council has not conceded the EP's 'maximalist' demand that CSDP missions should be approved by an absolute majority of MEPs (Lord 2011, 1143). In that way, the Parliament continues as the junior partner (Cini and Borragan 2016, 250) in the day-to-day conduct of the CFSP.

This weak formal position however, has not hindered the Parliament to make the best out of its situation by using these new treaty provisions to assert its role in the CFSP and CSDP as much as possible (cf. Crum and Fossum 2014, 117-20; Wisniewski 2011). Already in a resolution of 5 June 2008[126], the EP takes a clear stance by emphasizing the stronger role it sees for itself in CFSP under Lisbon. This resolution states that the Parliament should be involved *"in the*

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[125] Art. 36 TEU, confirmed by the *Declaration by the High Representative on Political Accountability*, art. 1.
[126] European Parliament, *Resolution of 5 June 2008 on the annual report from the Council to the European Parliament on the main aspects and basic choices of the Common Foreign and Security Policy (CFSP)* – 2006 (2007/2219(INI)) europarl.europa.eu/sides/getDoc. do?type=TA& language=EN&reference=P6-TA-2008-0254 [25.04.16].

decision-making process so as to enhance the transparency of and accountability for the main choices of the CFSP" and stresses that *"Council-Parliament relations [...] need to be reconsidered in order to take account of the major reforms of the future CSDP and of Parliament's strengthened powers of scrutiny, following the transfer of the remaining Western European Union competences to the EU"*. This strong parliamentary commitment to enhance its proper position about CFSP also emerges through its involvement in the development of the EEAS or, for instance, its recent activism concerning the creation of a European defence union. Where it concerns the EEAS – as discussed in Chapter VI – the Parliament successfully increased its leverage on the conduct of the EU's external action by increasing its role in the nomination of the HR and by intervening directly on the service funding as well as obtaining at least an informal impact on the appointment of Heads of Delegation (cf. Koutrakos 2012, 198). As to the debate on closer European cooperation in matters of defence, poked up by the election of Donald Trump as US-president[127], the EP published on its own initiative an extensive report[128] in which it set out its position and ideas on the matter, thus trying to give content and direction to the discussion.

Furthermore, by agreeing on so-called Interinstitutional Agreements with the other EU institutions – a *technique* it already successfully used before in this context (cf. Maurer et al. 2005) – the European Parliament has succeeded to obtain some more powers in CFSP. The IIA of 20 November 2002 and that of 14 June 2006 are important in this respect. The first one deals with the access of MEP's to sensitive information in the field of security and defence (cf. Chapter X, 4 *infra*), while the second regulates, amongst others, the involvement of the EP in financing the CFSP (cf. Chapter VII *supra*). In accordance with art. 113 of its rules of procedure, the Parliament has on its own initiative also passed resolutions stating the terms on which it would have approved CSDP missions when it would have had the formal power to do so[129] (cf. Barbé and Herranz Surrallés 2008, 91). The possible long-term impact of this activist strategy however is (still) difficult to predict. On the one hand, this could develop into a future source of influence in so far as the Council concludes that it is better to discuss the terms of a

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[127] EUObserver, 15.11.2016, "EU crafts defence plan in Trump's shadow" euobserver.com/foreign/135905 [10.05.17].

[128] European Parliament, *Resolution of 22 November 2016 on the European Defence Union (2016/2052(INI))* europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2016-0435 [10.05.17].

[129]Cf. European Parliament resolution of 13 June 2013 on the reconstruction and democratisation of Mali europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0281&language=EN&ring=B7-2013-0254 [08.01.14].

mission with the Parliament than leave themselves exposed – if things subsequently should go wrong – to the charge that they did not take all risks into account at the time of deployment (Lord 2011, 1143). On the other hand, the Parliament can well give its opinion; in the end, there are no formal provisions preventing the Council from adopting decisions contradicting the views formulated by the EP (Schmidt-Radefeldt 2011, §16). So, despite these efforts and a general observation that the obligation to consult the Parliament on foreign and security policy is taken increasingly seriously (Gourlay 2004, 188) – and as already mentioned before – the role of the EP in the daily conduct of CFSP remains overall still marginal. Essentially, Lisbon did not change the CFSP's multi-governance character. Therefore, the role of the European Parliament in its daily conduct is mostly restricted to being a kind of a sounding board of the European Council and the FAC which, supported by their intergovernmental preparatory and advisory organs, and the High Representative, clearly show the way where it concerns concrete CFSP actions.

Within this policy's still strongly intergovernmental context, ultimately, governments and diplomats remain key actors, who must resort to their national basis for acceptance of their activities (Wessels and Bopp 2008, 15). Under Lisbon, this national basis has officially obtained increased access to the European Policy system by the introduction of art. 12 TEU. In addition, also the already existing Protocol 1 on the role of national parliaments in the European Union deals with the role of national legislatures. This annex to the Treaty clarifies in its art. 10 that a conference of Parliamentary Committees for Union Affairs *"may [...] organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy"*[130]. However, there are limits to how far the European level can be controlled through the democratic institutions of the Member States, as for example, the costs to national parliaments of acquiring the specialized forms of expertise needed for effective democratic control will increase where they have to monitor both domestic and Union matters (Lord 2004, 181-82; cf. also Chapter XII, 1 *infra*). Besides, when looking at *Licensing* and *Budget* discussed before, it can be strongly doubted if their involvement in the day-to-day European foreign policy will be substantial. Even if a national parliament is involved in the definition of its own country's vision and position on European foreign policy, this does not per se mean that it has any substantial means of control over the actual European foreign policy. After all, as pointed out, the High Representative, for

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[130] Protocol on the role of national parliaments in the EU, OJ C 306, 17.12.2007, pp.148-150.

instance, could be appointed even when an individual Member State is opposed; and the involvement of each individual national parliament within its own national context would not change this. Or, if we take national parliaments' participation in decisions about the national military participation in CSDP missions, we again have to ascertain that involvement in the national decision about the country's own contribution does, as such, not mean much in relation to the mission's actual launch.

And, in any case, in many Member States, the parliament seems to plays no role whatsoever (or only a very weak role) in the policy-making process preparing CSDP missions (cf. Chapter VII *supra*, also: Peters et al. 2010, 10–1; Born et al. 2008, 15–31). In fact, as their role in national foreign policy is often restricted (cf. Diedrichs 2004, 31-32), this in European foreign and security policy is too. Looking at the on-going naval mission, EUNAVFOR Atalanta off the coast of Somalia, we see that among the twelve EU Member States that are currently on the ground or did so in the past, only five acted upon formal approval of their parliament. Germany came into action after a vote in the Bundestag on 22 December 2008. Only having the right of approval since 2005, following the contested Spanish participation in the Iraq War (Crum and Fossum 2014, 113-14), the Spanish parliament approved the country's participation on 21 January 2009 and upon approval of the Senate, Italian contributions followed in March 2009. In Finland, a government's bill on the country's participation to the mission was submitted to the Parliament in September 2010, to be adopted in November 2010 (Klabbers 2012, 384). The Swedish Riksdag finally agreed unanimously for action in March 2010, after strong debate (cf. Österdahl 2011, 43-45). France, the UK, The Netherlands, Belgium, Greece, Portugal and Romania on the other hand did not (have to) pass through a parliamentary approval prior to the deployment of troops. Although situations vary between these countries[131], they have in common that the executive decided on sending troops for Atalanta without real parliamentary say. Answers on the *Questionnaire among MSP* are in line with these results; showing that in less than half of the Member States (11 out of 25), binding parliamentary involvement (by mandate and/or approval) exist when the country is about to participate in EU military missions. This ratio is even lower in case of civilian EU-missions, in which case only eight national parliaments have a say about participation (Table 3).

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[131] Cf. Wagner (2006) for an overview of deployment procedures in different countries and the role of the parliament therein.

Table 3: Mandate/ approval by national parliaments of participation in EU military or civilian missions

TOTAL	Question	Austria	Belgium	Bulgaria	Czech Rep.	Croatia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Luxembourg	Malta	Netherlands	Poland	Portugal	Slovakia	Slovenia	Spain	Sweden	UK
11	A mandate from the parliament is needed (ex ante) before the country can participate in EU military missions: the executive can decide the country's participation, only when it disposes of a previous mandate of the parliament, that authorizes it to do so.	1	0	1	1	1	1	1	1	0	0	0	0	0	0	0	1	0	1	0	0	0	0		1	1
11	Approval by the parliament is needed (ex post) before the country can participate in EU military missions.	1	0	1	1	1	1	1	0	0	1	0	0	0	1	1	1	0		0		0	0	1	0	0
6	A mandate from the parliament is needed (ex ante) before the country can participate in EU military missions: the executive can decide the country's participation, only when it disposes of a previous mandate of the parliament, that authorizes it to do so.	1	0	1	1	0	0	0	0	0	0	0	0	0	1	0	1	0	1	0	0	0	0		0	0
7	Approval by the the parliament is needed (ex post) before the country can participate in EU civilian missions.	1	0	1	0	0	0	0	1	0	0	0	0	1	1	0	1	0		0		0	0	1	0	
	Comments:				(a)		(b)		(c)				(d)		(e)		(f)				(g)			(h)	(i)	(j)

1 = yes, 0 = no, empty = not answered. In case of a bicameral parliament and where both houses answered, I combined the results.

(source: Questionnaire among MSP)

a. The Czech Constitution stipulates two procedures. The Government may decide on troops deployment for up to 60 days. The Parliament (both chambers) has to approve such deployment (ex post). This provision could be use in cases of rapid response forces deployment (EU Battle Group, for instance). Secondly, there is a provision on the participation of Czech armed forces in an international military operation. The Government has to ask the Parliament for approval ex ante. The same provisions for approval of military operations apply to Czech participation in EU civilian missions.

b. Military: the answers concern military contributions to NATO or UN operations. DK does not participate in EU military operations due to its opt-out from EU defence cooperation. Civilian: follows the general procedure for Danish EU obligations. Before the government reaches a decision, it has to consider whether the participation is of major significance to Danish interests. If so the government will seek a mandate from the European Affairs Committee. If not, it just informs the committee. So far none of the Danish contributions to EU civilian missions have been subject to a mandate.

c. In reality, parliamentary approval ex ante would always be needed; the political reality is that government would subject the decision to a vote.

d. Government informs the Assembly immediately after a decision is taken, but does not need its approval.

e. Under law n. 145/2016, authorizations are approved on a yearly basis. Each Chamber is free to express its approval through any document envisaged by its rules of procedures. A draft bill is only required in case penal war code is to be applied during the mission (art. 2.2, Law 145/2016).

f. Whereas it is up to the Committee to give the ex-ante assent, it is the Conference of Presidents that gives its assent in the form of a grand-ducal regulation (not a law).

g. Whenever the Government decides to involve military forces or contingents in military operations abroad, it must notify the parliament and submit a detailed report about that involvement (including the requests that call for the involvement, together with their reasons; draft decisions or proposals of the involvement; the military resources to be involved, the type and level of risks estimated, the foreseen duration of the mission). If justified by the nature of the mission, this notification occurs when the security term required by the action has been completed. While the formal authorisation by the parliament is not necessary for the involvement of military contingents in military operations abroad, it is nonetheless responsible, after it has been informed by the Government, for the monitoring of the participation of such contingents. The Government submits to the parliament a

detailed report on the involvement of Portuguese military contingents abroad twice a year, without prejudice to other occasional or urgent information that may be requested, and the Government submits a final report to the parliament within sixty days of completion of the mission. The monitoring by the parliament is undertaken by the National Defence Committee.

h. *There is no established procedure for the participation in EU civilian missions. On a case by case basis, similar procedures to that followed in the framework of military missions would apply.*

i. *Mandate is needed only for the deployment of armed troops.*

j. *If deployments are part of training etc., the UK government would submit a memorandum on the policy framework to ESC, which would decide whether to clear from scrutiny, ask further questions or recommend for debate. In most cases, it clears these missions or asks for more information. If the EU was engaging in a hostile deployment the House as a whole would expect to debate the matter. - Any EU CSDP mission must be submitted for parliamentary scrutiny. However, this can be overridden if there is not sufficient time to clear the decision. The decision to act rests with the Government.*

3. Conclusion: participation in CFSP, normatively democratic?

As the time of the "permissive consensus" – i.e. the silent and unspoken acceptance of the integration process by a majority of European citizens (Lindberg and Scheingold 1970, 40) – is over, the EU institutions started increasingly thinking about how to involve the public more closely. Hence, in its 2001 White Paper on Governance[132], the European Commission proposes opening up the policy-making process to get more people and organisations involved in shaping and delivering EU policy. In this regard, both participation and public debate are mentioned as crucial instruments for good democratic governance. When looking however at the way the participation-indicators are met in the context of the EU's current foreign and security policy, we can identify certain drawbacks.

Although direct democracy formally exists under some form in most Member States, it does not serve as a channel of participation in European foreign security policy. Only in rare cases does direct democracy apply to foreign security and defence, let alone to European foreign security and defence. Since its first foundation with the Treaty of Maastricht in the beginning of the 1990's, no single referendum was organised about European foreign security and defence policy, with the probable exception of the Danish referendum on the Maastricht Treaty. One of the issues at stake during this referendum was defence cooperation for which Denmark – after initial refusal of the Treaty – obtained an opt-out. The Lisbon treaty did not lead to a change in this regard. Neither at a national level, nor at EU level – where Lisbon introduced some very limited direct democracy tools – do citizens seem to have direct access to the EU's foreign policy-making process. In this sense, the EU does not essentially differ from the large majority

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[132] European Commission, "European Governance – A White Paper", COM(2001) 428 final, OJ C 287, 12.10.2001, pp.1-29.

of its Member States where direct citizens' participation in foreign security and defence policy is also inexistent. Due to a formal exclusion of this policy from the scope of direct democracy, as is the case for the EU's citizens' initiative or the Estonian referendum[133], or just a result of the traditional exceptionality of foreign affairs, the result is essentially the same: citizens hardly play any direct role in the development and concrete establishment of foreign security and defence policy.

Where it concerns civil access to the European foreign policy makers through organised groups, the point is not so much if there are possibilities, but rather if there is currently demand for such access. Still today, interest groups do not seem particularly interested in foreign security and defence matters and when they do it is mostly from a strictly national point of view. Therefore, their approach is nationally dispersed and hence limited. Besides, those organisations being active at the European level not only seem to focus their efforts on the *wrong* institutions, but also somehow act disconnected from the *real* society out there. Regarding this last point it can indeed be wondered *"whether, how and to what extend these organisations that are active in lobbying at the EU level improve the democratic quality of decision-making in the CSDP"* (Dembinski and Joachim 2014, 450).

The absence of (direct) civil society participation could be compensated by an extensive parliamentary involvement in European foreign and security affairs. Yet, both at the European as well as the national level, this parliamentary involvement finds itself faced with important difficulties. The European Parliament repeatedly gives prove of a *participative eagerness* and certainly has made efforts to enhance its role in the day-to-day conduct of the European foreign and security policy. However, the particularities of foreign policy mentioned before, prevent it from becoming a *real* actor in CFSP. Being indeed consulted on the general direction of the CFSP, the Parliament is mostly left aside when it concerns concrete dossiers. Besides, it can difficultly be described as an active player; governments and diplomats play the game without much consideration for the EP. At the same time, also national parliaments are largely pushed along where it concerns European foreign and security policy. This becomes clear when looking at their role in the deployment of troops abroad. Notwithstanding things are not necessarily unchangeable – as shows the Spanish case – we cannot deny that in many EU-Member States

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[133] Many exceptions exist regarding issues that cannot be treated by direct democracy. In Estonia for instance, national defence cannot be subject to referendum; or, in Portugal and Hungary, civil service is excluded. For an overview of topics and restrictions, see *IDEA Direct Democracy Database* idea.int/elections/dd/search.cfm# [06.05.15].

the Parliament plays no significant role whatsoever where the participation of the army in EU-missions is concerned. Besides, the fact that some do, not necessarily makes for an improvement of the CFSP's overall normative democratic legitimacy. In line with what I have pointed out in the previous Chapter about budget control by national parliaments; this creates a situation in which a common policy – binding the EU in its totality – incorporates an unbalanced parliamentary participation. Given that the participating armies act under one mandate; and on the field, operate as one organization, the involvement of some people's representatives may well make for some partial public control, it does not make for public control, *with* political equality.

In a certain way however, it should not be very surprising that especially the participation in the daily conduct of foreign affairs points out to be not very well developed, as it is exactly in this daily conduct that speedy decision-making and secrecy can have their importance and that executive independence is arguably necessary to be effective. This line of thought seems moreover to be confirmed by the observation that exactly in these situations urging for rapid reaction, the parliament(s) hold(s) weaker grip on the budget (cf. Chapter VII *supra*).

IX.   Public debate about EU foreign policy

Summary: This chapter evaluates public debate mainly through the proxy of media coverage. Based on a systematic search in three comprehensive press databases, it looks at the coverage of (different elements of) European foreign security policy in a comparative way. In a second time, I look at more specialised, so-called, Europress, and its relevance for the public debate. Furthermore, the chapter assess how popular EU foreign policy institutions and actors are on social media.

As the then Belgian minister of foreign affairs, Louis Michel, rightly pointed out at the EU General Affairs Council of 16 July 2001, *"a public debate on CFSP/ ESDP is becoming all the more important, since the original goals of the European project – the maintenance of peace, stability and prosperity – run the risk of disappearing from the popular consciousness"* (cited in Ehrhart 2002, 7). Given that we cannot really find grounds to believe that there would be formal restraints on the possibility for such a debate[134], and opinion polls point out a continuously large popular support for the idea of a common European foreign policy (cf. Chapter I, 2 *supra*); the question remains whether or not, and to what extent such a debate actually exists in Europe.

When operationalizing public debate as a criterion for democratic legitimacy in foreign policy (Chapter IV, 5.1.4 *supra*), I argued that there are good reasons to almost equate the media and their contents with the public sphere, and that, therefore, we could use the proxy of media coverage to assess the presence and vivacity of the public debate. Building on the observation that the media indeed shape public opinion about the European Union (Peter et al. 2003, 306), there is little reason to assume that this argument does not also apply to the EU's foreign security policy. That is, media content such as news reports (independent of their format: written, television, radio, …), newspaper articles, editorials or opt-ads can indeed serve as a proxy for public debate about the EU's foreign policy. Hence, the first indicator that has been put forward in this regard (indicator 8) concerns the extent to which EU foreign policy is covered in the media. However, today probably more than ever, policy makers can communicate directly with citizens. Especially by means of social media they can tell and show the people their daily work and communicate directly to - and with the people about what they

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[134] In rankings such as World Press Freedom Index (21 EU countries in top 40) or Freedom House (22 EU countries marked as "free"), EU countries are traditionally scoring well.

are doing and why. Question then is if the people pick up this direct communication, hence informing themselves about the (foreign) policy in question (indicator 9).

1. Do the media report about the CFSP on a regular basis?

While opinions are divided with regard to EU coverage on the whole – varying notably between the assertion that *"one out of three articles in a European quality paper makes political reference to Europe* [and] *one out of five reports directly about at least one European issue"* (Trenz 2004, 311) and the affirmation that *"overall, EU topics account for an extremely small proportion of reporting in [...] national media"* (Machill et al. 2006, 78; also: Hube 2003, 67– 90) – things seem much less ambiguous when looking at European foreign and security policy in particular. Although it may well be asserted that the coverage of European foreign security and defence policy is primarily Europeanized in a sense that there is great emphasis on EU actors and evaluations are rather positive (Kandyla and de Vreese 2011), news coverage of EU foreign policy proves also to be very limited. Following a key-word based research in three extensive press databases – *Europresse*, *Genios* and *Gopress*[135] – several indications point out that European foreign security and defence policy is a topic poorly dealt with in many aspects[136].

To start with, by simply counting the number of articles for each year since Lisbon[137] that cite the name of the High Representative, we see how in comparison with other *international personalities*, the head of the European diplomacy is rather scarcely mentioned. Looking at five high-level European officials – Commission president (Barroso, Juncker), Council president (Van Rompuy, Tusk), EP president (Busek, Schulz), ECB president (Trichet, Draghi) and the High Representative (Ashton, Mogherini)[138] – we note that for each of the three databases the name of the High Representative is systematically less mentioned than that of the Commission president and of the ECB president. Besides, for *Gopress*, also Council president "Van Rompuy" or "Donald Tusk" have systematically more hits. And, for *Europresse* and *Genios*,

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[135] Europresse : bpe.europresse.com/, Genios : genios.de/, Gopress: gopress.be/info/nl
[136] I searched the databases from 01.01.2005 to 31.12.2016, using terms in English, French, German and Dutch for Gopress (thus largely covering the database, given its geographical focus on the Benelux). For Europresse I additionally searched in Spanish and Italian, thus covering 65,67% of Europe's native language use (cf. languageknowledge.eu /countries/eu27). In Genios, I searched in the German press. For more information on research queries, cf. Annex 6.
[137] Entered into force on 01.12.2009; for practical reasons, I understand "since Lisbon" in the context of this chapter as of 1 January 2010. "Since Lisbon" thus covers the years 2010 to 2016.
[138] With each person searched on for the exact time of his/ her time in office, cf. Annex 6.

these names are cited more often than that of the High Representative for, respectively, the years 2012, 2015 and 2016; and 2010, 2011, 2012, 2015 and 2016. Where, finally, it concerns the president of the EP, we note that – and although being mentioned less than the HR for the overall period 2010-2016 in both *Gopress* and *Europresse* – at least for *Gopress*, he seems to catch-up and is distinctly more mentioned than the HR for both 2014 and 2016 (cf. Figure 5) In that way, it should of course not astonish that "Catherine Ashton" and "Mogherini" are passed with distance by national leaders such as "Merkel", "François Hollande" or "Obama"; but also – and more notably – by UN secretary general "Ban Ki-Moon", or American Secretary of State "Hillary Clinton", or "Kerry".

Figure 5: High level EU officials mentioned by the media - comparison
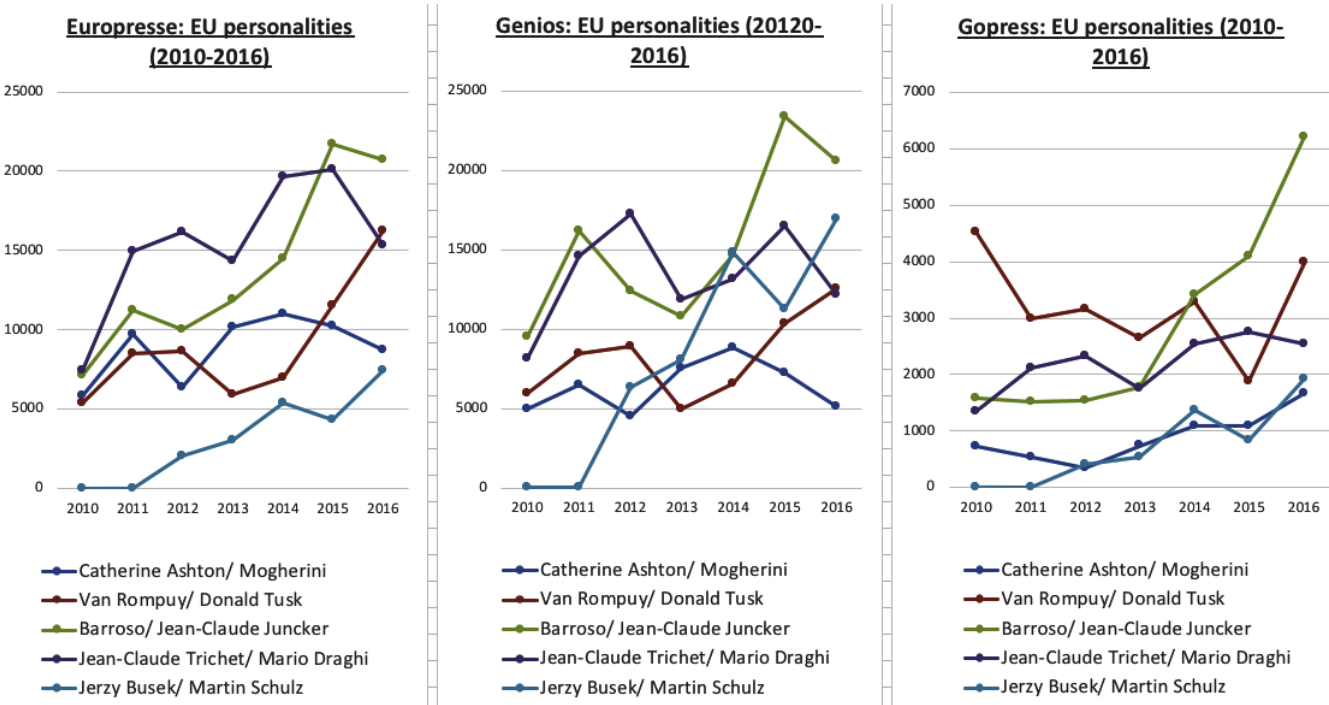
What is more, the entry into force of the Lisbon treaty seems not to lead to a notable change in this regard. So, for instance, measured against the overall number of articles registered in each of the respective databases, for the years 2010-2016, the name of "Catherine Ashton" or "Mogherini" is not notably more cited than that of the pre-Lisbon High Representative, "Solana", for the years 2005-2009. The same goes for the function as such. Although, in absolute numbers, an increasing number of articles exist that include a reference to the (name of the) High Representative, in relative terms the HR is not talked about more in articles published after Lisbon, than before (cf. Table 4).

Furthermore, not only is the "EEAS" the least cited EU institution – with 8.655 hits in *Europresse*, 1.457 in *Genios* and 1.006 in *Gopress*, against respectively 16.085, 5.209 and 2.874 for the "Court of Justice" – the second least mentioned European institution in each database – but also is European foreign security or defence policy overall little spoken of. Considering the number of articles which refere to the "European Union", those that talk about "European foreign policy", "common foreign and security" or "European defence" are comparatively few. Or, in comparison with other European policy topics: there is not only the "common agricultural policy" that is widely more mentioned, but also "Schengen" and the "Erasmus program", which are both scoring always better than "common foreign and security" or "European defence" (cf. Table 5). Besides, where the exact interpretation of these data could still be debated; another, and I believe unambiguous, indication is the number of times European civilian- or military missions are mentioned. Searching on the acronyms of all past- and on-going missions, we see that they are but very scarcely mentioned: since Lisbon, all 34 EU-missions together count for 6.658 hits in *Europresse*, 7.756 in *Genios* and 877 in Gopress.

Table 4: HR mentioned by the media - evolution over time (2005-2016)

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Genios (total number of articles)	9841547	10439021	10977895	11716254	11792606	12634492	13737715	14248805	14203457	13986862	16896793	15797650
Solana/ Catherine Ashton/ Mogherini	2980	7086	4518	3908	3218	4959	6516	4523	7547	8831	7277	5167
% TOTAL	0.03%	0.07%	0.04%	0.03%	0.03%	0.04%	0.05%	0.03%	0.05%	0.06%	0.04%	0.03%
High representative	481	1303	985	609	642	1453	3029	2173	3654	4766	4075	3013
% TOTAL	0.00%	0.01%	0.01%	0.01%	0.01%	0.01%	0.02%	0.02%	0.03%	0.03%	0.02%	0.02%
Europresse (total number of articles)	4791281	5020317	5476672	5907779	6035118	7017085	10023823	11516557	12526826	12946494	14209914	15957066
Solana/ Catherine Ashton/ Mogherini	3051	5887	4905	5317	3254	5799	9727	6402	10131	11008	10219	8693
% TOTAL	0.06%	0.12%	0.09%	0.09%	0.05%	0.08%	0.10%	0.06%	0.08%	0.09%	0.07%	0.05%
High representative	473	1679	1024	575	1130	1394	1339	653	1179	1600	1310	1180
% TOTAL	0.01%	0.03%	0.02%	0.01%	0.02%	0.02%	0.01%	0.01%	0.01%	0.01%	0.01%	0.01%
Gopress (total number of articles	1583203	1057243	1610733	1712555	1666202	1694734	1488758	1885685	2435754	2645397	2654426	4245456
Solana/ Catherine Ashton/ Mogherini	384	339	434	535	400	725	540	331	737	1087	1091	1659
% TOTAL	0.02%	0.03%	0.03%	0.03%	0.02%	0.04%	0.04%	0.02%	0.03%	0.04%	0.04%	0.04%
High representative	50	32	119	61	171	157	112	76	170	336	278	304
% TOTAL	0.00%	0.00%	0.01%	0.00%	0.01%	0.01%	0.01%	0.00%	0.01%	0.01%	0.01%	0.01%

This unequivocally confirms Stephanie Anderson's (2013, 7-8) findings, who based on a search in Google News concluded that CSDP missions are *"little mentioned and little debated"*. Or, to compare, NATO's single ISAF mission is with respectively 21.944, 38.922 and 1.550 results clearly much more talked about. These findings thus seem to confirm Helmuth Kuhn's (cited in: C. Bickerton 2011, 104) observation that compared to NATO missions, EU missions very often *"fall below the radar screen"*. Furthermore, the entry into force of the Lisbon treaty, again, does not seem to have led to considerable change in this regard. In that sense, foreign policy related issues seem to confirm a more general observation concerning EU topics all

together: based on the three press databases, EU related issues are not considerably more mentioned since 2010, than before (cf. Annex 6).

Table 5: EU policy fields mentioned by the media - comparison (2005-2016)

Europress	2005-09	2010-16	Genios	2005-09	2010-16	Gopress	2005-09	2010-16
European Union	431206	1159819	European Union	1642687	3309643	European Union	56822	135757
European migration policy	70	395	European migration policy	242	818	European migration policy	34	174
European asylum policy	48	418	**European Defence**	1554	2120	European energy policy	180	244
European energy policy	640	1191	European energy policy	2136	2184	**Common foreign and security**	161	244
Common foreign and security	1298	1772	**Common foreign and security**	2215	2501	European asylum policy	45	313
European Defence	1472	2253	European asylum policy	508	3640	**European Defence**	238	587
Erasmus programme	1556	5481	Erasmus programme	1349	4448	**European foreign policy**	366	780
European foreign policy	8362	10853	**European foreign policy**	3120	4871	Erasmus programme	418	945
Common agricultural policy	17037	28822	Common agricultural policy	5505	10138	Common agricultural policy	977	1841
Schengen	7497	46579	Schengen	27403	57594	Schengen	1271	10676
Eurocrisis	0	65519	Eurocrisis	0	170856	Eurocrisis	0	14305

Certainly, systematic media coverage of EU-affairs – including foreign security and defence issues – exists through a specialized – mostly online – press, which daily follows the ins and outs of EU-politics. Emblematic examples in this regard are *Politico* (until end of April 2015 *European Voice*), *EUobserver* and Euractiv[139]. Yet, such press can hardly be taken as a proxy for a larger public debate or be supposed to shape such public debate. Simply based for example on the likes and follows they receive on their Facebook-pages compared to other press sources[140], it seems safe to state that at least their direct impact will be modest. Given the fact that they are clearly much less *liked* than many other press sources (cf. Figure 6); which for that matter have a more restrained geographical reach, it obviously follows that they are much less known with the public.

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[139] Politico: politico.eu/, EUObserver : euobserver.com/, Euractiv : euractiv.com/

[140] On 16.05.17, I typed the name of each press source in the FB-search field. On the individual FB-page of the given press source, we then see the current number of likes or followers, i.e. of individual persons that like this specific FB-page or follow it. Given the nowadays generalized use of FB, this can arguably be taken as a good proxy for the public's familiarity with this press source and thus their direct impact.

Figure 6: Popularity of press sources on Facebook
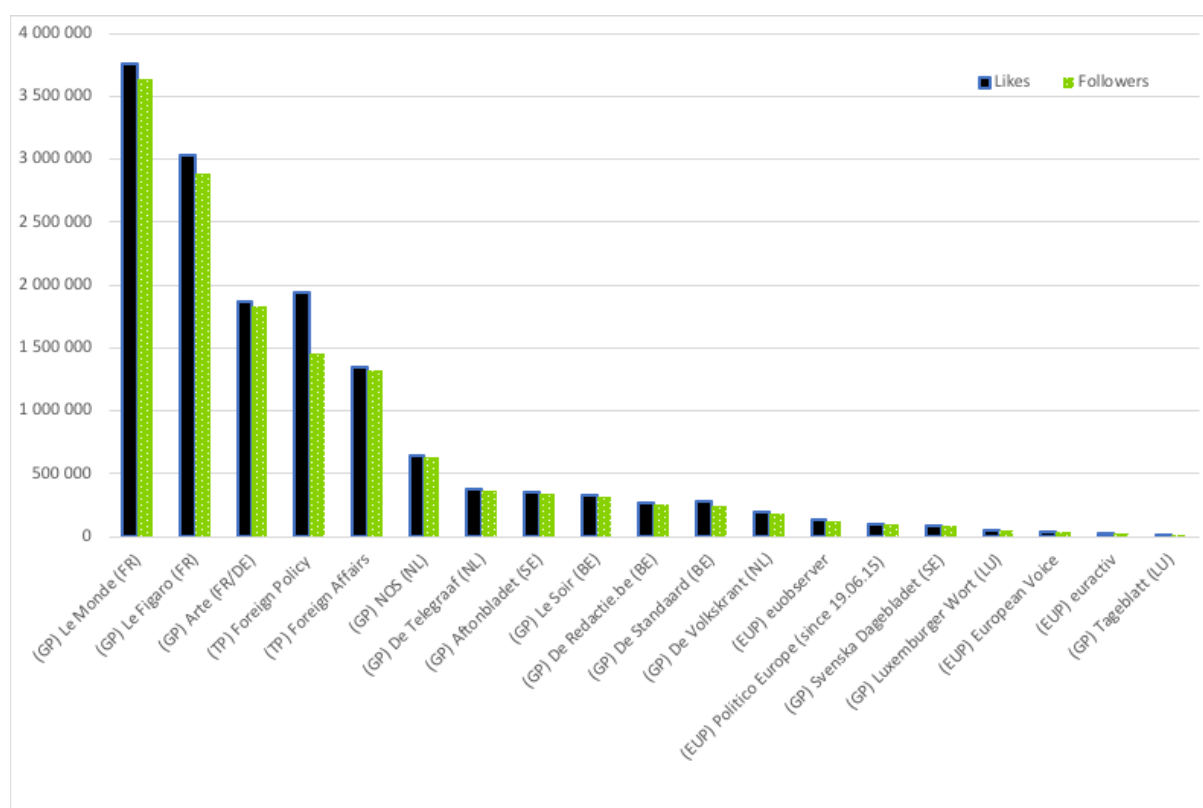
GP = General press – TP = thematic press – EUP = EU-specific press

Total numbers of likes and followers as indicate on the Facebook page of each respective press source, on 16.05.2017 (source: www.facebook.com)

This seems further confirmed by the limited readership of 1.5 million people and the distribution of 20.000 printed copies of its weekly edition, or even the 63.000 readers of its *Brussels Playbook*, that *Politico Europe* itself claims to have[141]. Thus, as the direct role in the public debate of this specialized press is narrow, it mostly has to pass through the filter of more general media. These general media however do not seem to rely very often on the EU-specialized media as a source of information and only scarcely pass their message through. Searching in *Gopress*[142], since the beginning of 2010 only 36 general media articles explicitly refer to *European Voice* as a source[143]; *EUObserver* is mentioned 77 times. *Politico Europe* only gave 32 results. However, the actual number of references made to this last news source

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[141] Politico, *Advertising* politico.eu/advertising/ [16.06.17].
[142] Gopress is the only of the 3 press databases where specific news outlets can be (de)selected. This is important in order to avoid counting cross-references, (i.e. references by the Euro-press to itself). I searched between 01.01.2010 and 31.12.2016, by ruling out *European Voice* (paper and website) as a source of reference. *EUObserver* and *Euractiv* are not included in the database.
[143] I searched for European Voice until 19.06.16, when it was taken over by Politico. In order to avoid articles that only talked about this take-over, I searched on "European Voice" NOT "Politico".

is difficult to evaluate. It seems often just referred to as *Politico*, which on the other hand, when searched on, would lead to a high number of unrelated hits as this can both refer to the American version of the news website or simply to a word repeatedly used as a prefix in Dutch or French. With 347 hits, finally, *Euractiv* is mentioned more often. Yet, taking everything into account and linked with the number of EU-related references that we can find in this same database (cf. Table 5 *supra*), I conclude that there seems not to be made much use of Euro-specialised press as source of information when dealing with EU-related topics. The about 2000 media citations per year, *Euractiv* mentions itself[144], are in that sense rather an extra proof of this specialised media's limited impact.

2. Is the public informed through direct communication with the CFSP actors?

With the emergence of social media, the possibility for policy makers to make direct contact with the people has increased considerably. Yet, the use of these social media not only can tell us how much these policy makers wish to communicate, but also how interested citizens are (in the topic of) that communication. That is, the degree with which the people follow particular political institutions and policy makers and consult the information these put online, arguably is a good indicator of how interested the public is in these institutions and policy makers and how informed they are about them.

In that sense, the popularity of the EEAS and the High Representative on different social media platforms, especially in comparison to other institutions and actors, certainly tells something about how *trending* they are as topics of public debate and can serve as an indicator of how much public debate there is about European foreign policy more in general. In this regard, the consecutive graphs in Figure 7 seem to confirm the previous observation about an all-in-all limited public debate about European foreign and security policy. On each of the four platforms that have been looked at (Facebook, Twitter, You Tube and Instagram), the EEAS and the High representative are clearly among the lesser, or even least, followed persons and institutions.

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[144] Euractiv, *Open EurActiv: Facts behind the media in 12 EU capitals, in 12 languages* euractiv. com/OpenEurActiv [16.05.17].

Figure 7: Popularity of different policy institutions and actors on social media
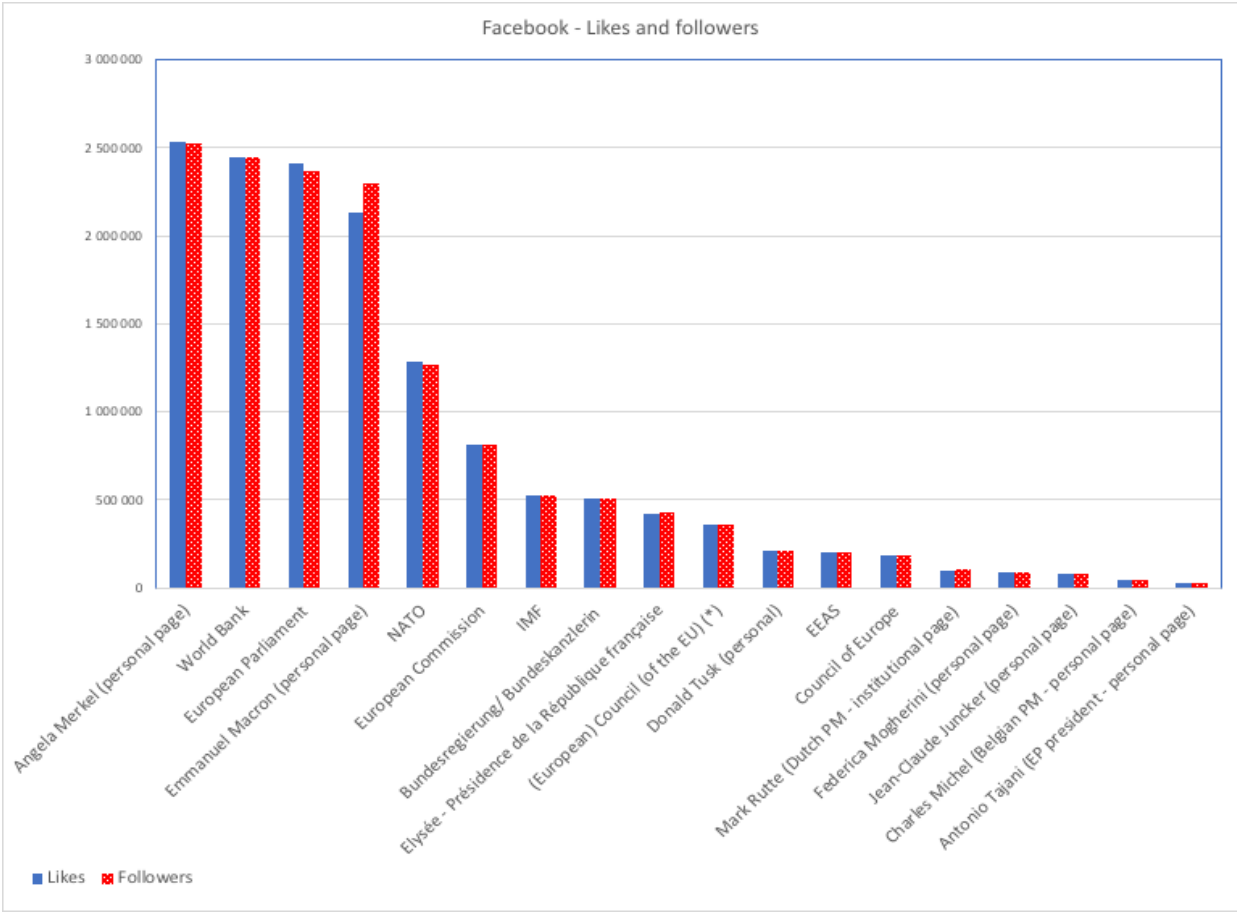
(*) The European Council- Council of the EU do not have separated Facebook pages.
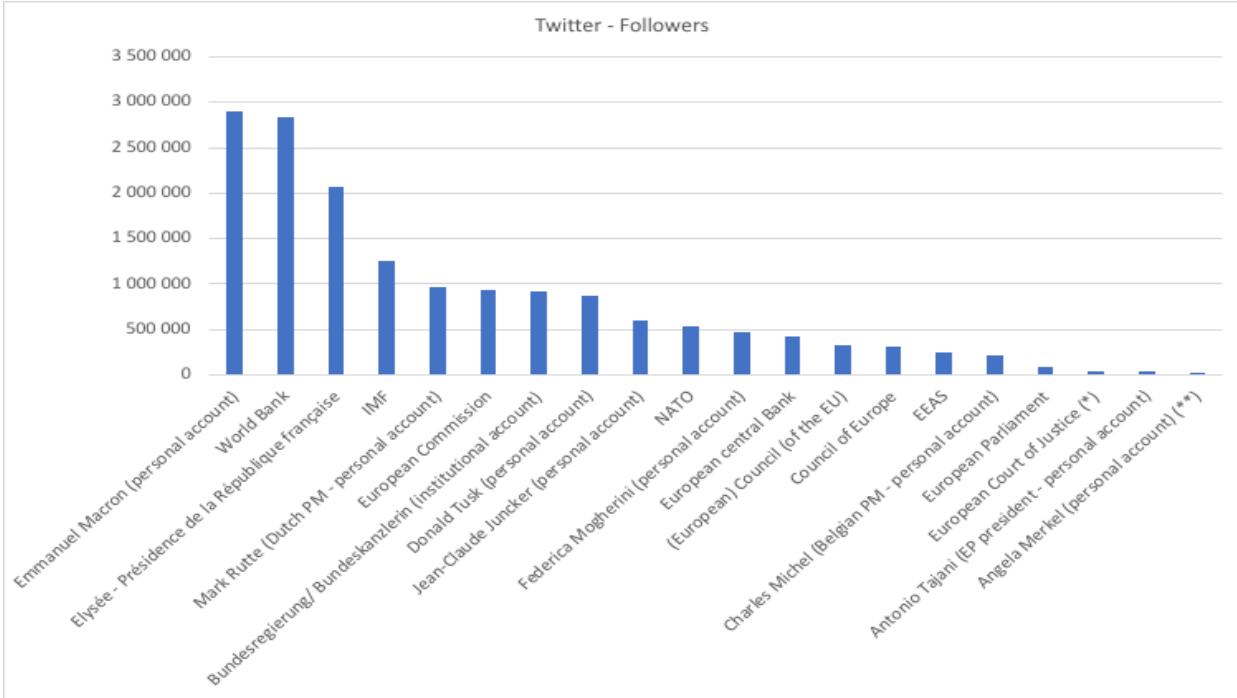
(*) Two separated twitter accounts, one in English and one in French
(**) Almost inactive on Twitter, last message from 16 January 2017

You Tube - Inscriptions to You Tube channel (*)
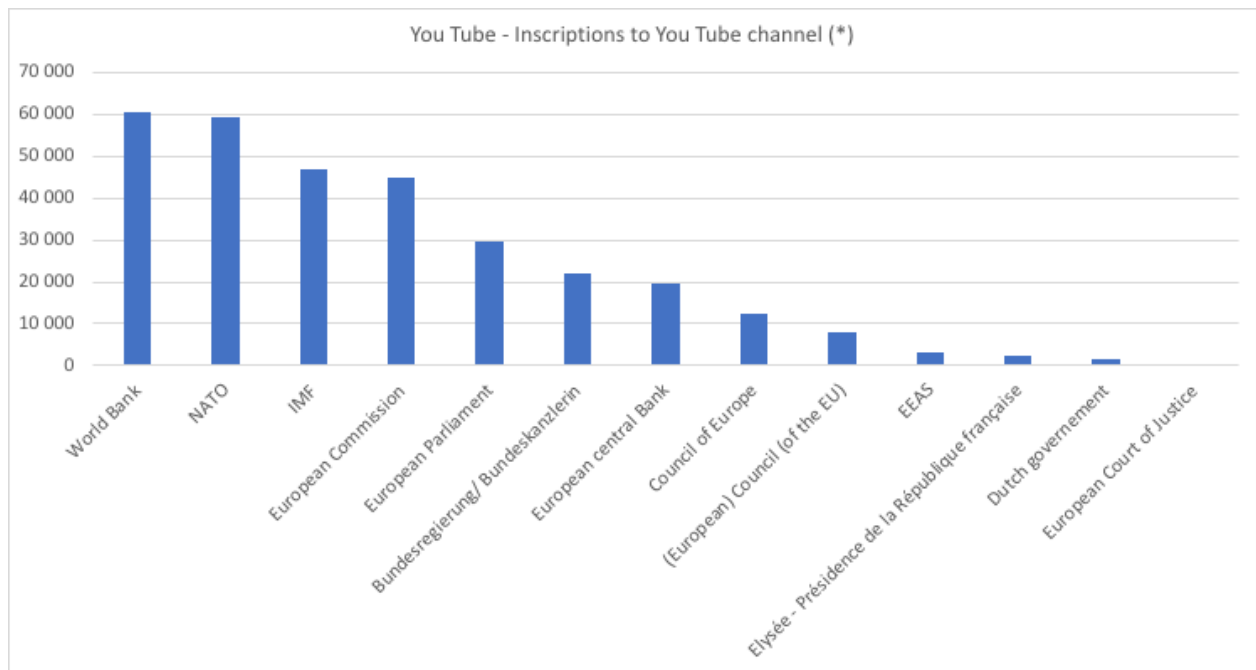
(*) You Tube channels are rather linked to the office/ institution than to a person. Therefore, there are no You Tube channels for individual politicians.

Instagram Folowers
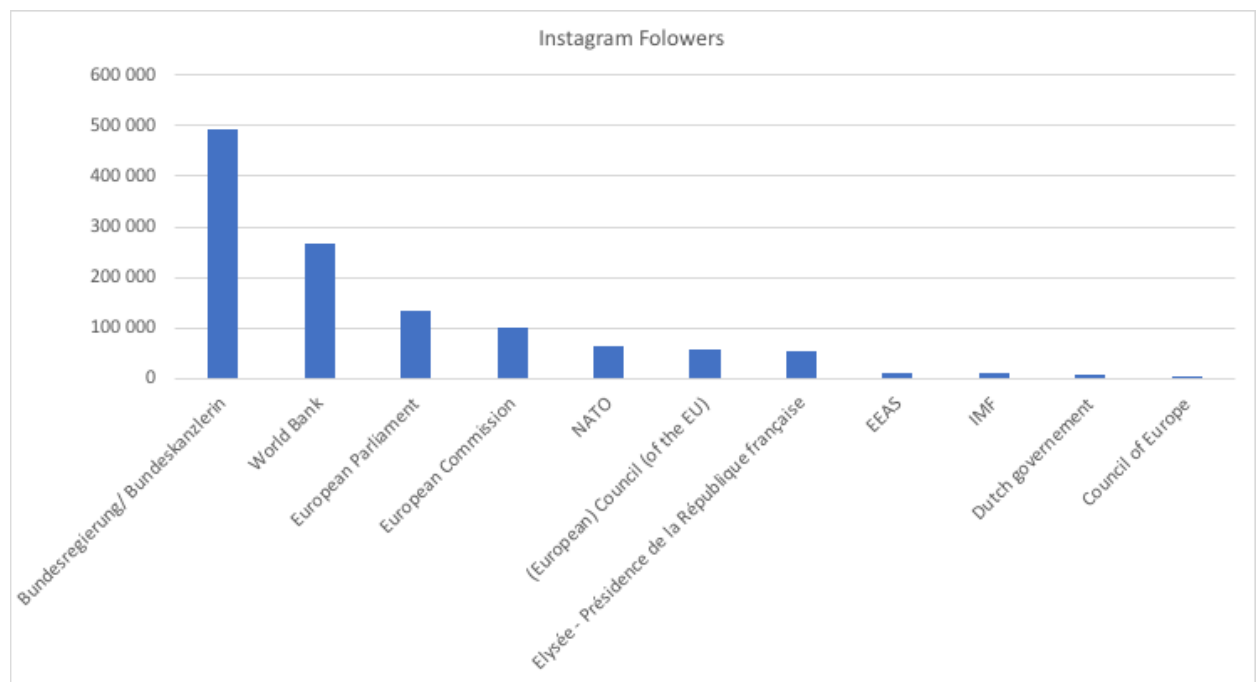
Sources: Facebook (www.facebook.com), Twitter (www.twitter.com/?lang=en), You Tube (www.youtube.com) and Instagram (www.Instagram.com). Consulted on 18.04.18.

The above findings are all the more telling when we take into account that the EEAS and the High Representative are comparatively quite active on social media. For those three platforms for which the total number of communications can be seen (Twitter, You Tube and Instagram), both the EEAS and the HR prove to be among the more communicative institutions and persons. (cf. Figure 8).

Figure 8: Social media activity of different policy institutions and actors
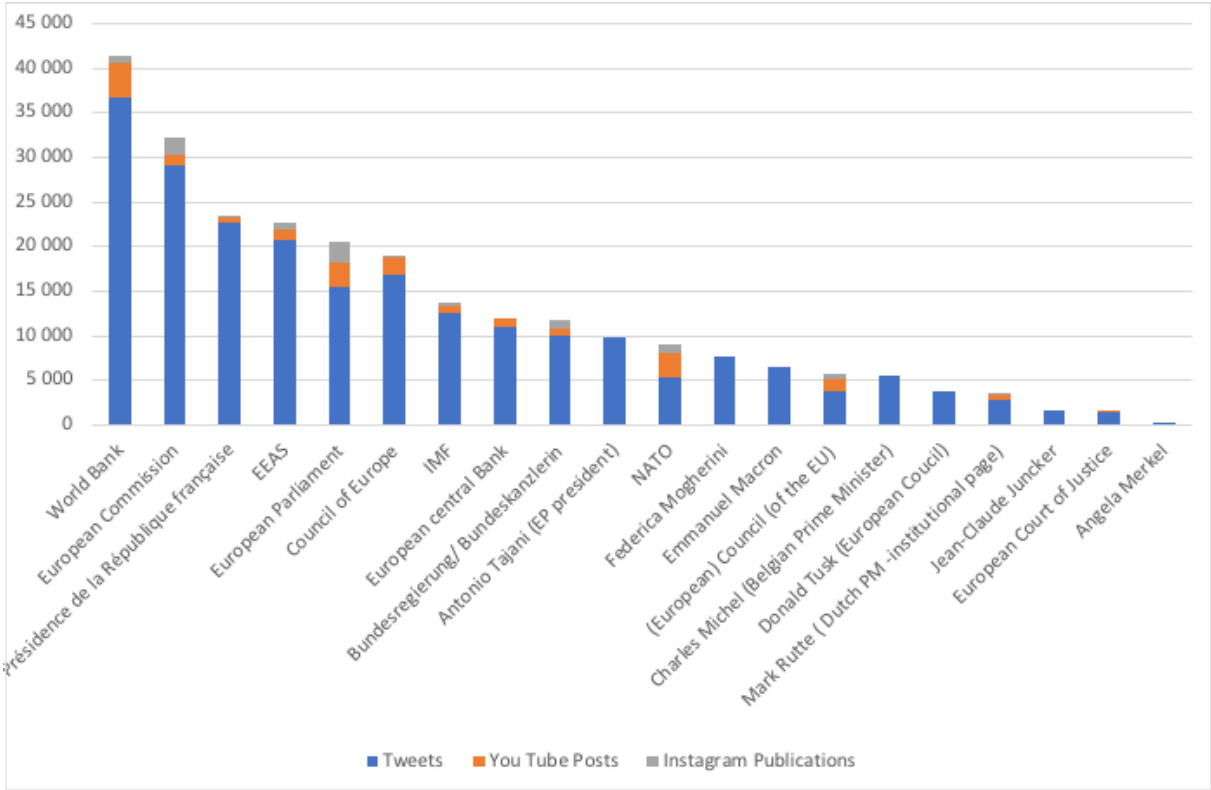
Sources: Twitter (www.twitter.com/?lang=en), You Tube (www.youtube.com) and Instagram (www.Instagram.com). Consulted on 20.04.18.

3. Conclusion: public debate in CFSP, normatively democratic?

The lack of public interest revealed through the assessment of the foregoing criterion of participation seems confirmed by the (absence of) public debate. Again, the point is not so much that there would exist a formal constraint on the possibility to have such a debate, but rather that it is currently not taking place. A good case in point for this is the overall coverage of European foreign policy by the press. Considering the totality of indications, it seems justified to conclude that European foreign security and defence is an issue not much spoken of in European media. Both the High Representative and her diplomatic service, the European External Action Service, are little mentioned in comparison to other European officials or offices. The same goes to a certain extent for European foreign policy as a policy domain; and certainly, for the EU's military and civilian missions abroad. In this regard, it is noteworthy to mention that the Lisbon treaty, and the changes it implied for the EU's foreign policy, did not seem to have any positive impact in this regard. It cannot be maintained that since then the EU's foreign policy (or one of its aspects) is covered more extensively. Where it concerns the more specialised *Europress*, the problem is that, so far, its impact is clearly too limited to serve as a

representative of public debate, let alone to instigate one. Having but a limited direct link to the wider public, it does not seem to fulfil an important role as input-provider to the more general press neither. That is, based on the relevant findings, general media does not often use the *Europress* as a source of information.

Furthermore, also the comparatively limited consultation by citizens of information that is made directly available by the European foreign policy players themselves through different social media channels, is pointing to to a rather constraint public debate about the issue.

Given the arguable link between both press coverage and use of social media on the one hand and public debate on the other, and the relevance of public debate as impetus to other criteria of democracy – be it public participation or oversight – this limited press coverage and ditto social media follow up are tangible shortcomings for the EU's foreign policy's normative democratic legitimacy.

X.   Transparency and secrecy in EU foreign policy

Summary: This chapter deals with transparency, traditionally understood as an important element of good, democratic governance for the EU. While doing so, the evaluation however takes distance from a sole focus on the public accessibility of documents but also looks at the organisation of secrecy. It discusses how secrecy is justified, how it is decided, and who has access to highly sensitive information.

Lack of transparency has often been invoked as a major problem of EU governance (cf. Curtin 2009, 206; Héritier 2003) and its improvement as a crucial step to reinforce the EU's democratic legitimacy (cf. Curtin and Meijer 2006, 110; Føllesdal 2003, 34; Neyer 2003, 703; Joerges and Dehousse 2002). The EU itself also repeatedly lauds the beneficial effects of transparency because it would *"enable citizens to participate more closely in the decision-making process and guarantee that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system"*[145]. Thus, transparency has been recognized, certainly since Lisbon, as a key requirement for legitimate, democratic governance and as a fundamental *constitutional* principle throughout the EU legal order (De Baere, 2013, p. 4).

However, where it concerns its foreign policy, the European Union does not escape the common dilemma that the demand for transparency contradicts a need for secrecy that often emerges in these matters. Just as is the case for *classical* State foreign policy – transparency in EU foreign policy should be understood in relation to efficiency-induced demands for secrecy. The question arises how the EU addresses this *secrecy dilemma*. Therefore, this chapter does not just look at transparency as the public accessibility of documents (indicator 9); but, accepting the idea that secrecy may be necessary for the EU's foreign policy to function, it also discusses the justification of such secrecy (indicator 10), as well as the way both transparency and secrecy are decided and organized (indicator 11). Finally, attention will be given to if and how elected representatives can have ultimate access to sensitive information by (indicator 12).

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[145] Joint Cases C-92/09 & C-93/09 *Volker und Markus Schecke GbR and Hartmut Eifert v Land Hessen* [2010], ECR 2010 I-11063

1. How accessible is relevant CFSP information to the public?

Except for art. 1§2 TEU and art. 10.3 TEU, acclaiming the general principle of openness; art. 15.3 TFEU explicitly states that *"any citizen [...], shall have a right of access to documents*[146] *of the Union institutions, bodies, offices and agencies, [...]"* and that *"Principles and limits [...] governing this right of access shall be determined by the European Parliament and the Council, by means of regulations [...]"*. Notwithstanding from a strictly legalistic point of view one could argue that this last article as such does not apply to CFSP/CSDP – as art. 40 TUE could be read as protecting CFSP from TFEU interference[147] (Jacqué 2010, §370) – in practice, the formal commitment of CFSP, not only to the general principle of openness but also to the concrete rule of transparency, is undeniable. Not only has the Court of Justice (CJEU) ruled that *"in the absence of provisions to the contrary"*, documents relating to Title V of the TEU are covered by the transparency principles that generally apply to Council documents[148], but also the CFSP falls within the scope of the Charter of Fundamental Rights of the EU of which art. 42 recognizes the access to documents in the same wording as art. 15(3) TFEU. Additionally, art. 15(3) TFEU applies indirectly. Art. 11 of the Council decision establishing the EEAS[149] states that the EEAS *"shall apply the rules laid down in Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001*[150]*"*, which exist in reference to the aforementioned treaty provision[151]. This is confirmed by the decision of the High Representative of 19 July 2011 regarding access to documents[152].

Looking at this formal outline, the EU seems to apply the same basic principles of transparency to its foreign policy as to other policies. However, what does this mean in practice? After all, art. 15.3 TFEU also stipulates that *"each institution, body, office or agency [...] shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to [...]"*; which certainly in foreign policy results in notable differences between key players in how they address transparency. Within the legal

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[146] *"Documents"* are *"any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility"*. Cf. *Regulation (EC) No 1049/2001*, art. 3, OJ L 145, 31.05.01, pp.43-48.

[147] Also art. 24§2; *"the common foreign and security policy is subject to specific rules and procedures"*

[148] Case T14-98 *Heidi Hautala v Council of the European Union* [1999], ECR 1999 II-02489.

[149] Council decision No 2010/427/EU, OJ L 201, 3.8.2010, p. 30–40.

[150] Regulation (EC) 1049/2001 (art.3), O.J. L 145, pp.43-48.

[151] Without an updated post-Lisbon version, Regulation (EC) 1049/2001 still details the treaty provisions (cf. *infra*).

[152] OJ C 243, 20.8.2011, p. 16–18.

framework outlined before, the HR/ EEAS, the Council and the European Council each have their particularities.

Where it concerns first of all the **European External Action Service**, a considerable number of documents is directly accessible on its website. Not only explanatory files and charts about the EEAS' legal basis and organisation; but also, profiles of top-ranking EEAS officials, speeches and statements of the High Representative, as well as information on the CFSP military and civilian missions can be found. These documents enable for the public to obtain a clear idea of the EEAS and its role in the EU's foreign and security policy. On the other hand, few of the documents provided for are real policy documents. So, the actual level of transparency this creates should not be overestimated (cf. Stie 2012, 44). Besides, many of these background documents do not to come from the EEAS itself, but from the Council, the Parliament or the Commission. Until quite recently, it was difficult to obtain an overview of *real* EEAS documents because of the absence of a centralized public register. Although it is explicitly called for by art. 10 of the HR's decision of 19 July 2011 and advanced as a key development by the EEAS *Access to Document Co-ordinator*[153], a register has only been operational since 2015. After a little more than two years in existence[154], the register contains 606 documents of which 183 (30.20%) can be directly downloaded. Trends, however, seem little promising. Apart from the last *trimester* of 2016, the number of new documents clearly slows down. And, for these first months of 2016, the increase in documents lies solely with documents that have to be formally requested for in order to access their content (i.e., only meta data appears in the register), the number of directly downloadable documents continues to go down (cf. Figure 9). The increasing gap between downloadable documents and those that must be requested is even more obvious when looking at it as a percentage of the total number of (newly added) documents (cf. Figure 9). Where on the one hand, the actual creation of the register seems promising; this continuing decrease in the registration of (directly accessible) documents – although being assured by the EEAS to be largely coincidental (EEAS, e-mail 12.06.17) – at least is puzzling. It will have to be seen how things evolve further over time.

Also, at present, only documents issued since 2015 are included because the focus is on the consolidation of the new practice. If feasible, older documents may be added in the future (EEAS, e-mail 17.02.16). Currently, older documents can be requested through the *Access to*

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[153] EEAS, *Report on Access to Documents for the Year 2011 and 2012*, EEAS (2013) 1141825, currently not available online.
[154] *e-EEAS Register* europa.eu/public-register/ Date of measurement: 17.05.2017.

documents service[155], but it is unclear how non-specialists can use this tool as documents' absence from the register make it difficult to even know of their existence. Thus, older documents cannot be explored systematically, which inhibits a coherent public accessibility of pre-2015 documents.

Figure 9: EEAS - Access to documents (01.2015 - 04.2017)
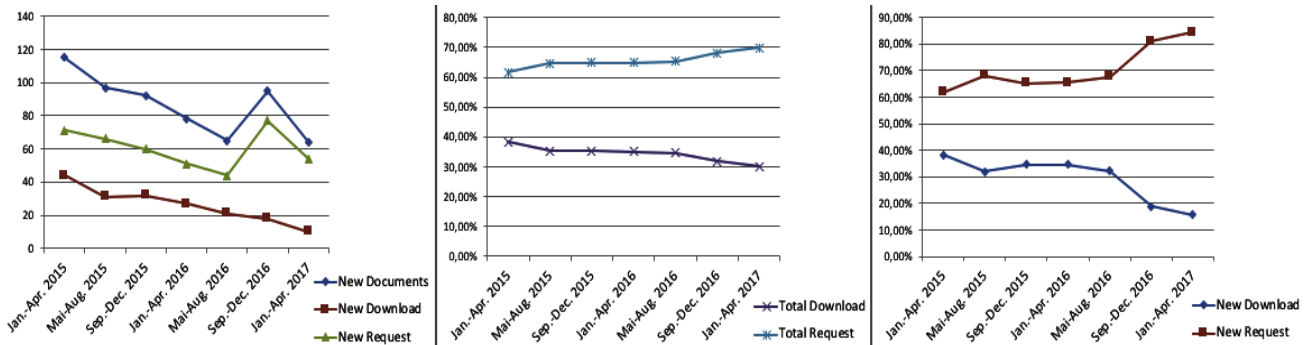
For other institutions (except for the EC, cf. *infra*) such a register exists for quite some time[156]. So, the documents on foreign security and defence policy from the **Council** and its organs are in principle accessible through an online research form[157]. Like with the EEAS, the results of a request not only list documents that are available online but also documents that are not directly accessible. Regrettably, a request does not offer a clear overview of the totality of documents on a specific issue. Not only is the number of hits limited to 500, but also is the research tool "subject matter" based on the distribution codes of Council documents. These codes do not concern general themes or policy issues. For the Common Foreign and Security Policy, there are no less than 34 codes (for an overview, see Annex 7), which cannot be used cumulatively because this may generate doubles. Therefore, the register is not suited for statistical purposes (GSC, e-mail 22.10.14). This research method limits accessibility and the ability to obtain an overview of the main points (cf. Curtin, 2007, pp. 254–55) and makes it difficult to reveal interconnections among files and to identify policy processes. In addition, the register does not allow comparing transparency among different policies. However, based on data from the GSC (CSC, e-mail 03.05.16), it can be concluded that a significant number of documents in the register relates to foreign policy – between 2010 and 2015, on average 16.87% of all new

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[155] e-EEAS Register europa.eu/public-register/ [15.08.17]

[156] Council EU, *Access to the public register of the other Institutions and bodies,* (from 1999 onwards) consilium.europa.eu/documents/access-to-council-documents-public-register/access-to-the-public-register-of-the-other-institutions-and-bodies?lang=en [15.03.16]

[157] *Public Register of Council documents* consilium.europa.eu/documents/access-to-council-documents-public-register?lang=en. [15.08.17]

documents and 14.32% of all new original documents concern the CFSP (cf. Table 6)– and also that the direct accessibility of these documents is limited above average.

Table 6: Council public register – CFSP documents

	2010	2011	2012	2013	2014	2015		TOTAL
(1) TOTAL number of documents (all language versions included) added in a given year	177639	185641	165202	169586	184219	153564		1035851
… of which are aboutCFSP(*) (Total)	24024	30311	27323	29039	32819	31199		174715
	13.52%	16.33%	16.54%	17.12%	17.82%	20.32%		16.87%
(2) Original documents added in a given year (issued in the original language = without translated versions)	23767	24367	23483	23080	22431	18994		136122
… of which are about CFSP(*) (Original)	3307	3683	3401	3365	2945	2790		19491
	13.91%	15.11%	14.48%	14.58%	13.13%	14.69%		14.32%

* That is, they bear at least one of the 34 distribution codes related to CFSP

(source: data received from the GSC, 03.05.16)

Since Lisbon, 84.99% of the non-CFSP documents have been directly consultable through the Council's register, against only 62.26% of the CFSP documents[158]. This difference is even more pronounced when only examining *original documents*[159]. For documents introduced since 2010, 77.77% of the original non-CFSP and only 44.97% of the original CFSP documents are available for download[160]. For the period under consideration, there does not seem to be a notable evolution (Figure 10). Registered documents that are not directly available online can be requested on-line[161]. According to the Council's 2016 *annual report on the access to documents*[162], for the years 2012 to 2016 on average, "External Relations – CFSP" is the second most popular among the 28 Policy areas of requested documents that are listed. On average, 10.46% of the documents for which access is requested concern this policy area. Yet, whether this is due to a genuine interest in the CFSP, or because the direct accessibility of these documents is more limited, is difficult to say; even more so because this category also concerns external relations more generally, thus also including issues such as international trade. Besides,

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[158] Non-CFSP Documents bear none of the CFSP distribution codes. CFSP documents bear at least one of the CFSP codes.

[159] The Register contains many translations of *original documents. Original documents* are original language versions.

[160] The different percentages of *direct availability for download* between *original* and *all language versions* is explained by the fact that a significant number of original documents only exist in English, of which essentially the documents that are already publically accessible have been translated. Thus, there is a higher ratio of publically available documents when considering all language versions compared with considering only original documents (GSC, e-mail 12.08.16).

[161] register.consilium.europa.eu/content/int?typ=NPDPF&lang=EN [15.08.17]

[162] Council of the European Union, Council Annual Report on Access of Documents – 2016, Table 12 (p.14) data.consilium.europa.eu/doc/document/ST-7903-2017-INIT/en/pdf [31.10.17]

documents about "Defence and military matters" are clearly much less requested: for 2012 to 2016 on average only 1.68% of the requested documents concern this policy area. In line with Regulation 1049/2001, art. 7 – also applying to the EEAS (cf. *supra* – initial applications shall be answered within 15 working days. In case of total or partial refusal, the applicant may, within 15 working days, send a confirmatory application to ask the institution to reconsider its position.

Figure 10: Council register - % of new documents per year, available online (2010-2015)
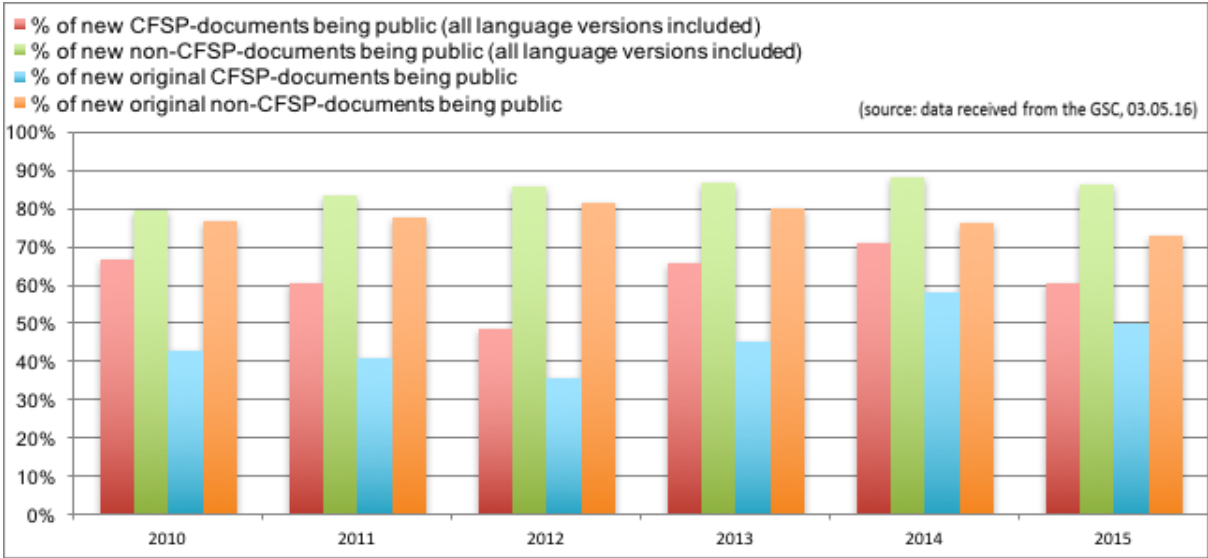
2. Is restriction of access publicly justified?

If the answer to a request for access is even partially negative, it must explain the reasons for refusal in reference to the exceptions outlined in Regulation 1049/2001, art. 4. Among these exceptions, especially those listed under paragraph 1(a) – "*disclosure would undermine the protection of the public interest as regards [to] public security, defence and military matters [or] international relations*" – apply to foreign policy. Pursuant to art. 17(1) of the same regulation, EU institutions also "*publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register*". For both the Council and the EEAS, these reports present information on the totality of applications and the number, or percentage, of refused requests[163]. They show that for most initial requests, access

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[163] Reports of the Council: consilium.europa.eu/en/documents-publications/publications/ ?top []=279&fm=&to=&p=1. The reports of the EEAS since 2015 can be found in the EEAS register; older reports are currently not online.

is granted. For the EEAS[164], of the 1034 requests for access between 2011 and 2016, a positive reply was given to 71.91% (750 requests); in 11.31% (118 requests), there was a full refusal (cf. Table 7)[165]. However, although the reasons for restricting access to documents are mentioned, they are generally vague (cf. Wessel, 2005, p. 234). Terms such as *public security* or *international relations* merely quote the above-cited art. 4 but do not explain precisely why access was really denied, and they seem subject to excessive executive discretion. Although this minimalistic argumentation regarding the reasons for secrecy has been successfully contested before the Court of Justice[166] (cf. Abazi and Hillebrandt, 2016), the annual Council reports so far do not seem to have changed the use of generic arguments. Furthermore, the situation is even more problematic when it concerns sensitive documents.

Table 7: Applications for access to documents treated by EEAS (2011-2016)

	Initial requests	Positive reply (1)	%	Partial acces	%	Full refusal	%	AI (2)	%	No match (3)	%
2011-12	362	279	77,07%	25	6,91%	47	12,98%	8	2,21%	3	0,83%
2013	217	141	64,98%	37	17,05%	28	12,90%	11	5,07%		0,00%
2014	183	128	69,95%	30	16,39%	17	9,29%	8	4,37%		0,00%
2015	163	107	65,64%	24	14,72%	20	12,27%	12	7,36%		0,00%
2016	118	95	80,51%	13	11,02%	6	5,08%	4	3,39%		0,00%
TOTAL	1043	750	71,91%	129	12,37%	118	11,31%	43	4,12%	3	0,29%

(1) Positive reply and full access was given
(2) Additional information was asked from the requestor, yet no answer was received
(3) No documents matching the request were found

(source: EEAS reports on access to documents)

Sensitive documents are of three types, namely, *top secret*, *secret* and *confidential*. Regulation 1049/2001, art. 9(2) states that they shall be handled only by the persons who have a right to acquaint themselves with such documents and that these persons shall also assess which references to these sensitive documents can be made in the register. Who these persons are, how they are bestowed with the right to determine the accessibility of sensitive documents, and

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[164] For the Council, only overall numbers are available; no precise numbers exist for the CFSP documents.
[165] Data are based on the EEAS reports on the access to documents for *2011 and 2012* (EEAS(2013)1141825)), *2013* (EEAS.sg.1(2014)2244316), *2014* (EEAS(2015)662) and *2015* (EEAS(2016)401) (received by e-mail EEAS SG.1, 08.03.16 and 14.06.16); and 2016, consulted through the EEAS Register. The 2011-2012 report mentions 389, not 362, as the number of initial requests. This is due to methodological problems in the preparation of the first report. On revision, the grand total of requests received for this period was 362 (EEAS, 10.03.16).
[166] Cf. Case T-529/09 *Sophie in 't Veld v Council of the European Union* [2012], ECR 2012-00000.

why they do so[167] is not indicated (cf. *infra*). Even knowing the actual number of foreign policy-related sensitive documents is unfeasible. Admittedly, the introduction to the EEAS' annual *transparency reports* refers to art. 17(1) of Regulation 1049/2001 but none of the reports actually contain information on *sensitive documents not recorded in the register*. In fact, the EEAS simply does not seem to possess detailed information on sensitive documents[168]. The *Council transparency reports*, on the other hand indeed provide detailed information on how many sensitive documents it has produced in the period concerned and how many thereof are referred to in the register (cf. Table 8). Although no exact data are available regarding which of these documents concern foreign security and defence, according to the Council's own statement, most of them do[169].

Table 8: Sensitive documents produced by the Council (2010-2014)

Classification level	2010		2011		2012		2013		2014	
	(a)	(b)	(a)	(b)	(a)	(b)	(a)	(b)	(a)	(b)
Confidentiel UE/EU Confidential	362	25	349	260	353	332	285	18	97	4
Secret UE/EU Secret	31	0	32	0	33	0	8	0	6	0
Très secret UE/EU Top Secret	0	0	0	0	0	0	0	0	0	0
Total	393	25	381	260	386	332	293	18	103	4

(a) = produced, (b) = made reference to in the register

(source: Council reports on access to documents)

The low overall numbers indicate that at least the production of sensitive documents by the Council is rarer than suggested by urban myth (Driessen 2008, 117). However, these self-produced secret documents are not the only ones addressed. Available data suggest that especially the number of *"EU Confidential"* documents handled by the Council is distinctively higher than the number mentioned in the transparency reports. For 2010 and 2011, the Council handled respectively 481 and 461 documents that were classified as *"EU Confidential"*[170]. This difference is explained by the fact that according to art. 9(3) of Regulation 1049/2001, *"sensitive documents shall be recorded in the register [...] only with the consent of the originator"*. Given that most sensitive documents on CFSP originate from other institutions, including the EEAS (Statewatch 2012) but also Member States, this not only brings us back to

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[167] Cf. EUObserver, 24.09.12, "What is secret EU anyway?" euobserver.com/secret-ue/117634 [15.08.17]
[168] Parliamentary question, 06.06.13 (E-004372/2012, OJ C 160 E).
[169] Parliamentary question, 06.06.13 (E-004374/2012, OJ C 160 E).
[170] Parliamentary question, 06.06.13 (E-004374/2012, OJ C 160 E).

the *recentness* of the EEAS register and the fact that EEAS does not seem to know the actual number of sensitive documents it produces, but also demonstrates the strong role of the Member States in this policy. As the Council is essentially an intergovernmental body in which MS continuously search for compromise, their pressure not to make public documents they circulate must not be underestimated (cf. Grigorescu 2007, 631). Relying on the originator consent principle, MS in practice have the last word on the documents they produce. Without explicit consent of the originator, the Council register will not mention a document that bears one of the three sensitive document classifications or is classified as "Restricted EU"[171]. Moreover, especially in non-legislative fields such as foreign security policy, MS traditionally rely on alternative channels of information exchange, such as the Coreu-network[172] or so-called Limite documents. Thus, the MS bypass the transparency rules that normally apply to Council documents (cf. Hillebrandt and Novak 2016, 534). Although the number of documents that circulates per year through Coreu seems to be in decline (Bicchi and Carta 2012, 471), the total volumes of *"Restricted EU"* and *"EU Confidential"* obviously exceed the number listed in the Council register (Bunyan 2014). Furthermore, because Member States are unwilling to see their individual positions revealed, the Council argues that the disclosure of Limite documents[173] risks undermining *"the ability of the Council and its members to carry out their responsibilities on the basis of frankness and mutual confidence"*[174]. Therefore, Keohane's (2005, 49), statement that *''the chief source of non-transparency is government pressure for confidentiality''* certainly applies to the workings of the Council, especially in a sensitive field such as foreign security and defence policy.

This limiting role of national governments seems to be confirmed when examining the **European Council**. Even more so than the Council (Abazi and Adriaensen 2017, 3), the European Council seems resistant to transparency in foreign affairs. As noted before, the European Council does not have its own Document Register and does not publish a proper *Access to Documents Report*. Therefore, the access to documents concerning foreign security

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[171] Regulation 1049/2001 discusses *"sensitive documents"* and list three categories. The Council decision of 23 September 2013 (cf. *infra*) mentions *"EU classified information (EUCI)"* and adds a fourth category, *"Restricted EU"*. Although *restricted documents* are formally not sensitive and in theory should be listed in the Register similar to any other *ordinary* document, in practice, a large number of restricted documents are not referenced in the Council Register.

[172] An acronym for *"Correspondance européenne "*, COREU is a communication network through which the Member States exchange secured information related to the CFSP.

[173] LIMITE is not a classification but a distribution code.

[174] Council EU, *Disclosure of Confidential Documents* (14920/13), 16.10.13.

and defence that originate from the European Council is clearly problematic. Although the provisions on public access to Council documents are said to apply to the European Council (art. 10.2 RoP EC), the fact that *"the deliberations of the European Council shall be covered by the obligation of professional secrecy"* (art. 11§1 RoP EC) and the absence of a proper register strongly limits the transparency of the EC's work. The recording of EC documents in the Council register does not really solve the problem, as it can be difficult for less specialized members of the public to distinguish from which institution documents originate. Furthermore, these documents are largely of a general nature. Accordingly, it is not at all easy to determine, for instance, when and how the EC decides the aforementioned *strategic interests and objectives of the Union* or what these interests and objectives may be.

3. Is a directly elected body involved in the definition of the rules applying to transparency and secrecy?

In the summer of 2000, a decision of then HR Javier Solana introducing classification rules for EU documents related to foreign security and defence policy caused controversy and was withdrawn when Regulation 1049/2001 was adopted (Wessel 2005, 232). Both the Council and the European Parliament adopted this Regulation. Although the fundamental principles on the access to EU documents thus seem eventually defined in a legislative act developed through public deliberation and in active consultation with a directly elected body, this is not the entire story. Resulting from an acrimonious confrontation between the EP and the Council in which the Council *"did not want to end up giving Parliament information which Member States were not prepared to share with their own parliaments"* (Rosén 2015, 389), the regulation has been a source of irritation ever since. Being a constructive document regarding the definition of general principles (art. 1, 2) and key concepts (art. 3), as well as the development of formal procedures (art. 6-8, 10) and structures for access (art. 11-12), the regulation remains vague on the refusal of access (art. 4, cf. *supra*, the classification of sensitive documents and access by the EP (art. 9) (cf. Maurer 2015, 13). Especially problematic, there are currently no EU-wide procedures for the classification of documents, and officials can classify them at their own discretion[175]. Where they exist, each institution internally decides on specific rules.

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[175] *Euractiv, 25.09.14,* "A roadmap to transparency and away from Sir Humphrey" euractiv.com /sections/eu-priorities-2020/roadmap-transparency-and-away-sir-humphrey-308698. [15.08.17]

The rules that apply to the EEAS are specified in a HR-decision from 19 April 2013[176], with no legislative body having been involved in the definition of these rules. The Council, on the other hand, specified the procedures in its Decision of 23 September 2013[177]. At the same time – in defiance of art. 9(6) of Regulation 1049/2001 stating that the *"rules of the institutions concerning sensitive documents shall be made public"* – these rules were further detailed in *hidden* LIMITE documents on the *handling of documents internal to the Council*[178] and the *public access to Council documents*[179], initially revealed by Statewatch. Echoing Deirdre Curtin (2014, 6), the consolidation of the rules of secrecy hence has been largely achieved on the basis of discussions that are internal to the Council. The Council decision of 23 September 2013 (§5) only "*underlines the importance of associating, where appropriate, the European Parliament [...] with the principles, standards and rules for protecting classified information [...]*". Given that under this formulation, the Council itself decides on the appropriateness and scope of the EP's involvement, it can be wondered how much say this actually leaves the Parliament. The European Council, for its part, seems to not even care about secrecy rules. Although the European Parliament already in 2008 urged the European Council to take appropriate action to apply Regulation 2001/1049[180] – which indicates that *"as a result of the entry into force of the TEU and the TFEU, [this] right of access to documents covers all EU institutions, bodies, and agencies"*[181] – no specifications on sensitive documents coming from the EC have been established. In recent years, the EP has increasingly sought to change this situation[182], so far without result.

All of this means that no directly elected body seems to have been involved in the establishment of these rules, neither for the EEAS, nor for the Council or European Council. The fact that the Council and European Council are composed of elected officials, in that sense does not make much difference. As already indicated under *Licensing* (Chapter VI, 1 *supra*, also: Hix and Høyland 2011, 8), in the context of the CFSP these bodies have essentially an executive role, not a legislative one. They carry out the EU's foreign policy, in the context of which they use and produce lots of information. The fact that they can on their own, without the involvement

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[176] OJ C 190, 29.6.2013, pp. 1–46, art. 5 and Annex A. Pending the adoption of these rules, the EEAS applied the rules of the Council.
[177] *Council* Decision 2013/488/EU, OJ L 274, 15.10.2013, pp.1-50, art. 2.2.
[178] *Handling of documents Internal to the Council* (11336/11), 09.06.11.
[179] *Public access to Council documents* (17177/13), 29.11.13.
[180] European Parliament, 14.01.09, 2007/2154(INI), art. 21.
[181] European parliament, 03.11.15, 2015/2287(INI), art. 6.
[182] Cf. European Parliament, 05.06.13, 2013/2637(RSP), also: 13.04.16, *2015/2287(INI))*.

of another, directly elected, body – either national or European – decide about which part of this information should be publically accessible and how this should be organised, hinders the public control over the actions and decision they take in the context of that policy.

4. Elected representatives have access to information sealed from public access?

Initially, the European Parliament was subjected to the same restrictions as the public[183]. This situation changed with Resolution 1049/2001, which states that *"[…] the Council shall inform the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions"*. Such an arrangement was reached in 2002 in the form of an Interinstitutional Agreement[184]. According to this IIA, the president of the EP and a special committee of four MEP's (five since September 2014) chaired by the Chairman of the Parliament's foreign affairs committee shall be informed of the content of sensitive documents related to foreign security and defence that are held by the Council (art. 3.3 IIA). In line with Mogherini's commitment to work on enabling access to classified information by the Parliament[185], an updated agreement that formally includes the EEAS is currently being drafted[186]. Meanwhile the provisions under the 2002 IIA also apply to the EEAS[187]. This IIA represents an acknowledgement of the Parliament's rights in foreign and security policy (Barbé and Herranz Surrallés 2008, 80-81) and can improve this policy's democratic quality by enabling access to highly sensitive information to directly elected persons.

However, some nuancing comments are in order.

A first problem is that MEP's do not necessarily have access to all relevant information. *"Information originating from a third State or international organisation shall [only] be transmitted with the agreement of that State or organisation"*. The same goes for Member States, which can refuse transmission of information that originates from them (IIA 2002, art.

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[183] EUObserver, 23.10.02, "Green light for more acces to sensitive documents" euobserver.com /political/8097 [15.08.17]

[184] OJ C 298, 30.11.2002, p. 1–3.

[185] European Parliament, *European Parliament's hearings: Federica Mogherini: High Representative of the Union for Foreign Policy and Security Policy - 6/10* europarl.europa.eu /hearings-2014/ resources/library/media/20141022RES75841/20141022RES75841.pdf . European Parliament, *Evaluation letter Federica Mogherini*, 08.10.14 europarl.europa.eu /hearings-2014/resources /library/media/20141021RES75582/20141021RES75582.pdf [18.05.17]

[186] *Council of the EU, 23.11.12, 15343/12* (to consult online at: statewatch.org/news/ 2012/oct/eu-council-ep-access-class-info-15343-12.pdf . *Also: Parliamentary question, 27.02.15 (E-003149-15).*

[187] OJ L 210, 3.8.2010, p. 30-40, para 6.

1.2). Similarly, the High Representative determines the Parliament's access to EEAS documents[188]. Therefore, the final decision on the access to sensitive documents and the rules that apply to them, lies with the *sending* institution that acts as a gatekeeper. Moreover, it is not clear what the real scrutinizing power is of those MEPs who have the necessary security clearance. While the committee members can act through two different procedures; in both cases, the actual information they got access to proves altogether rather limited. First, the Special Committee can hold meetings with the HR (or her representative) to discuss confidential matters, but there will not be any disclosure of confidential document at this meeting. These meetings take place in an informal and irregular manner (MEP, e-mail 18.08.16). Although initially planned to occur every six weeks (Brok and Gresch 2004, 187), the committee actually meets only sporadically. According to the HR annual activity reports, the committee only met six times between 2010 and 2015. The Parliament (European Parliament, e-mail 30.08.16) confirms that in each of the years 2013 and 2015, two meetings of the Special Committee were held and that there was no meeting in 2014 due to the EP elections that year. It does not have information for the previous years. Secondly, a committee member can request access to classified documents. If this request is granted, the viewing will occur in a secured reading room, initially situated in the Council buildings (EEAS, phone call 26.04.16), and since 2011 located at the EEAS premises (CSC, e-mail 23.06.16). Accordingly, between 2002 and 2011, MEP's consulted approximately 40 classified documents, seemingly without any refusal by the Council (CSC, e-mail 23.06.16). Data on the number of documents that were requested from the EEAS seems to be unavailable. However, this number is supposedly low, considering that there is at least no record of the consultations of classified documents that relate to EU sanctions (EEAS, e-mail 30.06.16) or the EU's engagements as a mediator in international conflicts (EEAS, e-mail 23.05.16; Chapter XI *infra*).

Secondly, it is not clear what the committee members can really do with the information they obtain. As stipulated by art. 9 of the EP decision on the implementation of the IIA[189], members of the Special Committee cannot disclose, disseminate or reproduce the information obtained through the meetings or individual consultations. Therefore, according to MEP Neyts-Uyttebroeck, the arrangement has questionable value for the workings of the Parliament because the members of the Committee cannot tell colleagues what they know and cannot claim

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[188] OJ C 210, 3.8.2010, p. 1–2 art. 4.
[189] OJ C 298, 30.11.2002, p. 4–5.

a superior status in decision-making[190]. The argument that through this instrument, the European Parliament *"is widely privileged vis-à-vis their parliamentary counterparts at the national level"* (Mittag 2006, 15) does not change the fact that the possibilities for the EP to have access to classified documents remain overall limited.

Linked with the above, also the actual composition of the committee becomes relevant. Given that the committee members cannot share the information they obtain with other MEP's, it is important who the selected members are and how they are chosen. To what extent are they representative for the European Parliament as a whole (Rosén and Stie 2017, 55-57)? As the IIA (art.3.3) only stipulates that the members are designated by the EP's conference of presidents (consisting of the President of Parliament and the chairmen of the political groups), neither the EP's own rules of procedures, nor the IIA explains on what grounds the five MEP's are selected. Mainly however, they are more experienced MEP's, seating in the EP already for quite some time. Of the five members and two substitutes currently appointed, four are seating in the EP since 2009 and two even since 1999. AFET-chair, David McMillan is only in Parliament since 2014. Who the actual members are is not explicitly communicated, yet their names can be found in the minutes of the Conference of the Presidents meeting at which their appointment is confirmed (European Parliament, e-mail 10.01.2018)[191]. While Rosèn and Stie's (2017, 56) idea that the names of the Committee members can only be obtained by filling a request goes too far, it is true that this information is not easy to find out.

Taking all of this into account and considering that transparency should contribute to accountability by acting as an input provider to (legislative) oversight, it can be asked if the current mechanism is not rather an empty shell.

5. Conclusion: transparency in CFSP, normatively democratic?

When evaluating transparency in foreign policy, we must take into account the secrecy dilemma that exists in this domain. The EU's foreign security policy is no exception to this rule. Therefore, this chapter not only assessed the accessibility of documents related to the EU's

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[190] EUObserver, 18.11.10, "Secret document group was like 'bad Le Carre novel', MEP says" euobserver.com/institutional/31296 [15.08.17]

[191] Conference of Presidents. Minutes of the ordinary of Thusday 1 October 2015 europarl.europa. eu/RegData/organes/conf_pres_groupes/proces_verbal/2015/10-01/CPG_PV(2015)10-01_EN.pdf [10.01.18]

foreign policy, but also looked at if and how secrecy is justified, and how the rules of transparency and secrecy are decided.

Formally speaking, documents on foreign policy are accessible through online public registers in the same way as non-foreign policy related material. In practice however, as it can be arguably expected, these documents are clearly less directly consultable through said registers and more frequently they are just referred to, without giving immediate access to their content. In these cases, access can be requested according to the same procedure that applies to non-foreign policy related documents and when such access is not granted reasons therefore are indeed communicated. As such, this should not be problematic. Though – and it is here that things do become problematic – when looking at these reasons in more detail, they essentially resemble generalized formulas rather than genuine arguments as to why the disclosure of specific information would be detrimental to the EU's foreign policy's efficiency (yet, it can of course be wondered how this could be done differently, without uncovering the secrecy that is covered by the deny of access…). Besides, also sensitive documents exist to which even basic reference is not made public. The reasons why their existence is kept secret are not communicated and the decision to do so solely results from the personal appraisal of an executive official.

This is further compromised by the fact that mainly the executive alone decides the overreaching framework of transparency and secrecy; but even more so by the fact that its concrete application, afterwards, varies between institutions. In the complex executive structure of the EU's foreign and security policy (cf. Thym 2011), the EEAS, the Council and the European Council each seem to hold on to their own interpretation of how to organize transparency and secrecy; each sticking to their own, internally developed practices. The European Parliament has only been involved in the establishment of the general rules on public accessibility and played no role in the respective secrecy rules of each of these executive institutions. The existence of such differing attitudes and especially the position of the European Council in this regard is problematic. The on-going discretion by the European Council regarding the information it holds and the secrecy rules that apply to such information impedes the development of a more balanced transparency-secrecy arrangement. Being the institution that sets out the basic principles and guidelines of the EU's foreign security actions, this hinders overall public control at a fundamental level, namely with regard to the basic orientation of the EU's external security and defence actions. This point clearly deserves lasting attention.

Furthermore, in practice there is, so far, no convincing access to confidential information by elected representatives in case such information is excluded from public viewing. In agreement with the other institutions (including the EEAS since Lisbon), the European Parliament indeed has created a special committee in this regard, but until now this committee does not seem to have actual relevance for the parliamentary overview of sensitive information.

Conclusively, it can be contended that the EU responds somewhat inconveniently to the secrecy dilemma. In European foreign policy, there is not so much a transparency problem in the sense that no information is accessible; but rather in the way that if access is limited this is done in a democratically unchecked manner. The EU struggles with the secrecy dilemma in that it indeed accepts the transparency principle – and this not just in words – but refrains from supplementing it with a, democratically generated, secrecy principle and corresponding structure. Where in line with the secrecy needed in foreign policy a limited public access to information about the policy's daily development could be justified; from a democratic perspective, the limited public control over why and how limiting access is decided is more difficult to accept. Given the secrecy dilemma, public access to CFSP related information may indeed be limited, but it is problematic that this is done in a way that is neither well explained, nor based on well-defined legal rules resulting from democratic deliberation.

XI. Reason-giving in EU foreign policy

Summary: *Linked with transparency, yet given its particular focus treated here as a distinct criterion, this chapter looks at the reasons the EU formulate to justify its daily foreign and security policy. To do so, this chapter discusses three key instruments of the EU's foreign security and defence action and the ways they are motivated; being military and civilian missions, restrictive measures against third states, individuals or entities, and the EU's actions as a diplomatic facilitator and mediator.*

Reason-giving is mentioned in the Treaty on the functioning of the EU as a condition for any legal act issued by the European Union. Legal acts, so it is stipulated by art. 296 TFEU, *"shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Treaties"*. At first sight it could be assumed that this rule does not apply to the EU's foreign security and defence policy (considering that *"the common foreign and security policy is subject to specific rules and procedures"*, art. 24.1 TEU). But, this vision is too narrow and seems contested by the European Court of Justice. In a 2009 judgement, the Court ruled, *"the obligation to state reasons [...] must apply [...] to any measures adopted by the institutions, whatever their form, which are intended to have binding legal effects"*[192]. Given that there are good arguments to say that measures taken in the field of foreign security and defence policy indeed impose binding legal duties on Member States and institutions (Eeckhout 2011, 171–2; Hillion and Wessel 2008, 82–6; Peterson et al. 2012, 295), it follows that the formal rule of reason-giving applies to Foreign Security and Defence Policy too. Besides, even when admitting that this legal vision is not completely uncontested (cf. Wessel 2015), it can hardly be denied that foreign policy decisions are politically binding: they strongly guide and frame EU institutions and Member State authorities and determine Europe's position on the world stage as well as its scope for future international action. Hence, if there would not already be a legal obligation for reason-giving in European foreign and security policy, there certainly is a strong political urge.

To help evaluate how this demand for reason-giving is practically answered, two indicators (13 and 14) – which obviously show clear similarities to the previous ones about the public accessibility of documents and the legislature's access to sensitive information put forward for

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[192] Court of Justice, *Judgment of the Court (Second Chamber) of 1 October 2009* – Case C-370/07 eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62007CJ0370 [08.04.16].

the evaluation of transparency – have been argued for. As these indicators in fact present a continuum; from general, publically available explanations, to the more restrained divulgation of reasons to a limited group of elected representatives in case of more sensitive issues; a separated discussion on each of the indicators would somehow seem artificial. Therefore, this chapter discusses them simultaneously.

1. **Does the EU communicate the reasons for foreign and security actions to the public or, at least, to members of the European- or national parliaments?**

In first instance, the Treaty provides us with the fundamental reasons for the EU's external action – with the inclusion of its foreign security and defence policy – by listing under art. 21.2 TEU a set of eight objectives. Being of a general order, these rules of course do in no way suffice to justify the totality of Europe's foreign actions. Hence, the real question is if the EU, when taking concrete action in the framework of its foreign security and defence policy explains why it does what it does.

Effective presence and influence of an actor on the global playing field is based on a combination of the three pillars of international power: diplomatic presence, economic presence and military presence (Coolsaet 2006, 17, 77-94). Relying on a series of instruments[193], also today's EU foreign policy indeed acts along these three classical lines of action in that it essentially uses (1) diplomacy, (2) restrictive measures and (3) military or civil missions to go after its goals (cf. Crisis Group 2005, 44-46)[194].

To start with the last one; the EU has currently (May 2017) **sixteen missions in operation**; five military operations, nine civilian missions, and one that technically speaking *"is not managed within CSDP structures and hence is strictly speaking not a 'CSDP Mission'"* (the EU Border Assistance Mission – EUBAMM – to Moldova and Ukraine)[195]. Except for this *EUBAM Moldova and Ukraine* (which followed on a Memorandum of Understanding between the European Commission and the governments of Ukraine and Moldova), each of these missions

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[193] For an extensive overview of CFSP-instruments: Federal Foreign Office, *CFSP – Instruments* auswaertiges-amt.de/EN/Europa/Aussenpolitik/GASP/InstrumenteGASP_node.html [22.01.15].
[194] Cf. also the three headings – *Sanctions*; *Conflict Prevention, peacebuilding and mediation* and *Crisis management* – under *Common Foreign and Security Policy* on the EEAS-website eeas.europa.eu/cfsp/index_en.htm [13.02.15].
[195] For a detailed overview: EEAS, *Ongoing missions and operations* eeas.europa.eu/csdp/ missions-and-operations/index_en.htm [19.05.17].

is launched following a decision of the Council[196]. These decisions contain not only information on the *what* and the *how* of the mission (when to start, where, budget, mandate, objectives, …) but indeed also mention a *why*. Each decision formally indicates in its preamble on which grounds the establishment of the mission is decided. Hence, when looking at the whole of the missions, five recurring reasons can be distinguished. First, four EU-missions (EULEX Kosovo, NAVFOR Atalanta, EUTM Somalia and EUTM Mali) justify their deployment by referring to a **Resolution of the UN Security Council** explicitly calling Member States or regional organisations to act. In a similar argumentation, three council decisions cite a formal approval of EU action by the UN Security Council as an (additional) explanation for the mission's existence (Althea, EULEX Kosovo and NAVFOR Atalanta). Subsequently there are those missions being launched after a **formal request by the host country/ies**. This is the case for EUBAM Rafah, EUBAM Ukraine/ Moldova, EUPOL COPPS, EUMM Georgia, EUCAP Sahel Niger, EUBAM Libya, EUTM Mali, EUAM Ukraine, EUCAP Sahel Mali and EUTM RCA. Additionally, two missions point out an approval by the host country/ies (EUCAP Somalia[197] and EUTM Somalia) or by a regional organisation (EUTM Somalia – in case the African Union). Thirdly, four decisions quote the **EU's previous commitment** regarding *the problem* to which the mission is a response as a reason for its deployment: EUPOL COPPS and EUBAM Rafah hence refer to the EU's role as a member of the Middle East Quartet guarding the implementation of the Roadmap for Peace. EUMM Georgia in turn points out the EU's role as a mediator and the previous six-point agreement concluded under its auspice. EUNAVFOR MED, finally, refer to the EU's *"commitment to act in order to prevent human tragedies resulting from the smuggling of people across the Mediterranean"* and the *"indignation"* it already expressed before about this situation. In a similar way, a fourth reason consists of an **existing international framework**. Hence, in the case of Althea, the EU explains its decision to launch the mission by referring to the General Framework Agreement for Peace (the so-called Dayton Agreement). Finally, four missions explicitly invoke the **EU's strategic and security interests or the protection of European citizens** as a reason for deployment. This is the case for EUCAP Nestor/Somalia, EUCAP Sahel Niger, EUBAM Libya and EUCAP Sahel Mali. Looking at this overview, we see that except for EUCAP Sahel Niger and EUAM Ukraine (both launched following an explicit request from the host country) all missions invoke multiple reasons.

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[196] Before Lisbon, this was done through a so-called *joint action*.
[197] Until March 2017 called EUCAP Nestor, then renamed as EUCAP Somalia.

The second type of actions, **restrictive measures** against third countries, individuals or entities (also called sanctions) *"are an essential EU foreign policy tool that it uses to pursue objectives in accordance with the principles of the Common Foreign and Security Policy"*[198]. Generally speaking, *"they aim to bring about a change in policy or activity by the target country, part of a country, government, entities or individuals"*[199]. Sanctions either implement (or reinforce – by applying stricter measures) a UN Security Council Resolution adopted under Chapter VII of the UN Charter or are decided autonomously by the EU. They are subject to a decision by the Council, taken by unanimity[200]. Subsequently, these sanctions are directly binding on Member States and implemented by them (e.g. arms embargoes and travel bans); or in case of economic and financial measures (export bans and asset freezes) falling directly under the competences of the Union and implemented through separate EU legislation in the form of a Council Regulation, which is directly binding[201]. As required under art. 215 TFEU, the European Parliament shall be informed thereof. The Court of Justice on the other hand has the jurisdiction to review the legality of decisions providing for restrictive measures (art. 275 TFEU). In that way, sanctions are an exception to the general rule excluding CFSP and CSDP from the Court's jurisdiction (art. 24.1 TEU). Deriding questions about their effectiveness and consistency – recurring topics in the literature (cf. Portela 2014; 2010; Franceso Giumelli 2013; Francesco Giumelli and Ivan 2013; Brummer 2009) – or their case by case implementation, the point at stake here is if sanctions – at the time of their proclamation – elude why they are decided?

The Council guidelines on restrictive measures[202] stipulate that *"the decision to subject a person or entity to targeted restrictive measures requires clear criteria; tailored to each specific case [...]. These clear criteria will be set out in the CFSP legal instrument"*. Said otherwise, *"proposals for listing must be accompanied by accurate, up-to-date and defendable statements"*. Where it concerns restrictive measures, carrying out UNSC resolutions, this means in practical terms that the relevant decisions and/ or resolutions of the Council take over the consolidated list as decided by the UNSC Resolution in question. Regarding EU autonomous

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[198] EEAS, *Sanctions Policy* eeas.europa.eu/cfsp/sanctions/index_en.htm [23.01.15].
[199] *Ibid*
[200] Previous to December 2009, restrictive measures were installed by means of a common position, based on art. 60 and 301 TEC.
[201] Council of the EU, *Factsheet. EU restrictive measures*, Brussels, 29 April 2014, 3p. consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/135804.pdf [29.10.15].
[202] General Secretariat of the Council, *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy*, 11205/12, Brussels, 15 June 2012 europeansanctions.files.wordpress.com/2013/03/eu-guidelines-on-sanctions-2012.pdf [30.01.15].

sanctions, these provisions are further detailed in Annex I to the Guidelines. Under a heading called *Reasons for listing*, it is specified that *"proposals for autonomous listings should include individual and specific reasons for each listing"*. The purpose thereof *"is to state, as concretely as possible, why the Council considers, in the exercise of its discretion, that the person, group or entity concerned falls under the designation criteria defined by the relevant legal act, taking into consideration the objectives of the measures as expressed in its introductory paragraphs"*. It is furthermore specified that *"these reasons should, in principle, be set out in a separate column in the Annex to the legal act containing the list of persons, groups and entities subject to restrictive measures"*. Finally, it is pointed out, *"These reasons should be capable of being made public"* unless in exceptional cases and this *"because of considerations of privacy and security.* In these exceptional cases however, members of the EP can have access to this information in accordance with the mechanism set out in art. 3.3 of the IIA 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 (cf. Chapter X, 4 *supra*) (EEAS, e-mail 08.10.15). However, in practice the EP Special Committee, so far never asked to consult a document related to sanctions (EEAS, e-mail 30.06.16, cf. *supra*).

A regularly updated list of restrictive measures, available on the website of the EEAS, presents an overview of sanctions being in force[203]. According to the version of 5 December 2014 of this list[204], the EU, for instance, adopted four new sanction regimes in 2014, and structurally reviewed two others. In that year, new sanctions were taken against Russia and the pro-Russian insurgents in Ukraine as well as in reaction to the precarious situations in the Central African Republic (CAR) and South-Sudan. Existing measures against Sudan were repealed and replaced by an updated regime, those against Yugoslavia simply repealed. Except for the sanctions against the CAR and Sudan, they are autonomous measures. When looking at the decisions and regulations that establish these sanctions, we see that each of these legal instruments indeed explains why the sanctions in question are promulgated. First of all, the preamble lists the general motivations for the sanctions, either by referring to the UNSC resolution(s) that is/are being implemented; or through an account of the Council's own reflexions in case of autonomous sanctions. In the context of the Union's reaction on the

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[203] European Commission, *Restrictive measures (sanctions) in force* eeas.europa.eu/cfsp/ sanctions/docs/measures_en.pdf [19.05.17].
[204] The version currently online, May 2017, is from 20.04.2016.

conflict in Ukraine we find for instance that the Council *"strongly condemned the unprovoked violation of Ukrainian sovereignty and territorial integrity by the Russian Federation and called on the Russian Federation to immediately withdraw its armed forces to the areas of their permanent stationing, in accordance with the relevant agreements. [... and] considered that the decision by the Supreme Council of the Autonomous Republic of Crimea to hold a referendum on the future status of the territory is contrary to the Ukrainian Constitution and therefore illegal"*[205]. Or, as formulated in a later decision: after having *"condemned the unprovoked violation of Ukrainian sovereignty and territorial integrity by the Russian Federation"* and having *"urged Russia to stop the increasing flow of weapons, equipment and militants across the border in order to achieve rapid and tangible results in de-escalation"* and *"in view of the gravity of the situation"* – the Council *"considers it appropriate to take restrictive measures in response to Russia's actions destabilising the situation in Ukraine"*[206]. Regarding the specific entities and persons being targeted, these are listed in an annex to the decision or resolution, which in case of natural persons always contains information on the *"grounds"*, *"reasons"* or *"justifications"* for listing. These personalised reasons explain for each person individually why (s)he is listed, and as such complement the more general motivations for listing that are given in the decision itself. The before mentioned Council Decision 2014/145/CFSP of 17 March 2014 thus lists twenty-one natural persons, among which Crimean leaders as well as Russian politicians publically calling for Russian military intervention in Ukraine. For each of them is in general terms indicated what it is that they did or said that led to their enlistment. In case the annex only contains legal persons, the rule of motivation seems to apply a bit less stringent. For instance, Council Decision 2014/512/CFSP concerning restrictive measures against Russia, gives a list of five legal persons (all financial institutions) for which the reasons for listing are not mentioned in the annex itself. However, taking into account the argumentation provided in the preamble as well as the specification given in art. 1a of the Decision, it cannot be said that there are no reasons mentioned at all.

Thirdly, the EU is implied in international politics as a purely diplomatic actor. Although EU diplomacy certainly surpasses the limits of foreign security and defence, we understand it in the context of the present discussion as "CFSP-diplomacy" (Keukeleire 2003, 36). Dealing with matters of war and peace, the most concrete actions undertaken by the EU in this sense are linked to **mediation and facilitation** in situations of both international and internal conflict.

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[205] Council Decision 2014/145/CFSP, OJ L 78, 17.03.2014, pp.16-21.
[206] Council Decision 2014/512/CFSP, OJ L 229, 31.07.2014, pp.13-17.

Given its own historical origins as a peace project, the promotion of peace and the prevention of conflict have since long been a central feature of Europe's international engagement (Gourlay 2013, 1). Mentioned in both the *European Security Strategy* of 2003 and its follow-up report of 2008, as well as the 2016 EU global strategy, mediation and dialogue are formalized through the 2009 Council's *Concept on Strengthening EU Mediation and Dialogue Capacities*[207].

The difficulty in evaluating these diplomatic policy tools is twofold. First, they represent a real, but difficultly tangible dimension of the EU's foreign security policy in which the confusing interplay between EU-level and Member State actions is the most striking. The two-level system of European foreign policy (Ponjaert and Telò 2013, 49) reveals itself here in its daily practice even more than with the other CFSP-actions. Telling examples are the negotiations on the Iranian nuclear programme – in which the EU is an actor together with the UK, France and Germany – or the 2008 Russia-Georgian conflict – in which it was rather France than the EU who brokered an agreement, or so seems the then French president Sarkozy to tell us (Grono 2010, 13; cf. also Sherriff and Volcker 2012, 6). This continuous mixture between different policy levels and actors makes it increasingly difficult to trace back the origins of decisions and actions. Secondly, the EU rarely has a formal mandate to act as a mediator or facilitator. Although some of the EU's commitments in this respect are high-level undertakings such as the High Representative's role as a facilitator in the Belgrade-Pristina Dialogue or former Finnish president Athisaari's participation in the Aceh peace process, most of these activities are confidential in nature (EEAS, e-mail 13.03.15). Given the often sensitive nature of peace negotiations, the previously discussed secrecy dilemma of foreign policy becomes very tangible here. On the one hand, the dissemination of information is a thing to be controlled carefully (cf. Mason 2007, 17). Especially when being in the position of neutral mediator, everything should be done not to jeopardize in any possible way the on-going negotiations. On the other hand, however – as explicitly recognised by the above-mentioned Council Concept[208] – *"mediation between conflicting parties carries certain political risks"* especially with regard to credibility. It is exactly this political risk that asks justification and reasons for the European Union's commitment as a mediator. It is not enough that the responsible EU services *"assess these risks*

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[207] Council of the EU, *Concept on Strengthening EU Mediation and Dialogue Capacities*, 10 November 2009 eeas.europa.eu/cfsp/conflict_prevention/docs/concept_strengthening_eu_med_en.pdf [08.04.16].

[208] *Concept on Strengthening EU Mediation and Dialogue* Capacities, *op cit.*, p.7: (c) Assessment of risks.

carefully, including the proposed timing for mediation, before accepting to become involved in a mediation process"; but this assessment should somehow be available, if for arguable reasons not to the wider public, then at least to the European Parliament. Based on the facts it is however difficult to know if, in practice, the Parliament would have access to these assessments, if wanted to. In that case – given their sensitive and confidential character – this would have to happen through the Special Committee of the Parliament, created in this regard. However, this never happened. At least since 2010 the Special Committee requested no sensitive documents related to EU mediation for consultation (EEAS, e-mail 23.05.16).

Although Europe most often works together with other actors and has a rather indirect and less visible contribution (Gourlay 2013, 3)[209], the EU has been active as a lead mediator at many occasions since the publication of the 2009 Concept (for a discussion of some key dossiers in which the EU was active as a mediator cf. Sherriff and Volcker 2012). But, concrete information on these EU mediation efforts is not available, let alone about the specific reasons which led the EU to decide in favour of taking up such role. The relevant information on the EEAS website is minimal. Except for generalities about underlying principles and concepts, and some press briefings or short declarations, no communication is made about any past or current mediation. The risk assessments referred to before, are not based on a formal mechanism, but use very varied modalities on an on-going and ad hoc basis. They are undertaken by the relevant actors within the EEAS and the Commission services. The reports of these analyses are primarily internal and occasionally shared with the EU Member States (EEAS - K2, e-mail 13.03.15).

2. Conclusion: Reason-giving in CFSP, normatively democratic?

From a strictly legal point of view, it could be debated if European foreign and security policy falls under the treaty obligation of reason-giving. Yet, givent that there is no doubt about the impact of EU's foreign policy decisions on Member States and European citizens, there undoubtedly is a political need for justification in EU foreign policy.

Looking at the three main types of actions through which the EU develops its common foreign policy, we see that their level of reason-giving is quite unequal. Where formally speaking EU military or –civilian missions do not necessary have to mention on which fundamental grounds

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[209] For an overview of different types of EU mediation involvement, cf. the 2009 Council concept, p.6.

their deployment is decided, we see that in practice, the decisions to launch such a mission always – though briefly – mention one or more reasons. As demonstrated before, five recurring reasons can be distinguished. However, the impact of this reason-giving and its relevance for democratic control should not be overestimated. The reasons given are of rather general order and do not permit outsiders, such as citizens or legislative bodies, to really grasp the essence of why a mission is launched. Restrictive measures, on the other hand seem to do better. Legally obliged to present criteria for their promulgation, they indeed give – overall, as well as personalized in case of individual sanctions – motivations. Although their formulation sometimes resembles rather standard formulations, it should be asked what more detailed reasons would have to consist of and in what way they would create more democratic control. After all, although the European Parliament has the right to do so, it seems that so far, it never used its prerogatives in the matter, and never asked access to more detailed information on sanctions that is kept away from the public. Finally, publically accessible reasons explaining why the European Union commits itself to the role of mediator in conflict situations are completely unavailable. Although the basic documents concerning this type of policy action clear provides for the existence of reasons, in practice it seems impossible to consult them or even to trace back their existence. Risk assessments circulate internal to the EU's relevant foreign affairs bodies and can be made available to Member States but seem not at all (meant to be) shared with (the European) parliament or the public at large.

What hence stands out regarding reason-giving in the context of the EU's foreign security and defence policy is the obvious discrepancy between some rather strong formal appeals and an altogether quite weak implementation. Reasons are indeed reflected upon and are indeed given in general terms, but this is done in such a way that they – except from formally fulfilling of what is asked for – are not really useful to those who are interested in understanding the EU's foreign policy and its deeper motivations.

XII. Oversight in EU foreign policy

***Summary:** This chapter deals with two strands of oversight: by elected representatives, and directly by society. For the first strand, it looks at questions by MEP's, general and thematic debates in the EP, Joint Consultation Meetings and parliamentary delegations; as well as oversight by national parliaments and the Interparliamentary Conference on CFSP. For societal oversight attention goes to media, research organisations and CSOs as well as individual citizens.*

I previously explained how given the elevated risk of executive discretion in foreign policy, expost oversight is of central importance to assuring this policy's democratic legitimacy. In that regard, we saw how there exist essentially two channels of oversight. On the one hand, an interinstitutional oversight that comes from elected representatives (indicator 15); that is, in case of the EU's foreign policy from the European parliament or national parliaments. On the other hand, oversight exercised by the democratic principal himself; that is the society at large, through media, academic research or the work of CSO, as well as by citizens individually. Such societal oversight, I proposed to evaluate through three additional indicators, focussing on its actual presence (indicator 16) as well as the degree to which the results of this oversight is, or can be picked up by society (indicator 17) or by the legislature, as input to its own oversight (indicator 18).

1. Does there exist an institutionalized system of oversight by elected representatives?

Before Lisbon, Giovanna Bono (2004, 177-78) declared that neither the European Parliament nor national parliaments have formal possibilities for scrutinizing decision-making in EU foreign policy. Anne-Elizabeth Stie (2010, 15-16) too concluded that *"the EP is deprived of formal rights to properly monitor on-going policy-making"* and that the situation is analogue for national parliaments. This last point is in similar terms discussed by Christopher Lord (2011, 1142), stating that the notion that national parliaments can adequately control Union decisions is open to several objections. Question is if such pre-Lisbon conclusions still apply to today's EFP?

Art. 36 TEU slightly enhances oversight of the European Parliament in foreign and security policy by extending its scope to CSDP. The Parliament, so the Treaty stipulates, *"may address **questions** [...] to the Council or the HR"*; and, *"twice a year it shall hold a **debate** on progress*

in implementing CFSP, including CSDP". These tools have received further backing by the High Representative's 2010 Declaration of political accountability, not only reaffirming these treaty provisions but also announcing to enhance the practice of so-called **Joint Consultation Meetings** (DPA, art. 1). Additionally, the EP can send **delegations** to civilian and military EU-missions. To this adds the **Special Committee** that was previously discussed when dealing with transparency (cf. Chapter X, 4 *supra*), and therefore will not be dealt with separately here. As to **national parliaments**, their role is defined by art. 12 TEU (cf. Chapter VIII, 2 *supra*), and with regard to foreign security and defence further detailed in art. 10 of Protocol I to the Treaty (on the Role of National Parliaments in the EU). Yet, how exactly they can monitor daily CFSP/CSDP-developments is not specified. As showed before, there is no common, way of parliamentary involvement in EU foreign policy (cf. Verhey 2014; Peters et al. 2014, 111); also in respect to oversight (i.a. Russo and Wiberg 2010; Anghel et al. 2008). To remedy this, since 2012 the EP and national parliaments hold two **interparliamentary conferences** per year to debate common foreign and security policy. According to the EP, this combined parliamentary scrutiny enhances legitimacy, and is essential if European external action is to be understood and supported by EU citizens[210].

European Parliament: questions

According to the EP, **questions** are a direct form of parliamentary scrutiny[211]. In line with its Rules of Procedures (RoP), questions can be asked in three ways: *orally* (RoP 128), *during question time* (RoP 129) or *by writing* (RoP 130). With regard to foreign policy, questions are directed to both the Council and the Commission. All questions and answers are published in an online register.

Written questions are with distance the most popular among them. From January 2010 till December 2016, 3.131 written questions have been sent to the Council and 79.590 to the Commission. In contrast, only 307 oral questions were addressed to the Council and 1019 to

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[210] Cf. *EP resolution of 24 October 2013, P7_TA(2013)0453),* § A europarl.europa.eu/sides/ get Doc.do?type=TA&reference=P7-TA-2013-0453&language=EN&ring=A7-2013-0330; *EP resolution of 11 May*, P7_TA(2011)0227, § G europarl.europa.eu/sides/getDoc. do?type= TA&language=EN&reference=P7-TA-2011-227 [22.05.17].
[211] EP, Research Service, *Parliamentary questions* epthinktank.eu/2014/12/05/parliamentary-questions/ [31.03.16].

the Commission[212]. These numbers also show that a clear majority of questions go to the Commission. Foreign security and defence is no exception to these trends. However, also some more particular, foreign policy related observations could be noted.

First, the number of questions dealing with foreign and security policy is limited compared to the total amount of questions. This is indisputable for oral questions. Between 2010 and 2016 only 10 oral questions were issued on behalf of the Foreign Affairs committee and none by the Security and Defence subcommittee. Although a precise evaluation of written questions per topic is not possible – due to limited search options (cf. *infra*), the register does not allow for a comprehensive overview of questions according to their main issue – a word-based search indicates a similar situation. Between 2010 and 2016, we find 913 written questions unequivocally dealing with main foreign security and defence issues: 162 concern organizational aspects of the EEAS[213], 135 of them deal with EU civilian and military missions[214] and 616 can be found that relate to restrictive measures[215]. Given the centrality of these three topics in today's EU foreign policy – and notwithstanding they cannot pretend to count for the exact number – these questions arguably cover a representative deal of those about the EU's foreign security and defence policy.

Furthermore, the Commission is confirmed as the Parliament's preferred interlocutor. Noteworthy in that regard is that although a similar trend can be recognized for the totality of questions (cf. *supra*, we see how in the case of foreign policy, the contrast clearly became more pronounced, especially for the first years after Lisbon (cf. Table 9). This arguably results from the integration of the High Representative within the European Commission, which leads to

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[212] As to questions for question time with the Commission, due to a change of format, they are only recorded in the register till 09.2011. Until then they were more frequent than oral questions, but compared to written questions still a very minor format.

[213] For 01.01.2010 till 31.12.2016 I searched the register for "Words in title": "EEAS" OR "European External Action Service". Then, I manually searched for those questions that concerned organisational aspects (<> other, policy-related aspects).

[214] For 01.01.2010 till 31.12.2016 I searched the register for "Words in text", using al acronyms used for EU missions. Thus, each question was selected that mentioned one of the following words: "EUPOL" OR "EUFOR" OR "EUCAP" OR "EUBAM" OR "EUSEC" OR "EUTM" OR "EUAM" OR "NAVFOR" OR "EULEX" OR "EUJUST" OR "EUMM" OR "EUPM" OR "EUPAT" OR "EU SSR" OR "EUAVSEC" OR "EUMAM". This resulted in 144 hits. I manually scrutinized these results in order to remove the hits not relevant to the topic of study.

[215] For 01.01.2010 till 31.12.2016 I searched the register for "Words in text": "Sanctions" OR "Restrictive measures". This resulted in 1112 hits. I manually scrutinized these results in order to remove the hits not relevant to the topic of study.

questions on foreign policy being increasingly sent through the Commission to its VP, the HR for the EU's foreign policy.

Table 9: Questions about foreign policy to the Commission and the Council (2010-2016)

	2010		2011		2012		2013		2014		2015		2016		TOTAL
Questions to COM	57	62.64%	120	89.55%	154	94.48%	107	92.24%	151	88.30%	128	81.53%	72	88.89%	789
Questions to Council	34	37.36%	14	10.45%	9	5.52%	9	7.76%	20	11.70%	29	18.47%	9	11.11%	124
TOTAL Questions/ year	91		134		163		116		171		157		81		913

In order now to apprehend the eligibility of these questions as tools of foreign policy monitoring we must look at both their profoundness – the detailedness of information they search for –and the answers they acquire; as well as at the time going by between a question and its answer.

To start with the last point, we distinguish between normal questions and priority questions. According to EP RoP 130, priority (P) questions shall be answered within 3 weeks; normal (E) questions have 6 weeks. Among the selected body of 913 questions, 828 were E-questions and 85 P-questions. Based upon the time elapsing between a question and its answer[216], we can conclude that a large majority of questions are not answered in time; only 214 E-questions (25.85%) and 4 P-questions (4.71%) received a timely answer. While the Commission (= HR) clearly answers more within the deadline than the Council, over time there seems no notable change in these measures (cf. Table 10) To put these data into comparative perspective is not self-evident, as the Parliament does not keep information on the time it took the other institutions to answer (European Parliament, e-mail 19.05.15). But, looking at the Commission's 2013 annual activity report (the most recent that gives data on this matter), it seems that written questions on foreign policy receive less timely replies than is generally the case. For E- and P-questions together, only 26.11% of the selected questions were answered within time by the Commission (cf. Table 10), compared to generally 58% for 2011 and 2012

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[216] To measure the answering time, I applied the following procedure: for each question, I looked in the register for the dates mentioned for the question and the answer. Then, I calculated the number of working days between both dates while adding 5 days for P-questions and 10 days for E-questions; this because the date of question mentioned is the date of registration in the register, not the date of reception by the addressee. Upon registration, questions undergo an admissibility and transmission procedure – "*which can take up to one week for priority questions and two weeks for normal written questions, depending on workload*" (European Parliament, e-mail 19.05.15). Thus, the deadline for reply starts to run on average one week after registration for P-questions and two weeks for E-questions. Hence, I considered to be answered within the deadline every question answered within 20 (15+5) working days for P-questions, respectively 40 (30+10) working days for E-questions.

and 69.3% for 2013[217]. For our selected questions, it takes the Commission on average 47 days to come back on E-questions and 45 days for P-questions on foreign security issues; against 49 and 66 days for the Council.

Table 10: Questions on EU foreign security and defence answered within time

	2010		2011		2012		2013		2014		2015		2016		TOTAL	
E-questions to COM	19	34.55%	47	40.52%	45	31.03%	38	38.00%	39	30.95%	8	6.90%	6	9.84%	202	28.09%
E-questions to Council	7	21.88%	2	14.29%	2	28.57%	0	0.00%	1	6.25%	0	0.00%	0	0.00%	12	11.01%
TOTAL E-questions/ year	20	22.99%	35	26.92%	36	23.68%	34	31.78%	34	23.94%	8	5.67%	4	5.80%	214	25.85%
	2010		2011		2012		2013		2014		2015		2016		TOTAL	
P-questions to COM	0	0.00%	0	0.00%	0	0.00%	0	0.00%	4	16.00%	0	0.00%	0	0.00%	4	5.71%
P-questions to Council	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
TOTAL P-questions/ year	0	0.00%	0	0.00%	0	0.00%	0	0.00%	4	13.79%	0	0.00%	0	0.00%	4	4.71%
	2010		2011		2012		2013		2014		2015		2016		TOTAL	
Questions to COM	19	33.33%	47	39.17%	45	29.22%	38	35.51%	43	28.48%	8	6.25%	6	8.33%	206	26.11%
Questions to Council	7	20.59%	2	14.29%	2	22.22%	0	0.00%	1	5.00%	0	0.00%	0	0.00%	12	9.68%
TOTAL Questions/ year	26	28.57%	49	36.57%	47	28.83%	38	32.76%	44	25.73%	8	5.10%	6	7.41%	218	23.88%

The 1st column per year contains the numbers of questions answered within time, the 2nd gives the % this number represents in proportion to the total numbers of that type of questions for that year.

However, not only how promptly they got response, i.e. within the deadline or not; but also, their content, and that of the answer, tells us something about the oversight capacity of questions. Classifying the selected questions and their answers along three categories: specific, general, and unspecific, it follows that a clear majority thereof is of general nature. For the answers, the rates are comparable. Only a limited number of questions and answers can be described as unspecific. (cf. Table 11) [218]. *Specific questions* contain very concrete points and make clear what kind of detailed information is expected. They often concern rather long questions that explain considerably the context and information to which they refer[219]; but they can also be very short, asking precise information about a concrete dossier or aspect[220]. G*eneral questions*, on the other hand, indeed search for a better understanding of the executive's work and intentions; but do not mention very specific - though rather general information themselves

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[217] Commission SG, *2013 Annual Activity Report*, p.52 ec.europa.eu/atwork/synthesis/aar/doc/sg_aar_2013.pdf [07.06.17]

[218] The allocation of the values to each question and answer results from a manual reading of them. In that sense, the data provided in Table 11 should be understood as indicative, clarifying my point, though without claiming to represent exact values.

[219] For instance: European Parliament – Parliamentary Questions, E-001314-14. *Subject: Somalia in a stage of transition and stabilisation: alarm at new wave of violence in the centre and south of the country*, 10 February 2014.

[220] For instance: European Parliament – Parliamentary Questions, E-004531-15. *Subject: Male and female staff involved in the EU police mission for the Palestinian territories (EUPOL COPPS)*, 20 March 2015.

and can be answered correctly in various ways. They ask for instance about the opinion of the HR (genre: *"in the HR's view…"* or *"does the Council agree…"*), or about possible future policy choices (genre: *"will the HR/ the Council consider…"*) *Unspecific questions* finally, seem asked rather for the form. They ask for information that clearly could be obtained through other means, simply repeat an already satisfactorily answered questions or do not ask for information at all. This, for instance, concerns questions that only ask if *"the Vice-President/High Representative find[s] it reasonable to have a Protocol Service?"*[221] or if *"the Council ha[s] any sanctions against Lashkar-e-Taiba?"*[222] (the answer to which can easily be found in the Official Journal of the EU or in the previously mentioned regularly update list available on the EEAS website). Where it concerns answers; *specific answers* contain detailed information such as precise numbers, they answer meticulously to the question[223]. G*eneral answers* indeed answer the question, but not very precise, they do not go into concrete detail. *Unspecific answers* are clearly insufficient. They do not at all answer the question by being in fact non-existent or by giving a minimalistic answer, compared to the question to which they answer[224].

Table 11: Type of question/ answer

E-questions	Questions		Answers	
Specific	248	29.95%	244	29.47%
General	550	66.43%	563	68.00%
Unspecific	30	3.62%	20	2.42%
(NAY)	0	0.00%	1	0.12%
	828		828	
P-questions	Questions		Answers	
Specific	34	40.00%	20	23.53%
General	51	60.00%	63	74.12%
Unspecific	0	0.00%	2	2.35%
(NAY)	0	0.00%	0	0.00%
	85		85	

NAY = Not answered yet (07.06.17)

In that way, written questions certainly present themselves as tools of monitoring, operated by MEP's to create oversight over the EU's foreign security and defence policy. And, although answers often resemble a kind of formality –not revealing information completely unknown before – the essential goal of questions seems fulfilled. Questions indeed force the Commission (and its vice-president, the High Representative), and the Council to

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[221] European Parliament – Parliamentary Questions, E-001712-13. *Subject: Protocol Service of the European External Action Service*, 18 February 2013.

[222] European Parliament – Parliamentary Questions, E-007637-15. *Subject: Council sanctions against Lashkar-e-Taiba*, 12 Mai 2015.

[223] For instance: European Parliament – Parliamentary Questions, E-012548-13. *Subject: Clarification on the Eulex mission in Kosovo* – Answer given by High Representative/Vice-President Ashton on behalf of the Commission, 23 January 2014.

[224] For instance: European Parliament – Parliamentary Questions, E-005107/2012. *Subject: The case of Trepca Mining, in Kosovo* – Reply, 16 July 2012.

reply, and MEP's thereby receive a statement that they thereupon can use for their own purpose (Raunio 1996, 362-63). Through the continuous stream of questions, the foreign policy-executives (HR and Council) know themselves closely followed.

European Parliament: debate

Other than by questions, the Parliament also scrutinizes CFSP/ CSDP through **general debates** (EP RoP 112). Such debates *on progress in implementing CFSP and CSDP* are provided to take place twice a year on the Parliament's own initiative[225]. They are organized around two reports, one on the CFSP in general, drafted by the Committee on Foreign Affairs; and another on the CSDP in particular, issued by the subcommittee on Security and Defence[226]. The starting point for these reports is a consultative document drawn up by the HR[227]. Since Lisbon, nine general debates have been organised about the CFSP and/or CSDP (cf. Table 12). At the CFSP-debates, the HR is always present, but for the plenary discussions on CSDP she has been replaced by the rotating presidency of the Council both in 2012 and 2013. The concrete oversight power of these debates should, however, not be overestimated, nor misunderstood. First of all, the HR's annual reports from which they depart are repeatedly criticized for their lack of clear priorities and guidelines, or for ignoring important questions and acute shortcomings in CSDP decision-making[228]. Such shortcomings (can) hinder a to-the-point debate. Furthermore, considerable time passes between the period discussed and the actual debate. This starts already with the HR's annual reports. According to the IIA of 2 December 2013, art. 25, these reports – containing an evaluation of the measures launched in the year n-1 as well as setting out the main aspects and basic choices of the CFSP in the year to come – shall be transmitted by June

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[225] The EP's work organizes along 19 types of procedures (for an overview, see: *Verfahrensarten der EU Institutionen und ihre Abkürzung* mitgestalten.eu/node/187). Debates on foreign policy and defence follow the own-initiative procedure (INI), see: *Own Initiative Reports* europarl. europa.eu/the-secretary-general/resource/static/files/Documents%20section/SPforEP/Own-Initiative_reports.pdf [28.04.16].

[226] EP, *Fact Sheets on the European Union: Common Security and Defence Policy* europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_6.1.2.html [28.04.16].

[227] *"Annual reports from the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament on the main aspects and basis choices of the CFSP"*; since 2016 denominated *"CFSP Report - Our priorities in [...]"*.

[228] Cf. EP resolution of 12.09.12 (P7_TA(2012)0334), §2 europarl.europa.eu/sides/getDoc. do? type=TA&reference=P7-TA-2012-0334&language=EN&ring=A7-2012-0252; 24.10.13 (P7_TA(2013)0453), §24 europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013 -0453&language=EN&ring=A7-2013-0330 [08.06.17]; also: Diedrichs (2004, 35).

15 of the year in question[229] [230]. In practice, though, we see that, except for the 2010 report, the High Representative never lived up to the deadline. Subsequently, a period of up to eight months can elapse between the publication of this annual report and the start of the parliamentary procedure. This leads to debates taking place only at the end, or even after the year for which the HR's report is supposed to set out the main aspects and basic choices. Although the long time-interval between the policy actions and their discussion in the Parliament obviously impedes the Parliament's ability to use debates as a means of direct monitoring, they could be useful in that they evaluate the concrete implementation of the foreign policy. In that sense, general debates are not so much a tool of decision-making monitoring but an instrument of reflection, scrutinizing what has become. Their oversight focus is not on decisional output but on outcome[231].

Table 12: EP general debates on CFSP/ CSDP

	Report	EP procedure	Start EP procedure	EP debate
Annual report 2009 (10659/10)	14.06.10	CFSP 2010/2124(INI)	09.09.10	11.05.11 (*)
Annual report 2010 (12562/11)	06.07.11	CFSP 2012/2050(INI)	20.04.12	11.09.12
		CSDP 2012/2138(INI)	05.07.12	21.11.12
Annual report 2011 (14605/1/12)	09.10.12	CFSP 2013/2081(INI)	10.06.13	23.10.13
		CSDP 2013/2105(INI)	13.06.13	20.11.13
Annual report 2012 (14924/13)	16.10.13	CFSP	no separate procedure was started to discuss this report (**)	no separate procedure was started to discuss this report
		CSDP	idem	idem
Annual report 2013 (12094/14)	23.07.14	CFSP 2014/2219(INI)	17.12.14	11.03.15
		CSDP 2014/2220(INI)	17.12.14	19.05.15
Annual report 2014 (11083/15)	20.07.15	CFSP 2016/2036(INI)	10.03.16	13.12.16
Annual report 2016 (13026/16)	17.10.16	CSDP 2016/2067(INI)	28.04.16	22.11.16

* Joint CFSP - CSDP debate

** Yet, the annual report has been mentioned twice (paragraph 15 and 40) in the Parliamentary resolution of 21.11.13 (procedure 2013/2105(INI) (EP, e-mail 16.08.29 and 16.10.04).

(source: European Parliament Legislative Observatory - europarl.europa.eu/oeil/home/home.do)

Except for these general debates, also **thematic debates** take place. Through these, the EP can ask the High Representative for regular and timely information on the development and implementation of the Union's CFSP (art. 112 RoP). Such debates are organised depending on international events and developments and offer the Parliament more punctual insight. Annexes to the aforementioned annual reports, listing the appearances of the HR in the European

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[229] *Interinstitutional Agreement of 2 December 2013*, OJ C 373, 20.12.2013, p. 1–11.
[230] In 2016, the HR changed the methodology of the report. Henceforth it focuses on the ongoing work rather than looks backwards (EEAS, e-mail 15.05.17); yet it is too early to say what this will imply for the general debate in the EP.
[231] On the relation between output and outcome and its relevance in EU foreign policy, cf. Lauwerier (2007).

Parliament, give an idea of how often such thematic debates have taken place over the last years: except for the aforementioned general debates, the High Representative was present during plenary at 45 occasions on 21 different dates between 2010 and 2014[232]. Furthermore, also at other occasions, such as committee meetings, the Parliament seems to have the possibility of discussion with the HR (cf. Table 13).

Table 13: Appearances of the HR in the EP (2010-2014)

	2010	2011	2012	2013	2014	TOTAL
Plenary (general debate)	1	1	1	1	1	5
Plenary (thematic) *	6	24	4	9	2	45
Plenary (other)		2	1			3
AFET/ SEDE	2	2	4	2	4	14
Other Parl. Committees	1		1	2		4
Special Committee		2	1	1		4
IPC			1		1	2
Other	1	5	2	1		9
TOTAL	11	36	15	16	8	

* Thematic debates often take place on the same date and are in fact just different points of discussion within one session - 2010: 6 different dates; 2011: 7 different dates; 2012: 3 different dates; 2013: 4 different dates; 2014: 1 date.

(source: Annual reports from the High Representative, annexes http://eeas.europa.eu/cfsp/index_en.htm and EEAS, SG.AFGEN2)

European Parliament: Joint Consultation meetings

A third way of monitoring is through **joint consultation meetings** (JCM), bringing together the bureaus of the parliamentary committees of foreign affairs (AFET) and budgets (BUDG) with representatives of the Council, the European External Action Service and the Commission. The EEAS presence (at all the meetings) includes in addition to the permanent Chair of the Political and Security Committee, senior officials responsible for the policy. Regular Joint Consultation Meetings take place at least five times a year[233] to prepare for the adoption of the annual CFSP budget. If necessary, additional JCM's may be arranged on top (DPA, art. 1), yet, so far, no additional meetings took place (MEP, e-mail 13.02.17). Briefings at these meetings relate in particular to CFSP missions financed out of the EU budget, both implemented and under preparation (DPA, art. 1). This concretely means that only civilian CSDP-missions are

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[232] At the time of writing, data for 2015 and 2016 were not available.
[233] *Interinstitutional Agreement of 2 December 2013,* OJ C 373, 20.12.2013, p. 1–11, art. 25.

discussed, as military missions are not paid through the regular EU budget[234] (cf. Chapter VII *supra*). Although such a mechanism was already informally in place since 2003, its formal introduction in the form of regular information moments results from a tug-of-war between the EP and the Council about budgetary control fought out in 2005-2006 (Barbé and Herranz Surrallés 2008, 81) and is confirmed in the 2006 IIA on budgetary discipline (and its follow-up of 2 December 2013, cf. Chapter VII *supra*). Despite their denomination as *consultation* meetings, the purport of this exercise should not be understood wrongly. They do not enable the Parliament to participate actively in the establishment of the EU's foreign policy but are mere information sessions on the main aspects and basic choices of the CFSP (Barbé and Herranz Surrallés 2008, 82), in particular in relation to budgetary aspects (cf. Chapter VII *supra*). In that sense, *"these meetings symbolise the coming together of Parliament's consultation/scrutiny role and budgetary authority in the area of CFSP"*[235] while helping the EP to keep oversight of the CFSP/CSDP and the (civilian) missions organised within that policy.

European Parliament: parliamentary delegations

A last oversight tool exists in the possibility for the EP to send parliamentary delegations to EU military or civilian missions. Two different types of delegations exist. On the one hand, the SEDE subcommittee can decide to send up to half of its members (= 15 in the on-going 8th term, 2014-2019) on visits within the EU (for instance to mission headquarters), but 1/3 of this quota can go for travel outside Europe, i.e. to troops in the field. On the other hand, on request of SEDE, the EP can decide to create an ad-hoc delegation, usually consisting of 7 MEPs[236]. Since 2010, 20 such visits were organised, 4 to headquarters and 16 on the field (cf. Table 14). These visits enable MEPs to familiarize with the on-the-field situation and are sometimes considered to bring about more useful information than just meetings with high-level officials back in Parliament. The information obtained through these field visits is put in a short, mostly

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[234] During her hearing before the EP, HR Mogherini declared that she *"will also instruct the services to show flexibility regarding the scope of the Joint Consultation meetings to keep the EP informed on military missions […]"* europarl.europa.eu/RegData/etudes/BRIE/2014/536_416/EXPO_BRI (2014)536416_EN.pdf [08.06.17]. It is unclear if this already has been implemented.

[235] European Parliament – DG for external policies of the Union, *The European Parliament and the Common Foreign and Security Policy. Policy briefing* europarl.europa.eu/webnp/webdav /site/myjahiasite/users/nsalliarelis/public/The%20European%20Parliament%20and%20the %20Common%20Security%20and%20Defence%20Policy.doc [12.05.16]

[236] European Parliament, Subcommittee on Security and Defence, *Providing parliamentary accountability over EU's Common Security and Defence Policy*, p.12 europarl.europa.eu/document /activities/cont/201203/20120308ATT40252/20120308ATT40252EN.pdf [02.05.16]

restricted, report by the head of the delegation. This adds to the Parliament's understanding of EU foreign security and defence policy and can be used by MEPs when asking questions or in discussions with administrative and political dirigeants (cf. Barbé and Herranz Surrallés 2008, 90-91; also: Born et al. 2007, 14).

Table 14: European Parliament visits to CSDP missions (2011-2016)

2010	2011	2012	2013	2014	2015	2016
Northwood (U.K.) (Headquarters EUNAVFOR -	Uganda (EUTM Somalia).	Israel and the Palestinian Territories (EUPOL COPPS and	Northwood (U.K.) (Headquarters EUNAVFOR -	Djibouti (EUCAP Nestor).	Central African Republic (EUFOR CAR),	Rome, Italy (OHQ of EUNAVFOR Med Sophia)
Djibouti (EUNAVFOR Operation "Atalanta")		Kosovo (EULEX).	Mali and Niger (EUTM Mali and EUCAP Sahel Niger),		Ukraine (EUAM),	Georgia (EUMM),
Georgia (EUMM).			Georgia (EUMM)		Moldova (EUBAM),	Mali (EUTM, EUCAP)
			Afghanistan (EUPOL).		Northwood (U.K.) (Headquarters EUNAVFOR -	Kyiv, Dnipro, Kramatorsk (Ukraine) (EUAM).
					Bosnia and Herzegovina (EUFOR Althea).	

(Source: European Parliament, e-mail 22.12.16)

National Parliaments oversight of CFSP

Although through the combination of these tools the European Parliament can keep an eye on the CFSP and it seems true that there is more parliamentary oversight at EU level in the area of security and defence than it appears on paper (Herranz-Surrallés 2014a, 5; also: Huff 2013, 16), one area remains out of EP reach. Council decisions relating to the launching, funding and conduct of military CSDP operations can well be questioned and debated, they officially remain a competence of the Member States, difficult to scrutinize through the European level.

In practice, as was discussed before (cf. Chapter VII, 1, VIII, 2 *supra*), national parliaments' abilities in this regard, proved rather limited. Only in a limited number of Member States is there a need of approval from at least one of the parliamentary chambers before the country can participate in EU military missions and even less so in case of civilian missions[237]. On the other hand, national parliaments are clearly not completely uninterested in CFSP matters. A notable majority holds at least one debate on the matter per year (either in committee or in plenary),

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[237] Although taking place before the actual deployment of troops, approval can be seen as oversight, in the way that it controls the decision of the government to participate after such decision has been taken.

and most of them regularly invite the competent ministers to debate CFSP and CSDP related topics (cf. Table 15).

Table 15: CFSP oversight by national parliaments

TOTAL	Question	Austria	Belgium	Bulgaria	Czech Rep.	Croatia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Luxembourg	Malta	Netherlands	Poland	Portugal	Slovakia	Slovenia	Spain	Sweden	UK
21	The government regularly informs (= at least once a year) the parliament about major CFSP developments and the country's participation therein.	1	1	1	0	1	1	1	1	1	1	1	1	1	0		1	0	1	1	1	1	1	1	1	1
20	The Parliament organizes regular debates (= one or more per year) about recent development within CFSP (both in plenary or in the competent committee).	1	1	1	0	1	0	1	1	1	1	1	1	1	0		1	0	1	1	1	1	1	1	1	1
9	The parliament publishes regular reports about recent developments within CFSP/CSDP.	0	1	1	1	0	0	0	1	1	1	0	0	1	0	0	0	0	0	0	0	0	0	0	1	1
22	The competent minister is regularly invited (= at least once a year) before the parliament (lenary or competent committee) to comment on the government's CFSP position.	1	1	1	1	1	1	1	1	1	1	1	1	0	1	0	1		1	1	1	1	1	1	1	1
	Comments:	(a)		(b)	(c)		(d)			(e)	(f)						(g)		(h)	(i)	(j)			(k)		(l)

1 = yes, 0 = no, empty = not answered. In case of a bicameral parliament and where both the houses answered, I combined the results.

(source: Questionnaire among MSP)

a. *At the start of each year, ministries have to send a report to the Parliament (both chambers) in which they give an overview on EU projects to be expected in that year. These reports are then debated in the respective sectorial committees. Besides MPs have the possibility to place the item "Debate on current issues within the remit of the committee" on the Committee's Agenda or question the minister within the Question Times, or debate within the instrument of consideration of EU matters.*
b. *Ministers are regularly invited to relevant committees of the National Assembly to discuss all aspects of CFSP and CSDP. In these meetings, they are obliged to answer comprehensively. Additionally, the ministries have to participate in committee meetings on so-called "blitz control" once every month.*
c. *Chamber: Committees are regularly informed, but the plenary discusses CFSP/CSDP issues only to a very limited extent if they have far-reaching implication for the Czech foreign policy and international policy in general. No special debate is held about CFSP/CSDP as such. – Senate: CFSP/CSDP is mostly debated during the debate on the preparation and on the outcome of the European Council in the European Affairs Committee and in the plenary. The Foreign Affairs Committee debates the preparation or outcomes of FAC with a deputy minister, but not always, i.e. not regarding every FAC meeting.*
d. *The relevant minister appears in the European Affairs Committee to inform and/or consult the committee on files before participating in council meetings. This applies to all ministers, including the Defense Minister (once or twice a year) and the Minister for Foreign Affairs (once a month).*
e. *All ministers are required to appear before either the EAC or the FAC or both before and after every Council meeting (or equivalent).*
f. *Essentially, the CFSP/ CSDP are followed by the FAC. These matters are very rarely debate in plenary.*
g. *The government does not seek opinion in the European Affairs committee, but approval. Without approval action cannot be taken in the Council.*
h. *Tweede Kamer: Debates or meetings are scheduled prior to FAC (Defence).*
i. *The EU Affairs committee is informed about the agenda of Council meetings and on its outcomes. Usually there are no separated committee sittings dedicated to CFSP/CSDP, but they are discussed when relevant EU documents are submitted to the Committee. The Defence Committee may*

introduce those topics to its agenda. In plenary, CFSP/CSDP are discussed in the annual debate on foreign policy or ad hoc on request.

j. *Although no specific report for CFSP/CSDP is published, a report of the Assembly's participation in the Interparliamentary Conference on CFSP/CSDP is published after every participation. This usually entails updated information on the CFSP/CSDP's state of play, as well as the views expressed by the Assembly's delegation during the debate and the contribution made to the final conclusions.*

k. *The debate about the CFSP/CSDP in National Assembly is based on an Annual Report of Declaration of foreign policy of the republic of Slovenia, prepared by Government.*

l. *House of Com: The European Scrutiny Committee publishes reports on all significant CFSP/CSDP proposals. The Defence Committee and/or the FAC may each take evidence on CFSP/CSDP matters. On occasion, this could be structured as part of an examination of EU policy, but it could equally arise as part of inquiries into individual missions, or regions rather than being an explicit regular hearing on CFSP. UK select committees take evidence and issue reports: they are not a forum for debate.*

However, what this implies for their actual oversight capacity is questionable. Although the data from Table 15 reveal a formal presence of national parliaments, they tell little about the actual relevance thereof. In that sense, they do not disprove Huff's (2013, 13) observation that *"the EU scrutiny systems of many national parliaments [...] are designed primarily to respond to draft EU legislation, rather than to oversee the broad direction of policy in areas where documents may arrive in non-typical guises, after decisions already have been taken at European level"*. But, most of all; when looking at the additional comments provided by several parliaments, they reveal how foreign security is mainly just one among many European issues. Bearing in mind that EU matters, in turn, are but one issue among many for national parliaments (cf. *ibid*, 17), all in all it is doubtful that national parliaments could really scrutinize their country's participation in CFSP matters. So, the generally limited ex ante control discussed under *Budget* and *Participation*, seems not immediately being remedied by ex-post oversight.

National Parliaments and the EP: Interparliamentary Conference for the CFSP and the CSDP

Besides, even if some national parliaments would have a strong grip over their country's role in CFSP (as for instance seems to be case for the Latvian Saeima, cf. Table 15, comment g), it can be asked what difference individual oversight by national parliaments would make? As the increasing integration of security policy makes it more difficult for national parliaments to act independently from each other (cf. Wagner 2006), it could after all be argued that the parliaments' role in the CFSP can only be assured when acting collectively.

In this regard, the lack of uniformity in parliamentary oversight between Member States has negative consequences on the effectiveness of the overall parliamentary oversight (Anghel et

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al. 2008, 75). Especially since the abolition of the Western European Union in 2011, and with it, the disappearance of its Parliamentary Assembly, common European defence activities risked escaping from any parliamentary control (Council of Europe 2009, 50). To anticipate this, parliaments searched for an alternative mechanism, resulting in the creation of the **Interparliamentary Conference on CFSP/CSDP** (IPC) in April 2012. Being aware that to make full use of their scrutiny rights, the European Parliament and the national parliaments have to intensify their cooperation; but that at the same time there is no need for new decision-making levels or structures[238]; the IPC essentially *"provides a framework for the exchange of information and best practices in the area of CFSP and CSDP, to enable national Parliaments and the European Parliament to be fully informed when carrying out their respective roles in this policy area"*[239]. The IPC is presided by the Parliament from the country holding the EU's rotating presidency, in close cooperation with the European Parliament. It convenes twice a year in the country of the Presidency Parliament or in the European Parliament in Brussels. The Member State parliaments are each represented by a delegation of up to six members; the European Parliament is represented by up to 16 members. National parliaments of EU candidate countries and NATO Member States that are not members of the EU can participate as observers and are represented by a delegation of up to four members[240].

However, as repeatedly discussed in the literature, the actual role this interparliamentary cooperation so far plays in monitoring European defence activities, and hence in ensuring its democratic oversight, can be arguably doubted. Interparliamentary cooperation is welcomed as a possible solution to the complexity and *multilayeredness* of CSDP (Wouters and Raube 2012, 10) and hailed for having great potential for improved information exchange (Peters et al. 2010, 17). And indeed, as at least the Portuguese case suggests (cf. Table 15, comment j), the IPC can provide input to national parliamentary debates on CFP. Yet, important shortcomings still have to be solved for the conference to become really an efficient and coherent oversight-instrument (cf. Butler 2015; Stavridis 2014). As Lord (2011, 1143-44) argues, it is not sure that

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[238] Cf. *Parliamentary scrutiny of EU external action, including the Common Foreign Security Policy (CFSP) and the Common Security and Defense Policy (CSDP) following the entry into force of the Lisbon treaty, Note by Elmar Brok and Roberto Gualtieri, MEP, Draft*, version 07.11.10 elmarbrok.de/wp-content/uploads/2011/02/cfsp_ep_elmarbrok.pdf [28.04.16].

[239] European parliament, *Relations with national parliaments – Interparliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defence Policy* europarl.europa.eu/webnp/cms/pid/1932 [28.04.16].

[240] Interparliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) parleu2017.ee/en/events/interparliamentary-conference-common-foreign-and-security-policy-cfsp-and-common-security [23.10.17]

shortcomings in national or European Parliament monitoring of CSDP would be resolved by arrangements for coordination and distribution of parliamentary functions across the two levels. Or, as he continues, *"it is by no means self-evident that co-ordination by national parliaments and the EP on CSDP matters will yield superior parliamentary control"*. The main reason for this lies in the opposing views among national parliaments, and with the European Parliament about how exactly interparliamentary cooperation should be organized and what exactly should be the role and position of national parliaments, respectively the EP in the IPC (cf. Herranz-Surrallés 2014b; Wouters and Raube 2012, 9-16). In a context where the roles of the respective players are not clearly defined and actors have opposing visions on their respective positions, the search for cooperation quickly risks to block, rather than to reinforce common scrutiny. Regarding security and defence, national parliaments seem increasingly keen to hold thigh to the (few) rights they have in this field rather than to accord a reinforced role to the European Parliament; even if this means an overall decrease in the oversight over matters increasingly decided at a supranational level (Herranz-Surrallés 2014b; Huff 2013, 7-8, 19).

Being aware of the difficulties, the IPC proceeded towards a review of its rules of procedures. Under the Greece and Italian presidency, an update of the rules of procedure[241] and a list of best practices was proposed[242] to elaborate the working of the Conference.

2. Do journalists, researchers, and CSOs or individual citizens' act as external watchdogs, monitoring daily developments of the CFSP?

Societal oversight: media

Where it concerns the first strand of societal oversight, it is obvious that this is strongly intertwined with the previous dimension of public debate. However, while media coverage in that context has been taken as a proxy for such public debate, it also (can) fulfil(s) another function. That is, media coverage does not only reflect and stimulate public debate; but while doing so, can also act as a public overseer. By throwing the light on the acts of government and by sounding the alarm when they think things are not happening as they should, media can certainly act as an external watchdog. However, it can be doubted that they actually do so.

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[241] IPEX, *Report on the Seminar of the 21st February for the review of the Rules of Procedure of the Inter-Parliamentary Conference for CFSP CSDP* ipex.eu/IPEXL-WEB/dossier/files/ download /082dbcc54477aede0144f46f8d715e09.do [30.10.17]
[242] IPEX, *Best Practices* ipex.eu/IPEXL-WEB/dossier/files/download/082dbcc54af19e11014b 067757271781.do [30.10.17]

As seen in in the previous discussion about public debate, extended **media coverage** would certainly be possible if wished for, but in practice, does not take place. Following from this, also the role of the media as watchdog seems generally limited. Of course, when looking for instance at the corruption-related problems emerging end 2014 within Eulex Kosovo, we cannot say that the media ignore these all together. Browsing through the results of a search on "Eulex AND Kosovo" in the press databases of Gopress, Europresse and Genios, teaches us that several articles indeed deal with these problems. In that sense, these articles can function as a fire alarm; informing the public about what is going wrong but also showing policy makers that *society is watching them*. However, with reference to the findings of Kandyla and de Vreese (2011, 60) that CFSP-coverage is primarily event-driven, it can be doubted to which extend this is proof of systematic monitoring by the press.

A more positive image emerges when taking into account specialised Euro-press. Media-outlets such as Politico, EUobserver or Euractiv routinely scrutinize European politics with inclusion of foreign policy. Apart from their limited role as dispensers of information, opinions or analyses towards the larger public, these media certainly fulfil a role as watchdog. Through their knowledge and expertise of EU affairs, they closely follow daily developments and act as external scrutinizers. Then again, previously discarded for having little (direct) access to the larger public, it can be suspected that their fire alarm risks not to be heard easily.

On the other hand, they could fulfil an important role that McCubbins & Schwartz (1984, 166) saw for fire alarm actors, i.e. bringing alleged violations to the Parliament's attention. Among the written questions by MEP's between 2010 and 2016, 194 questions explicitly refer to one of the previously mentioned specialised media as their source of information. At least 19 thereof deal with foreign security policy; several more are about other EU foreign affairs[243]. This shows that this specialised media is indeed a source of precise information which could help MEP's in keeping oversight. But, the limited number of questions that – at least explicitly – refer to these sources – compared to the total number – also should temper too much enthusiasm, for these data give no proof of systematic use of specialised Euro-press by the EP in the monitoring of the EU's foreign security policy.

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[243] I searched in the EP's question database for "Words in text", by using the names of each press outlet. Subsequently, I manually searched for those questions that concerned matters related to foreign security and defence matters or to foreign policy issues more in general. The same procedure has been applied for *academia and research*, and for *CSOs*.

Societal oversight: Academia and research

In general, academia and research organisations indeed seem to take up an important role as external overseer of the EU and its policy's. Meaningful in that regard is the observation that from the totality of initial requests for access to EU Council documents that are not directly consultable through the online register (cf. Chapter X, 1 *supra*), a clear majority comes from the academic world. For the years 2012 to 2016, on average 33.48% of the requests stem from academia (followed by civil society with 27.38%)[244]. Although less pronounced, with 27.30%, also the largest share of confirmatory requests comes from academia (again followed by civil society with 23.26%). More specifically with regard to foreign and security matters, the high involvement by academia and research seems confirmed by the even more pronounced situation that exists for EEAS documents. For the EEAS, on average 46.12% (481 out of 1043) of the initial requests come from the academic sector[245].

Multiple other observations point to a watchful academia and research too. The research guide for EU foreign policy for instance mentions no less than 47 *think tanks and research institutes focussing on EU external action and the EU's role in the world*[246], and the Transparency Register enlists 220 *think tanks, research and academic institutions* interested in foreign security policy and defence[247]. At the same time, several academic journals are devoted to the issue. Among the 40 journals *dealing with European politics and EU foreign polic*y enumerated by the research guide for EU foreign policy, at least 5 are primarily about EU foreign and security issues; the others deal with it to various degrees[248]. The existence of an extensive body of research about EU foreign policy is also revealed by scientific databases such as *Web of Science* or *Google Scholar*. Indicatively, Google Scholar gives 3120 results, merely when searching on *"European foreign and security" OR "EU foreign security and defence"* (730 since 2013)[249]. Web of Sciences on the other hand, for instance mentions 36 articles on the EEAS

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[244] Council of the European Union, *Council Annual Report on Access of Documents – 2016*, Table 8 (p.11) data.consilium.europa.eu/doc/document/ST-7903-2017-INIT/en/pdf [31.10.17]

[245] EEAS reports on the access to documents, cf. note 165, supra.

[246] Exploring EU Foreign Policy, *Research Centres and Think Tanks* eufp.eu/research-centres-and-think-tanks [08.06.17]. Developed by the College of Europe and the University of Leuven.

[247] EU, *Transparency Register* ec.europa.eu/transparencyregister/public/consultation/report ControllerPager.do [08.07.17]. *With "registration date" until 31.12.2016.*

[248] Exploring EU Foreign Policy, *Journals* eufp.eu/journals [08.06.17]

[249] Key-word based search scholar.google.com/ [08.06.17]

alone, published since 2010[250]. Given their extensive attention for European foreign security policy, scientific institutions, or individual researchers certainly (can) fulfil a watchdog function. As external experts of the policy field and its particularities, they develop a detailed understanding, enabling them to be among the first to point out possible problems and shortcomings.

While a constrained public access can arguably be supposed to weight on research organisations too; just like specialised media, they can attract attention from the legislature. They could serve as input providers to the European/ a national Parliament. However, also similar to specialised media, it may be questioned to which degree this potential is used. With regard to the European Parliament, it of course can arguably be supposed that academic and external research serves as an (important) source to the work of the Parliament's in-house research service which main task is *"to assist Members in their parliamentary work by providing them with independent, objective and authoritative analysis of, and research on, policy issues relating to the European Union"*[251]; but when just looking at the direct use by MEP's, the situation seems similar to that of specialised media. On the totality of questions asked between 2010 and 2016, a limited number of 77 makes explicit reference to one of the 46 think tanks or research groups listed by the research guide for EU foreign policy. Only 21 of these questions deal with foreign security and defence, and just 21 of the 47 organizations are mentioned (cf. Annex 8).

Societal oversight: CSOs

Finally, also specific CSOs can *"closely examine government policy and approaches from their particular areas of expertise, drawing public and political attention to aspects and approaches that have been ignored, overlooked or misunderstood"* (Caparini and Fluri 2006, 14). Just as for media and research, we hereby have to distinguish between these organisations' own monitoring activities and the way they can serve as input providers to the EP's oversight. With regard to the first dimension; as pointed out before (cf. Chapter VIII, 1 *supra*), many CSOs active on FSDP are not so much grass-root based organisations. But then again, given their expert knowledge and close cooperation with the EU institutions they indeed can act as external watchdogs (cf. Dembinski and Joachim 2014). Hence, they could be among the first to sound

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[250] Web of Science, search on *"Topic"* and selected on relevant *"Categories"* apps.webofknowledge .com/UA_GeneralSearch_input.do?product=UA&search_mode=GeneralSearch&SID=Z1HauIfn4P SAP6Auazp&preferencesSaved [08.06.17]

[251] *European Parliamentary Research Service* europarl.europa.eu/atyourservice/en/20150201 PVL00031/European-Parliamentary-Research-Service [13.05.16]

alarm if things are not going as they should. In relation with the oversight function of the EP, things seem again less promising.

Of the 406 CSOs, interested in *Foreign Security Policy and Defence*, registered in the EU's Transparency Register until June 2015[252], only very few seem to have been used as input providers to questions asked by members of the European Parliament. By searching in the Parliament's online database, we retrace 742 questions related to foreign security policy that explicitly refer to information from in total 29 of these 406 CSOs. Thereby, a large majority of these questions make use of information coming from only two organisations: of the 742 questions mentioned, 305 refer to *Human Rights Watch* as their source and 316 to *Amnesty International*. As to the kind of input that is drawn from these CSOs, in general it concerns information on local situations (human rights abuses, destabilizing factors …) and how the responsible EU institutions (HR, Council) deal with that or think to react (cf. Annex 9). Although such kind of questions certainly have their utility as tools of parliamentary oversight (cf. *supra*), this also means that only in a limited number of cases we can retrace the use of CSOs information as ground for a direct control of the EU's actual foreign security and defence policy. These few exceptions are a question refering to a report of the *Transnational Institute* in order to question the Commission about money it apparently spent on drone research[253] and 7 questions that mention the *International Crisis Group* as their source[254].

Societal oversight: citizens

Where it concerns monitoring **by citizens themselves**, the shortcomings in transparency – limiting the possibility for citizens to directly and easily access the relevant documents – hinder their ability to directly scrutinize foreign policy. To this adds an additional dimension, generally forgotten in the debate on transparency and highly relevant in relation to oversight; that is, how well can citizens follow their elected representatives when they are scrutinizing in their name? In this case, how easily can citizens follow the monitoring efforts of the European Parliament

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[252] Previously (cf. Chapter VIII, 1 supra), I mentioned 470 CSOs registered until end 2016. So, to be clear, the data used here do not refer to these 470 CSOs, but are based on earlier research, carried out in June 2015. That is why only 406 CSOs are taken into account (= the total number of CSOs, register at 23.06.2015, mentioning Foreign Security Policy and Defence as one of their fields of interest). Though, I do not believe this makes a difference for the considerations and conclusions that follow from this.

[253] European Parliament – Parliamentary Questions, P-002891-14. *Subject: VP/HR — EU support for drone research*, 12 March 2014.

[254] European Parliament – Parliamentary Questions europarl.europa.eu/plenary/en/ parliamentary-questions.html#sidesForm [13.06.15].

or their national parliament with regard to the EU's foreign policy? Given the repeatedly mentioned differences between the Member States' approach to EU foreign policy, I only refer here to the European Parliament when claiming that there are important barriers to citizens wishing to scrutinize the scrutinizers. The EP may well claim that "*Parliamentary questions, and the subsequent replies of the other EU institutions, are a rich source of information for citizens*"[255] in practice, their structured consultation demands for a knowledge of the parliamentary work which non-specialists do not possess. The online register may well contain all questions, it is of such design that it does not enable for a systematic search when one is not familiar with codes or dates. The word search on the other hand is too general to use as a focused research tool. The same can be said for other parliamentary documents available in the Parliament's Public Register of Documents. In that sense, the European Parliament fails to offer citizens a better understanding of European foreign policy and does not allow them to monitor its own work as scrutinizer of European foreign policy or this policy as such.

Question, of course can be asked if and how improved research tools for these questions- and documents registers would really contribute to their increased consultation by individual citizens. After all, it can be wondered if, in the end, individual citizens are much interested in exercising oversight; not only with regard to European foreign policy in particular, but with regard to European politics all together. Indeed, both the limited popularity of the specialised Europress, discussed before; as well as the limited share of individual citizens' requests of access to documents[256], seem to indicate a generally passive attitude by individual citizens about European politics. Following from this, it arguably could be wondered if an easier consultation of European parliamentary questions and documents would actually lead to an increased direct control. That is, even if opportunities for control would be reinforced for individual citizens, will they seize these opportunities? Due to a lack of expertise and technical knowledge, and limited cognitive capacities, many individual citizens will not just be unwilling, but also be unable to directly exercise public control; no matter the possibilities they are offered

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[255] European Parliament Research Service, *Parliamentary Questions* epthinktank.eu/2014/ 12/05/parliamentary-questions/ [08.05.15].

[256] According to the previously cited (cf. note 244 supra) *Council Annual Report on Access of Documents – 2016*, for the period 2012 to 2016, 8.56% of the initial requests come from *Others*. 13.26% of them originate from *Undeclared* petitioners. Even if we would suppose that all the *Other* and *Undeclared* requests come from individual citizens, then still only 21.82% are made by individual citizens. Among the confirmatory applications, their share is even more limited (17.22%). Of course, it should be mentioned that these data not only concern CFSP related documents, but all documents included in the register.

(cf. Maggetti and Papadopoulos 2016, 4). Bearing in mind this observation, the previously discussed means of both legislative oversight and oversight by external watchdogs, obviously gain even more relevance.

3. Conclusion: oversight in CFSP, normatively democratic?

Based on McCubbins & Schwarz's (1984) distinction between **police patrol by the Parliament** and **fire alarm by the larger society**, this chapter looked at both legislative oversight by the European and national parliaments as well as at oversight by societal actors. In both cases, positive elements exist, but also unmistakable shortcomings; leaving us with *mixed feelings* about the oversight of European foreign security and defence policy.

Where it concerns the first strand, especially the role of national parliaments is problematic. In general, they seem unfit to monitor independently a policy which scope exceeds their usual competences and capacities. Of course, it could be argued that this is essentially a national problem that will have to be dealt with at the national level... While it is indeed true that the EU as such can neither be blamed for these national-level shortcomings nor has much to say about how they could or should be corrected, it is also true that they do have importance for the EU's foreign policy's democratic legitimacy. They are national problems in their origin, but not so in their consequences. Similar to what I argued already when discussing *Budget* or *Participation*, even if some national parliaments have a certain oversight capacity (what of course is a good thing at their national level), this not necessarily creates good public control from an overall European perspective. While this essentially means that the people's capacity for control over a policy they are equally concerned by depends of the national citizenry they are part of, this can mean an unequal control.

To overcome this problem, a solution could lie with reinforced cooperation amongst them. But, based on several studies on the **Interparliamentary Conference on the CFSP** which has been created in that respect, it seems that national parliaments (so far) prove largely incapable of surpassing their differences and developing a mood of cooperation which would benefit their joint oversight. The Interparliamentary Conference on CFSP, though a potentially useful vehicle of common oversight, is too much disputed regarding its concrete form and functioning to grant national parliaments a stronger common position, enabling them to organize oversight together (with the EP). The European Parliament from its side cannot fill this gap. It has no say

over military CSDP-missions (cf. *infra*) and needs the national parliaments to cover this important aspect of the EU's foreign action.

On the other hand, the European Parliament has at its disposal different instrument to oversee non-defence related dimensions of EU foreign policy, and clearly uses them to do so. First of all, being the only tool of continuous oversight, **questions** allow the EP to communicate directly with the Council, the Commission and the High Representative. This indeed can lead to an information-gain for the Parliament; and tells these institutions that they are followed. The often-delayed answers however hamper this tool's ability to follow closely the day-to-day policy-implementation. As the Council and HR can let pass a deadline without much consequence other than a possible rappel of the question[257], this limits the oversight-autonomy of questions. Similar to what I explained previously about the EP's Special Committee for access to documents related to the CFSP (cf. Chapter X, 4 *supra*), he fact that in practice, the overseen institution can decide itself about a question's urgency, influences the final relevance of the oversight activity (cf. Lester 2015, 16). Yet, of course, it could be asked if the official deadlines are realistic, especially when considering the amount of written question asked yearly by the Parliament. The Commission in that regard even repeatedly complained about the cartload of (impertinent) questions[258], taking up a lot of the institution time and resources. In that sense, it could at least be wondered if oversight through questions by the EP does not suffer from its own excess, and if less would not be better (at least it could take away an argument from the Commission or Council to justify their belated answers…). Being in-depth and providing the Parliament with useful information about on-the-field-CFSP, **general debate** from its side enables a helicopter view that could result in increased insight on long-term implementation and focus on policy-outcome. However, as these debates relate to events that took place a relatively long time before, they are no means of direct oversight. **Thematic debates** in that sense could better fulfil this role as they enable the European Parliament to regularly meet with the High Representative to discuss specific issues and concrete dossiers. J**oint consultation meetings** also constitute a hands-on form of oversight, giving MEP's the opportunity to meet at regular intervals with high-ranking (non-political) CFSP officials. Then

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[257] Art. 130 (4) of the EP's RoP in this regard only stipulates that *"if a question cannot be answered within the time limit set it shall, at the request of the author, be placed on the agenda for the next meeting of the committee responsible"*.
[258] Politico, 08.09.15, "Do MEPs ask too many questions? Do they?" politico.eu/article/meps-ask-too-many-questions-parliament-brussels-eu/; also 15.03.17, *European Commission to Parliament: Enough of your stupid questions!* politico.eu/blogs/playbook-plus/2017/03/european-commission-to-parliament-enough-of-your-stupid-questions/ [09.06.17]

again, JCM's have the problem that they cannot incorporate the military dimension. Linked with the previously recalled problem of hampered control by national parliaments, this confirms that especially the EU's military policy – which indeed is all in all very limited, but that should not be an argument – largely escapes oversight by a directly elected body. This seems somewhat compensated by **parliamentary Delegations** on the field. These delegations seem well accepted for bringing about useful information about the daily goings of military and civilian CSDP missions.

Taking all this together, and with reference to the pre-Lisbon *readings* with which started this oversight discussion, I would not conclude that there are no formal possibilities for oversight, but rather that the practical implementation has limiting effects on its pertinence. Jointly, the instruments of parliamentary questions, debates, JCM and parliamentary delegations assure some oversight over important aspects of the EU's CFSP (such as the organisation of the EEAS, civil missions or sanctions), but two main shortcomings gnaw away at the legislature's oversight capacities.

First of all, defence policy indeed largely escapes oversight. As the reality of the CSDP shows a complex, multilevel policy-making system – not supranational, but not completely national anymore neither – it falls between two stools: both the national parliaments (mainly for organizational reasons) and the EP (for formal reasons) prove unfit to oversee it efficiently. Besides, there are shortcomings of communicative and time-related order. In the theoretical framework, oversight was defined as a dialogue. It is important to reflect on this when pondering these findings, as they seem to tell us that problems mainly lie with the return side of this two-way communication and more specifically with its timing. Oversight as such is indeed retrospective, but in case of CFSP a main shortcoming lies with the fact that it is maybe too retrospective.

The second strand of oversight by societal actors, again reveals a discrepancy between positive elements and hampering limits. For **specialised media** and **research**, a curious contradiction exists between their own (capacity of) active monitoring and the difficulty to make their fire alarm being heard. For **CSOs** finally, things are comparable in that we may conclude, in reference to previous research, that they have volition to monitor. As to the overall loudness of their fire alarm, this is however more difficult to estimate, given the large differences between the scope and general impact-factor of different organisations. What although can be evaluated for all three types of actors alike, is the degree to which the European Parliament makes (visible)

use of their work as input to its own oversight. The EP cannot be said to make no use of information from specialised media, research organisations or CSOs; but on the other hand, it cannot to be said to do so systematically neither. Summarized, we could state that there is at least room for improvement.

Finally, we see a restraint possibility for **citizens** to oversee themselves the daily development of European foreign policy. In contrast to the European Parliament's own confidence thereabout, citizens can difficultly follow the Parliament's work when not having the necessary specialised knowledge. This can make us doubt their ability to monitor European foreign policy directly themselves. Then again, as discussed, it of course can be wondered if citizens are much interested in exercising such direct oversight.

XIII. Overrule in EU foreign policy

Summary: In this last empirical chapter, attention turns to the overrule possibilities that exist directly for the people, the European Parliament or national parliaments. In that context, attention returns to the licensing procedure and the EU's concrete actions of military and civilian missions, sanctions and mediating, discussed before; as well as to the overall foreign policy strategy.

Finally, I argued for the possibility of overrule as an important criterion to assure public control; the evaluation of which helps to complete the picture of a foreign policy's normative democratic legitimacy. A sole indicator (19) was put forward in that regard. Applied to the specific context of European foreign security and defence, the question is thus if the people, the European Parliament, or national Parliaments somehow can exercise the last word over what the EU does internationally in matters of security and defence. In that context, attention should not only go to concrete actions, but also to the overall direction of the EU's foreign policy and the selection of the responsible decision-makers.

Starting with these two last points, this chapter subsequently looks at the three types of policy instruments that were distinguished before as key channels of EU foreign policy (military and civilian missions, sanctions and mediation, cf. Chapter XI *supra*). Although in doing so, the discussion retakes multiple elements already introduced before, it adds an additional dimension to their democratic evaluation, by looking at them from the particular angle of overrule.

1. Can the people, the European Parliament, or national parliaments overrule European foreign policy decisions?

In first instance, where it concerns the **nomination of two key decision-makers** that are the *High Representative of the Union for Foreign Affairs and Security Policy* and the *Permanent president of the European Council*, we saw how in practice neither the European Parliament, nor national parliaments have an actual say in this (cf. Chapter VI *supra*). The European Council unilaterally appoints both actors. And, even when not at all satisfied by its decision, no legislative body, let alone the people can repeal it. As to the HR, we also saw how this makes her case different from other commissioners whose individual nomination can in practice be undone by the EP in case the candidate's parliamentary hearing was insufficient. Although it could be claimed that overrule should not *per se* apply to such licensing issues – as these do not

concern actual foreign policy as such – I argue here to the contrary. Given the pivotal role played by these actors in the subsequent development of the EU's foreign action, certainly by the HR, these nominations can be of fundamental importance to the orientation of European foreign policy. Therefore – and given the executive character of these nominations in which neither the people nor their directly elected representatives take part – they should be subject to the possibility of overrule; which they are not.

Regarding concrete European foreign policy, two levels of decision-making are to be taken into account. First of all, there is the **overall definition and direction** of the policy, i.e. the framing of the general principles and fundamental choices underpinning the entirety of the EU's foreign action. Secondly, we should look at the definition of more **concrete policy programs**.

As to the first level, the Treaty (art. 26.1 TEU), in general terms, states, *"the European Council shall identify the Union's **strategic interests**, determine the objectives of and define **general guidelines** for the common foreign and security policy"*. Though, what such "general guidelines" are, the Treaty does not clearly define. Under what concrete form the overall direction of the policy is made explicit is not detailed. In practice, we see how the European Council sets out the general course of the EU's foreign policy through publicly available conclusions issued after its meetings as well as more informal conclusions that remain confidential[259] (Keukeleire and Delreux 2014, 160). Most of all however, it is the *European Security Strategy* of 2003 (as well as its 2008 follow-up report) that provides the conceptual framework of the Common Foreign and Security Policy, including the CSDP[260]. Tasked by the Member States, the document was drafted by the then HR, Javier Solana. It was subsequently adopted by the Brussels European Council of 12-13 December 2003. Four years later, the European Council *"[invited] the SG/HR, in full association with the Commission and in close cooperation with the Member States, to examine the implementation of the Strategy with a view to proposing elements on how to improve the implementation and, as appropriate, elements to complement it"*[261]. This results in a 2008 document, titled *Report on the Implementation of the*

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[259] European Council, *European Council Decisions*: *"The European Council sometimes holds informal or exceptional meetings of heads of State or government. Following these meetings, leaders usually adopt a statement or declaration rather than official conclusions"*. consilium.europa.eu /en/european-council/conclusions/ [20.05.17].
[260] EEAS, *European Security Strategy* eeas.europa.eu/csdp/about-csdp/european-security-strategy/ [11.04.16].
[261] European Council, *Brussels European Council 14 December 2007 - Presidency Conclusions*, §90, Brussels, 14 February 2008 consilium.europa.eu/ueDocs/cms_Data/docs/pressData/ en/ec/97669.pdf [11.04.16].

European Security Strategy: Providing Security in a Changing World. Given the European Council's notorious opacity and secrecy (cf. Chapter X *supra*; also: House of Commons 2008, 14), it is difficult to retrace the decision-making process behind these documents. However, the conclusions through which the European Council issues these reports as well as accepts them may well lack binding legal authority; they sure commit the Member States politically (cf. ibid., 12).

What strikes the most in this context of *political obligation* is that both these documents – and as for that matter also other guidelines – are issued as well as adopted by the same institution, the European Council, without a necessity for agreement by any other body or the possibility to refute the conclusions of the relevant European Council meetings. As the European Council in the context of European foreign policy essentially acts as an executive and not a legislative body (cf. Chapter VI, 1; X, 3), this is problematic. As conclusions are not to be controlled or agreed upon by any other European or national body, neither is the overall direction of the EU's foreign and security policy that is decided upon in these conclusions. Neither, the European, nor the national parliaments have anything to say regarding their content[262]. Besides, as these Council conclusions do not contain reference to the content of the debate preceding them, nor mention individual positions taken by individual members, it is in practice impossible for a national parliament to be sure about the position of their own head of State or government. Thus, there is no ultimate way through which the direction of the EU's foreign security and defence policy could be altered or decisions made in that context could be undone.

In June 2015, HR Mogherini has launched a process for the elaboration of a new *Global Strategy for the European Union*, in follow up to the 2003 and 2008 documents. This process is presented as being inclusive – said to be *developed in close cooperation with Member States, as well as with EU Institutions and the broader foreign policy community*[263]. Welcomed by the European Council of 28 June 2016[264] and by the common conclusions of the EU foreign ministers in October 2016[265]; it can however be wondered, if and how it indeed presented a more open process, allowing for real input and changes or amendments by the European or

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[262] Statewatch, *Council of the European Union: Policymaking through Council "Conclusions"* statewatch.org/observatory-council-conclusions.htm [11.04.16].
[263] A Global Strategy for the European Union europa.eu/globalstrategy/en [18.02.16].
[264] European Council, EUCO 26/16, § 20 consilium.europa.eu/en/press/press-releases/ 2016/06/28-euco-conclusions/ [20.05.17]
[265] Council of the EU, 13202/16 data.consilium.europa.eu/doc/document/ST-13202-2016-INIT/en/pdf [20.05.17]

national parliaments, or by the larger civil society. Just like its predecessors, this strategy is essentially elaborated by the services of the High Representative; and no Parliament had to pronounce itself on it before it was launched.

Also in case of concrete foreign security and defence actions, decisions are principally of such order that they are not to be revoked by citizens or their representatives. This becomes particularly clear in relation to **CSDP-missions**. According to the Treaty, *"decisions relating to the common security and defence policy, including those initiating a mission [...], shall be adopted by the Council acting unanimously"* (art. 42.4 TEU, also art. 31.1 TEU). However, within the general rule of unanimity, Member States can decide to abstain. In that case, the MS concerned *"shall not be obliged to apply the decision, [but it] shall accept that the decision commits the Union [;] [and] [i]n a spirit of mutual solidarity, [...] shall refrain from any action likely to conflict with or impede Union action based on that decision"* (art. 31.1 TEU, for a further discussion: Wessel and Böttner 2013, §16). This means that in practice CFSP-decisions (including those about CSDP-missions) are Union acts and not merely decisions adopted collectively by the Member States (cf. Chapter VII, 1 *supra*, also: Naert 2013, 4-5); and that regardless of their non-involvement in the decision, the MS's actual policy choices and actions will be strongly defined and bound by them. Similar to what I said before about the nomination of the High Representative (Chapter VI *supra*), this arguably can lead to a situation where (especially smaller, less influential) Member States could be brought to abstain rather than to fully oppose when they do not agree with the launch of a mission. Thus, the argument of the Council being a purely intergovernmental body, by means of unanimity assuring the equal representation of each Member State's citizens does not hold ground. In a situation where a procedure of formal unanimity is replaced by one that is actually about consensus, the concrete power and individual responsibility of each government within the Council over the final decision becomes more limited.

Yet *"in order for citizens and national parliamentarians to hold the politicians in the Council and European Council accountable, they must be able to attribute responsibility for decisions to their particular government"* (Curtin 2014, 687). When this is no longer possible – i.e. when their respective government no longer holds full responsibility over the final decision – this means that public control through the national channel is hampered. But also afterwards, with regard to a mission's concrete, on-the-ground development, the national level is limited as a channel of democratic control. Although, good practices exist and some individual parliaments

have the power to decide whether or not their country will participate in a mission (cf. Table 2 and Table 3 *supra*; also: Born et al. 2008, 16); as has been discussed before, this does not as such improve their common grip over a policy essentially developed at a European level (cf. Chapter XII, 1 *supra*). In fact, one (or even more) national parliament(s) not allowing their country to participate in a mission does not veto the decision to launch this mission as such. The decision to mount a mission is independent from a country's subsequent (non-) commitment to participate in that mission (EUMS, e-mail 06.10.15). So, whereas national parliaments have the possibility to overrule their own country's participation, this does not automatically prevent the mission from taking place.

This contradiction between a national overrule and the limited impact this has at EU level – even in the context of what is essentially supposed to be an intergovernmental process – we have seen for that matter also at a more fundamental level; regarding the launch of a European Defence Policy as such. When the Danish people vetoed in first instance the Treaty of Maastricht, one of the main issues at stake was the question of military cooperation. Rather than abandoning the perspective of a European common defense policy altogether, Denmark was given an opt-out on this matter and the Danish people voted a second time, this time accepting the Treaty. A common defence policy was launched. While Denmark may well be officially exempted from participating in this policy, this policy is still being carried out in name of the EU (of which Denmark of course continues to be a full member); and in practice is relying on and associated with EU infrastructures in which Denmark is fully involved. Although formally exempt from participating, it cannot be denied that Denmark's actual policy choices and actions will be strongly bound by what is decided by the others in the context of this common defence policy.

As it is made explicit by art. 44 TEU, not all MS should participate in the implementation of a mission for this to take place. Looking at currently on-going missions, we see how in practice the number of participating Member States varies between a large majority (for instance EUMM Georgia: all MS, EUTM Mali: 22, EUPOL COPPS: 21, Atalanta: 20) and even not half of them (EUCAP Mali: 13, EUTM Somalia and EUCAP Niger: 11)[266]. Besides, in this context, it should be pointed out that several of the Central and Eastern European Member States recently even relaxed the requirements of parliamentary control of troop deployments, and this

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[266] EEAS, *Ongoing missions and operations* eeas.europa.eu/csdp/missions-and-operations/ [11.04.16] Factsheets to be found on the webpages of various missions.

precisely in the context of their accessions to NATO and the EU (Peters and Wagner 2011, 183).

The European Parliament from its side does not fill the gap. As was expounded under *Budget* and *Participation* (cf. Chapter VII and Chapter VIII *supra*), the European Parliament has indeed no say in decisions relating to foreign policy; but also, it cannot undo them if it should not at all agree. In the context of the European foreign policy, the Council does not act in its role as part of the *bicameral legislative regime* together with the European Parliament (Tsebelis and Garrett 2000, 24; also: Hix and Høyland 2011, 68-74), but as an executive. *"In practice"*, it can be stated that in that context, *"the Parliament can act as an informed public overseer, but cannot stop a decision it does not agree with"* (Furness 2013, 114). All of this means that no representative institution (neither national, nor European) could prevent a CFSP-decision the launch of a mission in the first place.

Furthermore, it is surprising to see how the situation is even more problematic for civil missions. Where at first it could seem as if the EP's grip over such non-military missions is more developed as it somehow holds control over their budget; in practice, the Parliament could not use its budget powers to veto such missions as they concern the EU budget in general and not that of particular missions[267]. For national parliaments on the other hand, current procedures and practices cover military deployments (if at all) but hardly civilian police deployments. Even less than in the case of military missions, national parliaments seem to have to approve – and hence being able to block – a mission before it gets deployed (Anghel et al. 2008, 56, 75).

When **restrictive measures** are issued, the decision to do so is taken by the Council (art. 29 TEU), again according to the principle of unanimity defined under art. 31.1 TEU. As was explained before (cf. Chapter XI *supra*), the measures foreseen in that Council Decision are either implemented at national or at EU level. In the first case, they are directly binding upon the Member States. In the second they are implemented through a Council regulation taken by qualified majority and the European Parliament shall be informed thereof (art. 215 TFEU)[268]. Again, this means that these decisions, once they have been taken, can be difficultly disagreed with. Only (a) natural or legal person(s) against which sanctions are taken can institute

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[267] Cf. the remark on national parliaments' budget powers (Gourlay 2004, 195), cf. Chapter VII *supra*.
[268] Such Council regulations hence should not be confused with *normal* regulations adopted under the ordinary legislative procedure as set out in art. 294 TFEU.

proceedings against this act addressed to them or which is of direct and individual concern to them (art. 275 and art. 263§4 TFEU). Nor the European – or a national parliament, neither any other person has this possibility.

Where finally it concerns the last tool that was previously discerned, that of **mediation** in situation of conflict, it is obvious that the possibilities to overrule specific actions are almost non-existent. First of all, given the two-level dimension of the EU's mediation and facilitation efforts it is difficult to know where decisions to take up a role as mediator are taken and on which ground (cf. Chapter XI *supra*). Besides, *"there is no comprehensive, exact overview of these activities, many of which are confidential in nature"* (EEAS, e-mail 13.03.15). It follows from this that appealing against these decisions is practically impossible.

Again however, when looking at the European level – in line with what already discussed before – it is interesting to point out how the limits imposed on the European Parliament do not define its activism in exploring the boundaries of its influence and how to expand these. In an already famous case before the European Court of Justice, the Parliament defied the Council for not correctly sharing information about a CFSP-decision and therefore searched to get it nullified altogether; at which it succeeded formally. In the so-called *Mauritius Arrest* from June 2014[269], the ECJ backed up the EP and annulled a Council's CFSP-decision regarding the conclusion of an EU-Mauritius Agreement on the transfer of suspected pirates from the EU naval operation Atalanta. This was decided on grounds that the obligation to keep the EP informed, immediately and fully, at all stages of the procedure of concluding international agreements (art. 218 TFEU) had not been respected by the Council[270]. With this case, the European Parliament seems to confirm that when its rights are not correctly respected throughout a decision, it does not hesitate and will try overriding the decision as such. Even in those fields that politically escape its powers, such as foreign security policy. Of course, the overrule power displayed here is essentially of formal order. In that sense, it is all in all rather limited. It is based on shortcomings of an administrative order and as such is no proof of political overrule-power regarding the

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[269] ECJ, Judgment of the Court (Grand Chamber) of 24 June 2014. European Parliament v Council of the European Union. Action for annulment - Decision 2011/640/ CFSP - Legal basis - Common foreign and security policy (CFSP) - Article 37 TEU - International agreement relating exclusively to the CFSP - Second subparagraph of Article 218(6) TFEU - Obligation to inform the Parliament immediately and fully - Article 218(10) TFEU - Maintenance of effects. Case C-658/11. eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62011CJ0658 [11.04.16]
[270] For a discussion of this case, see: Joris Larik, *Democratic scrutiny of EU foreign policy: From pirates to the power of the people (Case C-658/11 Parliament v. Council)* europeanlawblog.eu /?p=2469 [25.06.15]

content of the decision. Said otherwise, although the EP can launch out about a certain *legalistic* overrule power, its political overrule in European foreign policy is not directly reinforced by this.

2. Conclusion: overrule in CFSP, democratically legitimate?

Throughout the discussion of the previous criteria, the dimension of overrule has already been touched upon at multiple occasions. However, to grasp this criterion in its own right, I essentially retook here some of the elements discussed before while revaluating them from the particular angle of this last systemic norm.

As was pointed out in the theoretical framework, overrule can be understood as participation of the last chance. It is the ultimate possibility for the democratic principal to have its say about the course of a policy. Based upon the above evaluation it has to be concluded that this possibility is almost non-existent with regard to European foreign policy. Not only can neither the people nor their elected representatives at the European or national level revoke the nomination of the key decision-makers of this policy, but also the general direction decided upon and concrete actions taken by these decision-makers stay outside their reach.

Although the documents through which the strategic interest and guidelines of the EU's foreign security and defence policy are set out have no legal force, once drawn up they have a strong political authority. But, executively decided, there is neither for the people nor for the parliament(s) a way to alter or stop the overall course of European foreign policy set out through these documents. In a similar way, also concrete European foreign security and strategys cannot be democratically revoked once decided. Although in some cases individual parliaments could *forbid* their country to participate in a military EU mission, this in no way hinders the mission to be launched. As for the European Parliament – just as for national parliaments in case of civilian mission – it can in no way influence the decision to establish a mission, neither during the decision-making process, nor afterwards. A similar incapacity we find with regard to the other main instruments of the EU's foreign policy action, sanctions and mediation.

The lack of overrule power as demonstrated here could be explained by the specific character of European foreign and security policy. Differing from *community* policies, it is – as has already been pointed out before – not simply intergovernmental either. Hence it is structurally undefined which level should have the last word. Where in the first case the European Parliament holds a veto power through the ordinary legislative procedure and in the second case

there is a need for unanimity that could give a veto to one single country, in this case there is no proper way of ultimate control. The European Parliament is overall excluded and although national parliaments can (in some countries) override their own country's position this as such does not really impact on the decision taken at the European level. Besides, also following this policy's multilevel governance structure (cf. Chapter IV, 3.2 *supra*), in which supranational and national levels are strongly interlinked, decisions are the result of difficult negotiations and compromise. Therefore, the principal-agent line seems especially fragile in this last step of the policy-making process, exactly because coming to these decisions often is such a laborious task. Having them repealed is something the decision-makers in such a context strongly wish to avoid. In that sense, as it directly follows from the policy's sui generis nature as a multilevel governance system, the absence of democratic overrule possibilities can even be seen as an inherent necessity of the EU's foreign policy in order to function.

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Part III: Conclusions

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Main findings and possibilities for future audit

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I started this thesis with the observation that existing literature about European foreign policy generally omits to grasp this policy's democratic situation in an overall manner. Although the question of democracy and EU foreign security and defence has certainly been looked at before, this is rarely done as part of a comprehensive evaluation. Individual dimensions of democracy are discussed, yet this is mainly done in a stand-alone approach which essentially focusses on a singular dimension. In that way, an inclusive appreciation of the EU's foreign security and defence policy's democratic state of affairs has been fairly lacking. Given the fragmented approach, it is difficult to see the larger picture. This hampers our understanding of general democratic strengths and weaknesses of this policy, consequentially making it difficult to act upon these. Therefore, the thesis proposed a systematic democratic assessment of the EU's foreign security and defence policy (*Introduction*). Departing from an argument in favour of a focus on the CFSP's normative democratic legitimacy – i.e. its inherent democratic qualities, legitimizing its philosophical acceptability *(Chapter I)*, and a discussion about the need for democracy in foreign policy *(Chapter II)*; the thesis aimed to do so through the development of a democratic audit *(Chapter III)*. While defining democracy as public control with political equality, it therefore proposed a comprehensive assessment framework composed of eight democratic criteria and one overarching principle *(Chapter IV)*. Finally, the EU's foreign security and defence policy has been discussed with regard to each of the criteria *(Chapter VI to XIII)*.

This last part now, essentially does two things. First of all, in order to complete the empirical assessment carried out in the previous chapters, Chapter XIV discusses the main findings that have come up from this assessment. The purpose of the audit was to develop a comprehensive balance sheet about the CFSP's democratic strengths and weaknesses, and not just to look at separate manifestations of democracy. Therefore, this discussion looks at both the main overlaps and commonalities between them. That is, rather than just summarizing key findings and observations it focusses on how they interconnect with each other. The overall question then is what all this tells us about the public control with political equality of the EU's foreign

security and defence policy. Additionally, it can be asked how the assessment could contribute to possible improvements of the CFSP's normative democratic legitimacy.

Subsequently, the last chapter, Chapter XV, returns to democratic auditing as a method for assessing a policy, and in particular a foreign policy. After all, at the beginning of this thesis I explained how this systematic and comprehensive appraisal of the EU's foreign policy's democratic legitimacy would be a first democratic audit that does not concern a political system but a policy. Therefore, a return to the auditing method, and some considerations about its future application and possible subsequent steps, deserves attention.

XIV. Assessing the democratic legitimacy of European foreign security and defence policy: key findings

Summary: This chapter discusses the key findings and observations that came up from the previous empirical chapters. To complete the assessment, it focusses on overlaps between these findings, as well as on general transversal trends that could help us understand the reasons behind them. Finally, it looks at how these findings relate to recommendations for democratic improvement.

1. The normative democratic legitimacy of EU foreign policy: an inclusive appreciation

Throughout the eight empirical chapters, I have carried out a systematic audit of the EU's foreign security and defence policy's decision-making processes and institutions, according to a set of democratic criteria that take their starting point from the two basic principles of public control and political equality. For each of the criteria, an evaluation has been undertaken about how the EU's foreign security and defence policy lives up to it. Ranging i.a. from the appointment procedures for EEAS officials and the budget rules applying to EU military and civilian missions, over the ability of citizens or Civil Society Organisations to impact on the EU's foreign security course of action and this policy's media coverage, to the accessibility of relevant information and the organisation of secrecy, or the possibility of ex-post control; this has presented us with a panoply of findings and observations about how the CFSP's normative democratic character takes form (cf. Table 16).

Table 16: Summary of main empirical findings

Criterion	Indicator	Main findings/ observations	Pos. / Neg.	Mainly relevant for
Licensing	1	The HR is appointed by the European Council, behind closed doors and without much information about the reasons and motivations about that appointment.	-	Public control
	1	The HR is appointed by the European Council acting with QMV: this hampers the involvement of smaller, less influential Member States.	-	Political equality

	2	With Lisbon, the EP obtained increased leverage over HR appointment.	+	Public control
	2	EEAS appointments: EP can organize exchange and has some informal power, yet less than wished for.	+, -	Public control
	2	PSC and Coreper II appointments: very few national parliaments have control…	-	Public control
	2	.. Yet, some have.	+, -	Public control, Political equality
	3	EC decides CFSP guidelines and strategic interests without European/ national parliamentary control.	-	Public control
	3	Especially the CSDP overall structure developed by European Council, without citizens or parliament input…	-	Public control, Political equality
	3	… Yet in the recent debates on European defence, other actors, including the EP and the IPC on CFSP/CSDP have become more involved.	+	Public control, Political equality
	3	EP had important role in development EEAS.	+	Public control
Budget	4	CFSP budget essentially integrated in general EU budget, thus it is overseen by the EP.	+	Public control
	5	Missions financed by MS: unequal opportunities for national parliaments to control their participation in the budget.	-	Political equality
Participation	6	Possibilities for popular participation (by citizens directly, or through CSOs) do exist, participation is encouraged by the EU institutions…	+	Public control, Political equality

	6	… Yet, in practice, both forms of participation prove to be rather limited.	-	Public control/ Political equality
	7	EP is informed about the general course of the CFSP, and…	+	Public control
	7	...Notwithstanding the absence of a strong formal (legal) position, the EP gives prove of participative eagerness and tries to be involved in the daily affairs as good as possible (parliamentary consultations, resolutions, development EEAS, IIA's…	+	Public control
	7	… But, in practice, overall EP involvement is still very limited.	-	Public control
	7	With Lisbon, national parliaments - at least formally - gained increased access to EU affairs, including the CFSP...	+	Public control
	7	… But only few of them have a role in their country's participation in EU Missions.	-	Political equality
Public debate	8	The media are free to cover the CFSPS, no formal constraints exist that would hinder it being spoken about by the media…	+	Public control, Political equality
	8	… Yet, general media scarcely does so.	-	Public control
	8	There exists a specialised *Europress* that does cover extensively EU politics, including the CFSP	+	Public control
	9	The EU's key foreign policy institutions of HR and EEAS are actively communicating, for instance through social media…	+	Public control
	9	… Yet, popular consultation of the information thus provided is limited	-	Public control
Transparency	10	Detailed transparency rules exist, and also apply to the CFSP.	+	Public control

	10	Extensive documents registers exist…	+	Public control/ Political equality
	10	… But, difficult in use for non-specialists.	-	Political equality
	11	In practice, access is limited without clear rules or reasons.	-	Public control
	10, 11, 12, 13	Great differences between the institutions in how they deal with transparency.	-	Public control
	12	The rules in place are mainly executively decided without much involvement from the European Parliament (or, for that matter, national parliaments).	-	Public control
	13	Within the EP, a procedure concerning its access to sensitive information indeed exist (Special Committee), but this does not seem to lead to actual access.	+, -	Public control
Reason giving	14	Clear rules exist about the need for giving reasons.	+	Public control
	14	In general, reasons indeed are given and made public.	+	Public control, Political equality
	14	Public reasons are mainly of very general order.	-	Public control
	15	So far, the EP did not use its right to ask for more detailed reasons.	-	Public control
Oversight	16	The EP has many instruments at its disposal…	+	Public control
	16	… And uses them.	+	Public control
	16	Oversight by national parliaments is limited and differs between Member States.	-	Public control, Political equality
	16	There is little cooperation between national parliaments.	-	Public control, Political equality

	17	Media, and many academic and research organizations as well as CSOs exist that in some way oversee the CFSP…	+	Public control
	18	… Yet it can be wondered if their alarm would be heard…	-	Public control
	19	… And, their use as input providers to the EP seems limited.	-	Public control
Overrule	20	Possibilities for overrule are limited.	-	Public control

In the empirical chapters, the criteria were essentially looked at separately. As explained, I choose to proceed in that way because it is convenient for analytical purposes (cf. Chapter III, 3). However, looked at individually, each of them tells us but a limited part of the story. While, these successive findings certainly are interesting, the numerous interconnections that emerged between the different empirical chapters and linked them together clearly showed how in practice they of course do not stand on their own. The systematic cross-references I introduced between the chapters made that tangibly clear.

It is only when looked at together that the empirical findings gain their full meaning and can help us understand the overall normative democratic legitimacy of the EU's foreign security policy. It is when looked at together that the evaluations that have been carried out present a comprehensive view about if and how the organisation and development of the post-Lisbon European foreign policy respects and gives effect to the key democratic principles.

Looking at the totality of the findings summarized in Table 16, this first of all confirms Lord's (2004, 221) warning against *"sweeping generalizations for or against the existence of a democratic deficit"*. The empirical assessments clearly reveal how negative and positive elements exist side by side. They confirm or compensate each other and together make for a normative democratic legitimacy that is not black or white. Yet, the findings also confirm how, in practice, democracy indeed takes form through interconnected and complementary dimensions and is difficult to grasp comprehensively when only looking at single dimensions. In that sense, we see ourselves repeatedly confronted with direct overlaps as well as indirect influences between the empirical assessments of the different criteria.

Direct overlaps, for instance, are the case for *Participation* and *Overrule*, *Budget* and *Oversight*, or *Transparency* and again *Oversight*. As these pairs of criteria share common basic rules and

organizational set-ups, or relate to the same institutions and actions, multiple cross-overs emerged between their discussions. Hence, for instance, lacking overrule powers in fact results from limited opportunities for participation all together; and possible problems with oversight cannot be seen independent from how rules for transparency and secrecy are established. In a similar way, the limited participation of the civil society that we observed under *Participation*, goes hand in hand with the narrow public interest we noticed under *Public debate*. In both cases we saw how, the point is not so much that the people do not have the possibility to inform themselves, but rather that they actually do not seem much interested in doing so.

More indirect influence, on the other hand, did not only exist between the two throughput criteria of *Transparency* and *Reason-giving*, but also occurred between *Licensing to govern* and *Oversight* or *Budget*. After all, the MEP's numerous questions to the High Representative or the presence of this HR during the Parliament's plenary debates on the CFSP cannot be seen separately from how the European Parliament assured itself a role in the HR's nomination procedure. The same goes for the Parliament's involvement in the EEAS' set-up: this not only assured the Parliament's grip over the institution as such, but also gave it an additional foot in the door with regard to the CFSP budget. Furthermore, a link can also be made out between popular participation and parliamentary oversight. Given the altogether limited interest and involvement of civil society organisations in the EU's foreign security and defence policy, this obviously could explain the limited use that at least the EP seem to make of information provided for by those CSO's.

2. Three transversal trends

Except for overlaps and influences between different elements and observations, we can also observe recurring trends running along the criteria that bind the findings together at a more fundamental level. When looking at the totality of observations, they not only seem interconnected or mutually influencing but also point to the existence of some common threads. Beyond the many different observations, these general tendencies offer an explanation about why the EU's common foreign security and defence policy responds to the basic requirement of public control with political equality the way it does. Based on the previous empirical assessment, I argue for the existence of three such trends. First, there is the impact of an **unsolved intergovernmental-supranational divide** within the CFSP. Secondly, we can see a **structural discrepancy between rules and practice**. And, finally, European foreign policy is characterised by a **parliamentary configuration** in which an activist European Parliament

almost frantically searches for the limits of its own role and power, while national parliaments repeatedly struggle with finding theirs. As defining vectors of the EU's foreign policy's organisation and working, and while offering a common explanation for many of the individual observations, each of these trends has a considerable impact on this policy's normative democratic legitimacy. All three trends are mutually interconnected; but, at the same time they are also individually relevant. From the point of view of the overall evaluation, reflexions about these trends, however, come in addition to the previous empirical observations, they do not replace them. To grasp the normative democratic legitimacy of the EU's foreign policy in an overall way and to find solutions to possible problems (cf. *infra*), the collection of individual findings keeps its full relevance; yet the transversal trends add an additional layer of understanding.

2.1 *Intergovernmental vs supranational*

Put forward as an important characteristic of the CFSP's current configuration (cf. Introduction, Chapter IV), the presence of both intergovernmental and supranational trends within the development of this policy has come up repeatedly throughout the empirical discussions. As such, the audit of course does not pretend to tell something new, but only confirms what has already been recognized before about this policy. Yet, while previous research has indeed discussed the dichotomy between Intergovernmentalism and Supranationalism in European foreign policy (cf. Radtke 2012; Thym 2011; Tonra and Christiansen 2004; Øhrgaard 1997), the democratic implications this involves have hardly been looked at. The audit changes this.

In Chapter IV, I explained how the question is not one in favour or against either Supranationalism or Intergovernmentalism, but one about the democratic quality of the actual structures and procedures in place. It is in this context of actual structures and procedures that the audit recurrently came up against democratic problems caused by the complicated merger between both approaches within the EU's foreign security and defence policy. Throughout the audit, it has been revealed how the complex intermingling of intergovernmental and supranational tendencies within the EU's foreign policy-making indeed impacts on this policy's democratic quality. Recurrently, the assessments have shown how the multilevel governance system is not just an organisational feature of the CFSP, but how it plays an important role in the way in which this policy responds to the demand for public control with political equality.

Already during the policy's input phase, we saw how the complicated cohabitation between both modes of operation impacts on the policy's development and operation. First of all, there

was the nomination of the High Representative. By integrating the High Representative into the Commission, the Lisbon Treaty has contributed to a supranationalisation of this actor's role and character; but supranational control over this nomination has not evolved accordingly. In practice, the European Parliament (still) has little to say over this nomination. Compared to the nomination of other Commissioners, the EP's factual possibilities of control over his/her nomination are more limited. In that way, the only institution that really matters in the appointment of the HR is the European Council. However, because this appointment by the European Council is a matter of qualified majority and not of unanimity, as discussed, national governments somewhat lose their equal control over this appointment. Although formally resulting from an intergovernmental bargain, in practice, the nomination of the HR already at its starting point may escape the control of (some) individual Member States.

Linked with the appointment of the HR, the institutional set-up of the CFSP offers another example of how today's EU foreign policy incorporates an intricate mixture of intergovernmental and supranational tendencies. With the involvement of the PSC and Coreper (and their preparatory structures), intergovernmental bodies continue to hold a strong position in the daily CFSP policy-making. But, on the other hand – taking into account the creation of the EEAS as an autonomous EU body, the EP's notable involvement in the service's set-up, and the EEAS' financing through the normal EU budget – a supranational dimension has become undeniable. Added to this is the fact that the previously mentioned, formally intergovernmental PSC, shows a considerable supranational character. Due to both its far-reaching competencies and the fact that it is chaired by an EEAS official, it is difficult to classify this body as just a preparatory diplomatic meeting place.

Another situation where a tendency towards supranationalism contrasts with the CFSP's intergovernmental baseline, is the policy's budget. While financing EU military missions may still be largely a Member State affair; the budget of the EU's foreign service, the EEAS, is, as mentioned above, fully integrated in the EU's normal budget and subject to control and approval by the European parliament. Thus, the EEAS budget partially escapes Member State control, or at least these Member States have to accept that a supranational body too has an important say over it.

Questions about intergovernmental and supranational attitudes also played a role at other occasions. When dealing for instance with transparency, we saw how the most intergovernmental CFSP actor, the European Council, is the most reluctant about transparency

rules. In line with the intergovernmental tradition, the EC sees itself essentially as forum for Member States to find compromise, and therefore as an actor exempt from general transparency rules existing at the EU level. However, as it is through said compromises that the EC defines the basic principles and guidelines of a common foreign security and defence policy that has developed beyond being a mere multilateral cooperation, this claim is somewhat problematic.

Furthermore, as has been discussed under *Budget*, *Participation* and *Overrule*, also the launch of EU military or civilian missions incorporates ambiguity along this line. At the origin of such missions lies a decision by the Council of the EU. Despite the formal rule of unanimity, we saw how Member States can abstain without blocking the decision. As explained, this means that in the absence of actual unanimity, a decision about the launch of EU mission still can be taken and this decision commits the Union all together and not just the contributing Member States. Also with regard to the subsequent development and execution of these missions, it is clear that this is not just a mere matter of purely intergovernmental cooperation. Although, as reminded here above, missions are formally financed outside the EU Budget, in practice it cannot be denied that the EEAS is closely involved. Being a *Brussel's institution* payed out of the regular EU budget, this EEAS involvement thus further supranationalises these missions.

This last example goes to the heart of the CFSP's supranational-intergovernmental democratic problem. It is true that formally speaking the EU's foreign security policy *"shall be defined and implemented by the European Council and the Council acting unanimously"* (art. 24.1 TEU, cf. Chapter IV, 3.2). In that sense, democratic legitimacy seems intergovernmentally assured... However, in practice things are not so straightforward. Because, what does it actually mean, when the Treaty says 'unanimously'? After all, unanimity can be understood both as 'unanimous voting' or 'unanimous consent'. Unanimous voting recognizes the need for every participant of the group that bears the responsibility of taking a decision (in case the – European – Council) to explicitly express their position in favour of that decision. However, in case unanimity is merely seen as consent, it is understood in weaker terms: not as the explicitly expressed agreement between all members of a group, but as the absence of explicitly expressed opposition. While the Treaty omits to state precisely which kind of unanimity it refers to when it declares that the (European) Council acts/ decides/ or adopts 'unanimously'[271], the reality of

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[271] Also the (European) Council's webpage about the different voting systems applying to its work (cf. consilium.europa.eu/en/council-eu/voting-system/unanimity/) is not without ambiguity in this regard. On the one hand, it says that *"unanimity requires everyone to agree **or abstain** [my emphasis] from voting"*, thus apparently considering unanimity rather as consent. Yet, on the

the CFSP matches 'consent' rather than 'voting'. Given the possibility for abstention and the fact that such *"abstention does not prevent a decision from being taken"*[272] (except *"if the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union"* – art.31.1 TEU), this form of unanimity in practice gives room for action even if not all Member-States are fully convinced by (the need or form) of such action.

Under this *weak* unanimity, *"the rules [that] are designed for the protection of the minority and generally need not be strictly enforced"* are considered not necessary because *"there is no minority to protect"* (cf. Robert 2011, 105). Yet, considering the need of unanimity to assure equality between States with considerably uneven resources and powers (cf. Chapter IV, 3.1), the non-necessity of explicit approval and so the abandoning of individual veto-power undermines the intergovernmental argument of public control through national governments, each assuring on an equal footing the representation of their own people. Although governments are still key decision-makers, their common decisions no longer are the mere result of the equal recognition of each of their individual decisions. Instead, their decisions are collective endeavours. Even when they do not agree (while at the same time they hold back from explicitly disagreeing), as was pointed out under *Oversight*, in practice individual States have to abide by these decisions, or at least are clearly bound by them (cf. Cooper et al. 2008, 506). With reference to Heywood's (2002, 148) previously mentioned definition of supranationalism as a situation in which there exists an authority that is higher than that of a State; a context of international cooperation in which a State can be compelled by a common policy, rule or action it did not agree with itself, could be arguably categorized as such. In fact, the EU's foreign policy finds itself confronted with a kind of '*hidden', latent supranationalism*, the existence of which is often overlooked. While the EU's foreign policy is indeed a domain in which intergovernmental institutions predominate, the actual working of these institutions seems not always to be so intergovernmental after all. By allowing members to abstain or by voting with qualified majority, the (European) Council somehow represents an independent position, and not simply the common position of the MS (cf. Dingwerth et al. 2011, 86). While we may indeed not be in a situation of *delegated sovereignty* in which supranational institutions take autonomous decisions (Hurrell 2007, 93), there is a *pooled sovereignty* in which individual

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other hand it states that "*the Council has to vote unanimously*", therefore suggesting that when there is talk of 'unanimity', this means the more stringent form of absolute unanimity between all members.

[272] consilium.europa.eu/en/council-eu/voting-system/unanimity/ [01.06.18]

governments give up full control (cf. Moravcsik 1998, 67). As already pointed out under *Licensing*, with regard to QMV the situation here is different from, for instance, the use of QMV by the EU Council within the ordinary legislative procedure. As explained, in that case, QMV is part of an elaborated decision-making procedure also involving the European Parliament.

Considering all the above, it becomes clear that the problem is not so much that both intergovernmental and supranational procedures and actors are present within one policy, but that it is not always evident which procedure is followed or what the actual role of a given actor really implies. This creates uncertainty. The presence of a triple executive composed of the European Council, the Council of the EU and the High Representative/ EEAS – two of which are formally intergovernmental, but less so in practice, and one which is supranational – and the two-level parliamentary field; with each of these actors advocating different attitudes with regard to where the locus of CFSP decision-making and control lies, leaves us, as we saw, with a policy that combines the intergovernmental and supranational idea rather inconveniently. More concretely, under its current form, the not-being-intergovernmental-yet-not-being-supranational-neither status of the CFSP creates gaps in relation to public control. For instance, the budget situation in which EU missions are financed outside the EU budget but in reality – be it indirectly, through the involvement of the EEAS – also make use of EU funds; or the fact that the Council launches such missions, but that the Council in practice does not need unanimity to do so, creates ambiguity with regard to where and how to assure public control. As has been pointed out repeatedly throughout the empirical assessments, and further discussed here: in the context of the CFSP, national governments do not so much act as representatives of their respective countries but rather as a kind of European executive. Therefore, their control at the national level is hampered. But so far this seems not to have been compensated by a more supranationalised public control. If we return for instance to the last example of EU military or civilian missions, we see how in reality public control over the launch and development of such missions continues to be limited at the European level. As explained under *Oversight*, the European Parliament indeed may – and does – send delegations to mission headquarters and on-the-ground operations, and uses the information obtained in that way in questions and debate. But despite the interesting – and probably promising – evolution this incorporates; we should be aware not to overestimate its importance. The same goes for the Interparliamentary Conference for the CFSP. While it indeed could help national parliaments to increase their common grip, so far it does not seem up to the task.

To summarize, as both traditions depart from a fundamentally different view about where public control should be organised, their unsettled combination within one policy has created an exceedingly complicated decision-making structure, in which the roles of the different actors and institutions and how they relate to each other is unclear. Interaction between actors at national and European level indeed is a recurring feature of EU politics in general and the interrelation between both approaches runs along the whole European integration process (Schout and Wolff 2010). Yet, at least in the context of the EU's foreign security and defence policy their unsettled combination impacts on this policy's inherent democratic quality.

2.2   *Rules vs practice*

The unresolved mixture of intergovernmentalism and supranationalism alone does not explain all the findings about democratic strengths and weaknesses that came out of the empirical assessment. Another trend running through the CFSP's development and conduct can be distinguished, namely the presence of a generalised ambiguity between rules and practices. Although this trend follows partially from the previous one, it is not completely defined by it. While certain situations of disagreement between rules and practice indeed can be explained by what has been said previously about the complicated and unclear relationship between intergovernmental and supranational tendencies and methods, many others stand on their one. That is, at multiple occasions we saw a discrepancy between rules and practice in the EU's foreign policy that does not just follow from the intergovernmental-supranational problem.

Considering the totality of findings and observations, it is difficult to ignore the numerous rules that guide the EU's foreign policy and how many amongst them relate to aspects of democracy. But, there are the official rules and norms… and there is the daily practice. When discussing the data that would substantiate the empirical assessment (Chapter V), I referred to the difference between *democratic hardware* and *democratic software*. This distinction – and especially the gap that exists between both these dimensions – forms a second transversal trend, determining the CFSP's overall normative democratic legitimacy. Although such a gap between rules and daily practice is in no way unique for the EU's foreign security policy, and somehow inherent to every policy – be it European, national or other – it certainly seems outspoken here. Where it concerns the formal organisation of the CFSP, we saw for instance how a set of clear rules is available with regard to transparency and secrecy; or concerning the publication of reasons. The same goes for the oversight dimension, where the European parliament has at its disposal no less than five instruments; each of which is formally backed by the Treaty

(parliamentary questions, debate), by an official declaration of the HR (Joint Consultation Meetings), by the Parliament's internal rules (delegations) or by an Interinstitutional Agreement (Special Committee). However, in each of these cases we have seen how reality can be quite different from the formal norms.

In chapter IV, I argued for the presence of clear legal rules as a necessary overarching principle to the actual democratic criteria, needed to assure their durability over time. At multiple occasions during the empirical assessment – and as briefly summarized here above – we saw the existence of such rules. Probably more than one would expect, the CFSP's democratic dimension seems ruled by Treaty- and other legal provisions. Yet, the existence of these formal rules, meant to give democratic body to the CFSP, does not seem to guarantee that they are actually lived up to or used. In reference to the indicators that were put forward for this additional criterion, there is first of all a legal reason for this. Bearing in mind that the Court of Justice of the European Union has no jurisdiction over this policy (art. 24.1§2 TEU, art.275 TFEU), there is a practical impossibility to denounce the non-respect of the rules. As we saw in the discussion about overrule (Chapter XIII), a certain legal control can occur when the CFSP relies on an instrument that is not formally hers – *in casu* an international agreement with a third country, Mauritius – though in general, it is difficult for the people or their parliamentary representatives (be it European or national) to legally challenge CFSP procedures and decisions. Even in the exceptional case of sanctions, where, as pointed out in Chapter XI, the CJEU does have jurisdiction, only those natural or legal persons who are directly concerned by the sanction can denounce it. So, for instance the EP could not do so when the right of information it possesses in these matters is not respected.

However, although this legal reason certainly explains some of the notable discrepancies between rules and practice, it is not the only explanation. A second reason, less formal but not less relevant, adds to it. In light of the consecutive changes in the way that the CFSP has been run since its start under Maastricht, and the relative newness of its current, post-Lisbon form, those involved seem still in a learning process; i.e. they seem still in the process of getting acquainted with their actual role or to struggle with the opportunities and obligations involved for them. Examples of this we can find under *Oversight*. In this context, we saw for instance how the creation of a Special Committee in agreement with the HR acknowledged and formalized the Parliament's access to sensitive documents. As has been discussed at that occasion; according to the rules applying to this Committee, it may request information on developments in European security and defence policy, including sensitive information.

However, we saw how in practice, the Committee meets much less than was initially planned, and considering the totality of sensitive documents it has consulted only a limited number of them. Also with regard to questions, it can be wondered if the European Parliament (can) fully use(s) this instrument's potential as a means of oversight. Given the generally considerable time interval between questions and their answers, the practical effectiveness of this instrument – which can formally be used by the EP to oversee, amongst others, the CFSP's direction and actions – at least seems hindered. So far, the EP seems not to have found a way to bring the Council and the High Representative to formulate answers more promptly.

Other examples of the rules vs practice divide we saw under *Transparency* or *Reason-giving*. Where both the discussion about Transparency and Reason-giving revealed the existence of a quite elaborated body of norms, they also exposed reservations with regard to how these norms are actually implemented. In case of Transparency this was exemplified by the limited operationally of the EEAS register (both in time and scope) and the European Council's apparent reluctance to abide by the rules. Also, where a document register exists, its concrete format hinders actual access to documents by non-specialists. With regard to reason-giving, we could summarize the situation as "willing but minimalistic". That is, reasons are indeed communicated – in case of military and civilian missions even without a formal necessity to do so; but then again, this could be seen as a straddle between rules and practice, be it in the other sense. But, this is mainly done in such a restrictive, formalistic way, that their actual relevance can at least be doubted.

Furthermore, a gap between *the formal* and *the actual* has also come up in relation to *Public debate* or *Participation*. In these cases, however, the problem is not about a minimalistic interpretation of existing rules by an actor involved in the CFSP; but about society showing limited interest in an active involvement, or limited capacity to make use of the opportunities for control that are offered to them. But all the same, fact is that potential and reality are not on the same line. The democratic hardware would allow, for instance, a more elaborated public debate and does not obstruct the possibility of this policy's coverage by the media or its follow-up by citizens on different social media platforms. But, the democratic software – being in this case the actual existence of such coverage – proved to be limited. The same goes for the involvement of *Civil Society organisations* or – as reflected upon at the end of *Oversight* – *individual citizens*. Even though they could become more involved; so far, they seem not particularly motivated to do so.

From a strictly formalistic point of view the argument could be made that these recurring discrepancies between rules and their actual application or use are not so important and we should not read too much in it... After all, as I said at the start of this discussion, numerous rules – more than we probably would expect – do exist. Besides, looking at the discrepancies described here, it also seems true that in many cases, the problem is not so much one of a conscious disrespect of existing rules, but rather one of not using them to their full potential. Thus, it could be suggested that while it is of course a pity that they are not always made full use of, the rules are there and so, altogether, things are ok. However, I belief such an appreciation of the facts would not do justice to the approach I took with regard to democratic legitimacy. As I argued in Chapter I, to really understand normative democratic legitimacy, the point is not only to look at *if* formal democratic attributes are present or not, but also at *how* these attributes interact with reality. As we saw repeatedly throughout the empirical assessments, simply the formal existence of rules and procedures does not automatically contribute to actual democracy – i.e. actual public control with political equality. Given the multiple situations where rules exist without for that matter being much used or lived up to, it is exactly in this interaction with reality that the existing rules seem to lose some of their democratic strength… Therefore, it indeed is relevant to look beyond the sole existence of these rules as such.

On the one hand, the overall set of rules and norms indeed involves recognition of democratic quality as a guiding principle for the CFSP. Being a policy of which it is hoped that it could provide a remedy against the legitimacy shortcomings often attributed to the EU, and that has been created to consolidate and support democracy (Part II, introduction), the existence of multiple rules that relate to (aspects of) its own democratic organization therefore is reassuring and can serve as valuable starting point for an actually democratic CFSP. The rules incorporate a potential for a comprehensive public control. In that sense, their presence is certainly not irrelevant. But, on the other hand, the fact that non-compliance with these rules cannot be legally denounced, as well as the recurring discrepancy between said rules and the actual implementation, weakens their on-the-field pertinence. After all, if rules exist, but their actual application variates among situations; that is, if their implementation depends strongly on the actors that are supposed to apply these rules, or to abide by them, they risk becoming meaningless. Just like the lacking clarity about where, how and when intergovernmentalism or supranationalism are in play, the main problem of this situation for the CFSP's democratic legitimacy lies with the uncertainty this brings with it. It follows from this uncertainty that it

becomes difficult to know if the public control that the rules are meant to assure really takes place, and if they indeed help to make such public control to be politically equal.

2.3   *European parliament activism vs. national parliaments' struggle*

The definition of democracy as public control with political equality shows independence towards actual political institutions and practices (cf. Chapter IV, 2.2) and has been evaluated accordingly within the context of this thesis. Yet, in retrospect, the preponderant position that the representative, parliamentary channel of democracy has taken throughout this evaluation, of course cannot be denied. In the successive assessments of different criteria and individual indicators, the representative channel repeatedly came up as a key way through which public control with political equality is (tried to be) realized in relation to European foreign policy. When we think about it, this of course should not be really surprising, as it lies actually in line with the EU's own constitutional affirmation that *"the functioning of the Union shall be founded on representative democracy"* (art.10.1 TEU). In that sense, it is important to note that the connection between democracy and parliamentarism that comes forward from this thesis, does not so much concern a personal preference of the author or an assumption about any inherent qualities of representative forms of democracy, yet essentially emerges from the comprehensive assessment as such. Neither do I presuppose *democracy* to equal *representative democracy* just like that, nor are the criteria and indicators especially focussed in that direction (cf. Chapter IV, 5). However, when we look at how public control with political equality is organized in the case of European foreign security and defence policy, the European Parliament and the national parliaments indeed come forward as important channels. And, they do so more than other, more direct means such as referenda or active public debate and civil society participation. This being said, it is within this parliamentary setting that a third transversal trend running along the findings is situated. More concretely, it concerns the complicated interplay between the European parliament and national parliaments that exists with regard to how they (together) deal with/ act upon matters of CFSP.

Just as *rules vs practice*, this last trend is linked with, and influenced by the first one of *Intergovernmentalism vs Supranationalism*, but it also stands apart. That is to say, in itself it plays throughout the organisation of the EU's foreign and security policy and has an impact on this policy's democratic organisation.

At multiple occasions, we noticed an eagerness on behalf of the European Parliament to take up a central role in the CFSP, if not in its daily conduct, then at least regarding the policy's

general direction and structure. The EP seems to search almost systematically for the boundaries of its formal powers and how it could expand these. Independently from these actual formal powers, the Parliament shows eagerness to define and scrutinize European foreign policy. This starts already at the licensing phase, where the EP sought to improve its grip over the appointment of the High Representative or key EEAS officials (with mitigated results), and, successfully, influenced the creation of the EEAS. Yet also at other occasions, the EP's willingness to be an actor of relevance revealed to be outspoken. This is not only the case in matters of budget – where we saw the Parliament's assertiveness confirmed by the grip it took over the EEAS budget – but also at the final stage of overview – in which case the Parliament's *enthusiasm* seems to have little limits where it concerns written questions – or overrule. At the same time, however, at multiple occasions the EP's seems somewhat too big for its boots and has to accept its altogether limited role. Not only – as has been reminded under the foregoing discussion of intergovernmentalism vs. supranationalism – has this been the case with regard to the previously mentioned appointment of the HR or that of other EEAS officials, but also where it concerns the Parliament's active participation in the policy. Yet, taking everything into account, it can be concluded that although the European Parliament of course finds itself hindered by the realities of daily foreign policy, it has somehow succeeded in obtaining itself a position in CFSP to be reckoned with, and in doing so has incontrovertibly surpassed the role that is formally set aside for it. With reference to Born & Hängi's (2005, 3-12) distinction between authority, ability and attitude we can say that what the Parliament lacks with regard to the first two, it certainly compensates by the later.

In contrast with this, we find the national parliaments struggling with finding their right place. The problem is not so much about national parliaments being altogether uninterested in the CFSP (data found in that regard rather seemed to indicate the opposite); but that even if they keep a strong stance at their national level – for instance by controlling (to various degrees) their national appointments to CFSP organs, as is the case in Hungary, Germany, Latvia or Poland – the leverage this gives them at the European level is limited. Exemplified by EU military missions, we essentially see how the decisions of individual national parliaments have little impact on the final course of action, *in casu* the actual launch of such missions. Although a mechanism for parliamentary cooperation has been established in the form of the Interparliamentary Conference on CFSP and with the aim of increasing the common role of national parliaments, so far this does not work as it should.

What is now the relevance of all this for the CFSP's normative democratic legitimacy?

When looking solely at the European Parliament, one could come to conclude that things are not perfect but go into the right direction. The EP's attitude in matters of foreign policy confirms observations about the institution's growing role in EU politics (see i.a. Hix and Høyland 2013; Judge and Earnshaw 2008; Steunenberg and Thomassen 2002), which – given the Parliament's status as the EU's only institution that is directly elected – could be seen as an improvement in democratic quality. Given that the European Parliament represents the whole body of EU citizens, it increasing assertiveness in matters of foreign security and defence thus could be said to reinforce both public control and political equality in this field. This position is defended by the European Parliament itself, which not only declares to play an essential role in ensuring the legitimacy of the Union[273], but also repeatedly *"calls for parliamentary oversight of EU external action to be strengthened"*[274], while pointing out *"that the role conferred on the European Parliament as the body directly representing EU citizens makes [it] a vital source of democratic legitimacy for the CFSP/CSDP"*[275]. On the other hand, not everyone agrees with the Parliament's own positive image about its underlying democratic quality (for a summary of key arguments in this regard, cf. Kröger & Friedrich 2013, 177-79). From such a more critical point of view, the Parliament's activism then could be perceived differently as rather problematic. Due to the Parliament's overall democratic shortcomings, it could be argued that its enthusiastic involvement does not actually reinforce democratic control, even to the contrary.

Besides, also a focus on national parliaments would tell a different story. The problems these parliaments have with assuring themselves an actual role in the EU's common foreign security and defence policy hinders public control. And, what is more, as argued under *Budget* (Chapter

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[273] *European Parliament resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty (2014/2249(INI))*, art. 8, 9. europarl.europa.eu /sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0049+0+ DOC+PDF+V0//EN [28.07.17]

[274] *ibid.* art.100. Also: *European Parliament resolution of 7 May 2009 on Parliament's new role and responsibilities in implementing the Treaty of Lisbon (2008/2063(INI))*, art.14 europarl.europa.eu /sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2009-373 [28.07.17]

[275] *European Parliament resolution of 11 May 2011 on the development of the common security and defence policy following the entry into force of the Lisbon Treaty (2010/2299(INI))*, art.12 europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-228 [28.07.17]

VII), the stronger competencies of some national parliaments' do not make up for this; as this essentially creates inequality amongst them, and therefore amongst the citizens they represent.

But of course, in reality, these accounts do not stand alone. Returning to the previous discussion about the multilevel intermixture of supranational and intergovernmental methods within the development of the EU's foreign policy, it becomes obvious that both these parliamentary levels have to be taken into account when evaluating this policy; not just individually, but together. Said otherwise, the European Parliament and the national parliaments both play a role in the CFSP – not just separately, but as part of an overall parliamentary system. Although, the existence of such a *'multilevel parliamentary field'* (Crum and Fossum 2009) is not limited to the CFSP, it is of a particular nature here. Given this policy's development, at least partially initiated outside the formal structures of European integration and resulting from ad hoc decisions by national governments, and the fact that it has only recently become increasingly Europeanized (cf. Introduction), it is especially true in this field that "*no natural division of labour [exists] between the two channels*" (*ibid.*, 250). This situation presents both an opportunity and a challenge to the CFSP's democratic legitimacy. On the one hand, in a setting where parliamentary roles and competencies are not completely clear-cut, each channel supposedly could more easily compensate for shortcomings of the other. From this perspective, the EP's assertiveness should not just be looked at in light of the institution's own position but has to be appreciated both in connection with the CFSP's *latent supranationalism* and the national parliament's difficulties with asserting their (common) place in the CFSP. To the extent that the activism of the European Parliament concerns aspects of the CFSP that escape the limited competencies of national parliaments, its growing involvement in this policy could compensate the hampered public control by national parliaments and even remedy the political inequality that follows from their unequal powers. Notwithstanding compensation by the EP is not complete – as demonstrated for instance by the case of EU military missions – the flexibility that is implied in the absence of a natural division of labour hence could have positive effects for the policy's overall public control with political equality. On the other hand, the unclear definition of the parliaments' role also creates uncertainty and causes friction amongst these parliaments, leading to gaps in parliamentary coverage of the CFSP. This has been most clearly observed in the context of the Interparliamentary Conference on CFSP (Chapter XII). In that case national parliaments not only proved reluctant towards a reinforced involvement of the European Parliament, but also towards each other. As the parliaments do not clearly know where each of them stands and what their respective competencies are, they seem not eager to

give up their own (limited) role in favour of a coordinated, common approach. In this context, the vigour of the European Parliament, rather than being an advantage, probably even could be a hindrance to the overall public control of the CFSP. That is, if the EP proceeds with respect for the positions and fears of national parliaments and expresses its ambitions clearly and in consideration with its national counterparts – and for that matter can convince them of its good intentions – this can be beneficial to their common grip over the EU's foreign security policy. If not, the European Parliament's activism could make national parliaments hesitant or even unwilling to cooperate too much with it, afraid that, in the end, this would just encourage the EP to become even more involved and lead to a situation where this European Parliament finishes by actually taking over the limited competences the national parliaments (still) have in this domain (cf. Liszczyk 2013, 2).

3. An inclusive, not a singular appreciation

The democratic audit carried out in this thesis looked at how satisfactory the EU responds to the basic requirements of democracy in the context of its common foreign security and defence policy, therefore providing this policy with moral arguments for calling itself democratic. In that sense, by looking at different criteria for democracy, the audit can offer an overall idea about this policy's normative democratic legitimacy. But, as pointed out, while going beyond a one-on-one discussion of these criteria, aggregating the different assessments into an overall appreciation is not about a simple sum but concerns a balanced understanding of how the different criteria, and the way they have been lived up to, relate to each other. Similar to what I said about a quantifying exercise that exists in translating qualitative findings into numerical values (cf. Chapter III, 1), a qualitative aggregation should guard itself from making invisible the numerous findings and observations by replacing it with one single, final judgement. Said otherwise, while it should be recognized that the audit can offer us an inclusive idea about the policy's normative democratic legitimacy, it does – and should not – result in one final, singular conclusion. Where the audit has grasped the CFSP's democratic state of affairs in a comprehensive way, by taking into account different dimensions of democracy; it has not done so just to reach a univocal yes or no verdict. The relevance of the assessment lies precisely with the fact that it recognizes democracy as the combination of different elements. Rather than building up to one single judgement about the presence of public control with political equality, the audit revealed the various, interconnecting ways through which the CFSP gave content to these requirements, where it did so successfully or where, otherwise, it failed or neglected to do so. In that sense – as has been systematically resumed in the conclusion of each empirical

chapter, and also came forward throughout the prior discussion of the three transversal trends – the focus of the assessment was indeed on *how* the CFSP is normatively democratic, rather than just on *if* (cf. Chapter V). The inclusive appreciation resides in the association between the different findings, while uncovering their overlaps and distinguishing their common, underlying trends.

It is the overall exposure of the CFSP's actual strengths and weaknesses that follows from this, and the understanding of how they relate to each other, that makes the audit a good starting point for discussions about possible improvements of the CFSP's normative democratic legitimacy.

Furthermore, also in light of a more integrated understanding of the CFSP's democratic legitimacy, the comprehensive approach and inclusive evaluation of its normative legitimacy present a more coherent point of departure. In the beginning of this thesis, I explained that an integrated evaluation of democratic legitimacy – i.e. an evaluation that takes into account both acceptability and acceptance and further factors influencing their interconnection – would need considerable information and knowledge about the actual facts of each dimension. The systematic and overall assessment of different dimensions of democracy offers such knowledge and information. By taking distance from the dispersed approach, characteristic for the current discussion about the normative democratic legitimacy of the CFSP it can serve as a structured starting point to understand why (not), and with regard to (the combination of) which dimensions of democracy, the people accept the CFSP as legitimate.

4. From an audit of normative democratic legitimacy to guidelines for democratic improvement

Democratic audits not only vary with regard to how they organize and carry out the actual assessment, but also with respect to the follow-up of their results. As discussed in the last part of the IDEA methodology (Beetham et al. 2008, 284–), democratic assessments can have *different potential audiences* as well as *different short-term and long-term effects*. In that manner, they can be mainly built for direct use by policy makers and include precise recommendations, they can raise public awareness and serve as the basis for public debate, or they can be meant to mobilize civil society organizations. Of course, they could also aim at cranking up academic research and serve as the basis for further study. Given the origins of this thesis as a response to perceived shortcomings in the existing academic literature and the

original use of the democratic audit method it therefore proposes, this last purpose obviously applies to it. Whereas this point will be dealt with in the following chapter, I propose to close the actual assessment by reflecting on how it connects with possible recommendations for democratic improvement of the EU's foreign security and defence policy.

The audit carried out in this thesis presents a snapshot about the democratic state of affairs of the EU's foreign security and defence policy. With a focus on the CFSP as it emerged from the last institutional reforms introduced by the Lisbon Treaty (cf. Chapter III, 4), it looks at how this relatively new policy so far responds to the democratic requirements of public control with political equality. As summarized here above, this resulted in multiple observations about strengths and weaknesses and how they interconnect. Now, it can be wondered how the audit and the findings that result from it (can) contribute to the possible development of a democratic reform agenda. After all, at the beginning of this thesis, I stated that a fragmented approach hinders our ability to understand what has to be taken into account in order to overcome democratic weaknesses and to further reinforce democratic strengths, and that a comprehensive approach can help remedy this. While formulating concrete recommendations for improvement has not been the main goal of this thesis; it therefore at least deserves to be reflected upon how its holistic assessment of the EU's foreign security and defence policy can be of importance for debate and can help the actual improvement of its normative democratic legitimacy. In what way could the results of the assessment help us reinforce the public control with political equality of the CFSP?

As has been discussed previously in this chapter, the audit shows us how the CFSP's democratic set-up exists of a complex intermingling of good practices and notable shortcomings, as well as how overlaps and cross-cutting trends bind together different criteria of democracy. I believe this complexity is a first point to keep in mind if one wishes to propose recommendations for democratic improvement of this policy. In line with the previous warning against too one-sided conclusions for or against the presence of a democratic deficit, we should also guard ourselves from proposing one-focussed solutions that ignore this complexity. If for the sake of simplicity or in an urge for rapid results, one would (decide to) ignore this complexity and make recommendations for the improvement of but one aspect of the CFSP's institutional structure or decision-making system, while ignoring how in practice it is indissolubly linked with other elements, (s)he runs the risk of aggravating rather than improving the CFSP's overall normative democratic legitimacy. As pointed out, for instance, the European Parliament's enthusiasm, cannot be seen in disconnection from the national parliaments' limited involvement. Hence, an

exclusive focus on a further reinforcement of the EP's position would not per se be sanctifying. If such a reinforcement of the role of the European Parliament in European foreign security and defence policy is not linked with a more comprehensive reflection about the role and position of national parliaments too, it risks to complicate relations between both parliamentary levels even further.

A further point of attention concerns the introduction of additional rules. We saw how many rules exist that relate to the CFSP's democratic organisation, but also how, on the contrary, the actual implementation and use of these rules is lagging behind. With regard to the recommendation of possible democratic improvements, this should make us prudent about additional, more detailed rules. Rather than putting energy in a further expansion of the formal democratic framework, those who want to reinforce the normative democratic legitimacy of the EU's foreign policy should probably first of all focus on how to make the current rules being more lived up to. Possibly, the existing framework of rules could be enough to assure *public control with political equality* if it were to be implemented more fully. In that sense, additional rules, though well meant, just risk to complicate even further an already complicated policy structure. When then in turn also not lived up to, this would only increase uncertainty and therefore hinder equal public control. Especially when actors are unwilling to abide by the rules that apply to them in the first place, or on the contrary, seem structurally uninterested or incapable of using the opportunities these rules offer them, one should be cautious about the introduction of additional rules as a solution to improve things. Looking for instance at the absence of a proper European Council document register and Access to documents reports (cf. Chapter X, 2); it could, for the time being, maybe prove easier to just adapt the common Council register in such a way that it enables to search for documents according to their originator – EU Council or European Council – rather than trying to push the EC to develop its own register. Where it concerns on the other hand the lack of interest or inability of the public – and in particular of individual citizens – to fully use the opportunities of control they are offered with regard to the EU's foreign policy (cf. Chapter XII, 2), it can be wondered if this will be solved be simply giving this public even more opportunities. In that sense, for instance, just obliging the responsible EU institutions to render ever more CFSP related documents public, would not increase control when the actual consultation of these documents by the public remains limited. Fact is that such consultation is currently limited and most probably will continue to do so. While, of course, this should not bring us to conclude that we may neglect direct public control all together – as there is of course always the risk that a representative body does not live up to

its task and neglects the control function bestowed on it – it gives an argument in favour of the representative, parliamentary level as the principal channel of public control. At different occasions throughout the empirical assessments – especially in the discussions on Participation (Chapter VIII), Public debate (Chapter IX) and Oversight (Chapter XII) – we saw how society appears to have an altogether limited interest in European Foreign Policy. Following from this, direct public control can be considered to be limited, and this can be doubted to change soon. Therefore, ways to reinforced public control arguably should be searched for in the, representative, parliamentary realm. When doing so, the previous remarks about the connection between the European Parliament and national parliaments of course should be kept in mind.

Linked with all this, is the fact that in the multilevel – and formally largely intergovernmental – policy field that is the CFSP, national governments play an important role. Notwithstanding that, at the European level, latent supranationalism may curtail their individual power, this should not be overlooked. Many decisions that concern the CFSP are, in first instance, taken in national capitals. If we take for instance the initial decision to develop a common security and defence policy (cf. Chapter VI, 2), or the launch of military and civilian missions, we indeed saw how we cannot fully grasp the way in which these come into being without considering the national level.

This intermixture between both European and national levels presents an important challenge to the EU's foreign policy's overall democratic legitimacy. After all – as was pointed out under *Budget* – this means that the democratic quality of how things are done at the national level is important for the democratic quality of the EU's foreign policy altogether. We saw for instance how national representatives in the PSC have gained autonomy towards their national principals, or how in many countries there is little parliamentary control over the decision to participate in international military missions, and how in some countries there is even little or no parliamentary debate about foreign security policy all together. In these cases, it is obvious that where it concerns the improvement of the CFSP's democratic legitimacy, salvage cannot come from the European level alone. In fact, democratic flaws of the CFSP often seem situated at the national level, rather than at the European level. While it is true here that the EU-level cannot be incriminated for these shortcomings, they do have importance for the overall democratic legitimacy of the EU's foreign policy. Notwithstanding, for instance, the national parliaments indeed are *national*, in case of their (absence of) control over what their government decides within the context of the CFSP, their role becomes European. And so too does the relevance of their strengths or shortcomings (cf. Chapter XII, 3). This means that although in

these cases *the EU* (meant here as the distinct political level; what we could commonly refer to as *Brussels*) cannot - and thus should not - be blamed for possible shortcomings; *the EU* (in the sense of the Union as an overall geopolitical entity) still bears the consequences. Once we cannot completely separate the two levels functionally, neither can we democratically. Similar to what I said about intergovernmentalism or supranationalism and their respective consequences for democratic organisation (cf. Chapter IV, 3.2), the question here is not about a value-judgement for or against either the European or the national level. As both are part of an overall policy-system, the question is just if this system creates a democratically legitimate policy. Therefore, we must assess where possible strengths and weaknesses are situated; and where and how they could be remedied. As it seems not likely that Member States will soon yield their competences in matters of foreign security and defence; they will, for the time being, continue to be important actors in the CFSP. And, as long as they do, the democratic legitimacy of their internal decision-making will play a role in the democratic legitimacy of the CFSP. Therefore, where democratic problems are actually located at the national level of individual Member States, solutions too will have to be searched for and implemented at the level of these individual Member States. It is true that the intricated mixture between different policy levels of course can complicate the task of those who want to better this policy's democratic credentials. Yet, a first step is to recognize where possible problems are situated. In that sense it is important not to overlook the national level, but to take it into account too in the overall assessment of the CFSP's democratic legitimacy.

Finally, in the context of proposing recommendations, it is also important to comprehend the difference between the individual findings that came up from the empirical assessments and the transversal trends that have been pointed out, previously in this chapter. As argued when introducing these general trends, they do not replace the different observations as the final outcome of the assessment; but they present key common reasons that help us understand their existence. While, in that way, understanding these trends can give direction to the discussion; actual propositions for improvement will still have to deal with concrete aspects of the CFSP's working. For instance, the opposition between intergovernmental and supranational attitudes, distinguished as a defining vector for the way the CFSP answers to the demand for public control with political equality, helps us understand certain problems in a more comprehensive way. However, possible solutions will still have to focus on these individual problems. Said otherwise, as a recommendation for democratic improvement it does not suffice to simply declare that *"we should be aware of the complicated balance between intergovernmental and*

supranational tendencies within the CFSP"; or something similar. To actually improve the situation, one has to look at the real implications this has for the daily development of the EU's common foreign security and defence policy. Based thereon, (s)he will have to come up with concrete changes concerning, amongst others, the financing of the CFSP, or the decision-making procedure preceding the launch of an EU military mission. However, what then in the end these changes actually have to be is up for debate and depends altogether from the personal, ideological views of those who are proposing them.

This observation, that actual recommendations on democratic changes cannot be seen independent from the personal opinions and understanding of those who propose them, prompt us to reflect on a more general challenge posed to normative democratic improvements; namely how they will be subjectively received. In Chapter I, I argued for a focus in this thesis on the normative – acceptability – dimension of democratic legitimacy, in contrast with the empirical – acceptance – dimension. The assessment that has been carried out looked at the democratic qualities of the CFSP's policy system as such, and not at *if*, *how* and *why* it is perceived by the public as being democratic. Although, in that way, the assessment can never completely escape a certain subjectivity, inherent to the assessor (cf. Chapter V, 2; also Chapter XV, 4 *infra*), it essentially has tried to present a disengaged, objective, overview of the CFSP's democratic situation. But, when contemplating about what could actually be done to reinforce this policy's democratic quality, the empirical dimension inevitably comes into play. Just like what I said about neglecting the policy's inherent complexity, one should also keep in mind that possible changes to the policy's structure and procedures act within a much larger context. Aiming attention exclusively at the philosophical reasons of democratic acceptability, and how they are lived up to, makes sense to find out objectively about democratic strengths and weaknesses. However, once attention turns to possible improvements, the way these are perceived cannot be ignored. After all, a certain change in the CFSP's structure or decision-making might well make it philosophically speaking worthier of recognition; it arguably makes little sense to willingly propose such change, if – for whatever which reason – it is generally refuted by the public. If we take for instance the parliamentary situation, the audit essentially pointed out that the EP's enthusiasm incorporates a certain positive democratic potential, while the general weakness of national parliaments and their unclear cooperation (amongst themselves and with the European Parliament) brings with it potential problems. When now attention turns to possible solutions – i.e. ways to change the parliamentary configuration in such a manner that it leads to more equal public control of the CFSP – this has to be done with consideration for

the people's subjective perception of both parliamentary levels. In a similar vein, it can for instance also be wondered if focussing on the reinforcement of direct popular participation is a road to follow and would help the overall – i.e. integrated – democratic legitimacy of European foreign policy? After all, the empirical assessments repeatedly revealed how the people seem not much interested in such a more active, direct involvement. In that sense, the question is if it would prove democratically useful to willy-nilly search to improve this more direct channel? Linked with the representative approach advocated by the EU itself, it could therefore be discussed if efforts for democratic improvement should not rather focus on this representative road.

As part of such a debate, also the discussion about the democratic legitimacy of the EU in general or of specific institutions in particular will come into play. While this thesis essentially assessed the democratic legitimacy of the CFSP as a policy (cf. Chapter III, 4; also: IV, 6), as was pointed out in the discussion about *European parliament activism vs. national parliaments' struggle*, different appreciations for instance exist with regard to the EP's overall democratic legitimacy. The arguments followed by someone in this regard (i.e. does one consider the EP in general to be a democratically legitimate institution or not) of course will determine his/ her vision on what can or has to be done to improve the democratic legitimacy of the EU's foreign security policy. The same of course goes for other institutions such as the European Council. Throughout the empirical chapters the EC repeatedly came forward as the key executive decision-maker within the CFSP. Taking into account the events-oriented character of a foreign policy like the CFSP (cf. Chapter II, 2), this is neither astonishing nor inherently problematic (cf. Van Middelaar 2016, 8). Again, the empirical assessment carried out here just observed this fact and evaluated how this European foreign policy executive responds – within the context of the CFSP – to the democratic demands of public control and political equality. Yet, independently from what we found out about the equal democratic control of that executive actor, opposing opinions exist about the acceptance of a strong executive. As mentioned at the beginning of this thesis (Chapter III, 4) different democratic traditions can exist within the different EU Member States. In its assessment, this thesis tried to look at the democratic legitimacy of the CFSP without a preference for one of these traditions by starting from a basic definition of democracy and not from a more refined model of democracy[276]. However, once

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[276] It should be reiterated here that the parliamentary understanding of democracy that came forward from the assessment in that sense does not express a foregoing preference on my part, but simply showed itself as the most active channel of public control (cf. this chapter 2.3 *supra*).

we come to a discussion of probable democratic changes and improvements, the tradition someone comes from can play a role in how (s)he will *intuitively* appreciate the position of the European Council. To make it obvious: someone from France, used to a strong president having considerable prerogatives in foreign policy, will probable look with a different eye at the role of the European Council than someone from Finland, where the government's autonomy in matters of foreign security and defence is more confined.

So, a search for possible improvement of the CFSP's democratic state of affairs, eventually, will happen through discussion and debate. The results of such debate will be influenced by the personal views and opinions of those who participate in it, as well as somehow have to take into account the subjective beliefs and perceptions of the society at large. The democratic audit of the CFSP's normative democratic legitimacy carried out in this thesis, and the ensuing balance sheet, however, can serve as valuable starting point for such debate, by providing it with factual content and thus giving useful direction to it (cf. Hendriks et al. 2016, 71).

5. Conclusion

This chapter concluded the empirical assessments carried out in Part II of this thesis. With that aim, it summarized the key findings and observations from the CFSP's empirical assessment. Yet, rather than just listing said findings, the focus of the discussion was thereby essentially on how these findings connect and interact, and which general, underlying trends can be distinguished. In that regard, I argued for the presence of three such trends. First, there is the presence of both intergovernmental and supranational tendencies, and the fact that the often-unclear manner in which they are combined within the CFSP can be of hindrance to this policy's equal public control. A second transversal trend was recognized in the structural discrepancy between the existence of multiple rules and the limited way in which they sometimes are applied or used. Finally, the chapter pointed to the recurring opposition between the European Parliament's eagerness and the national parliaments' limited and struggling involvement. Thereupon, the chapter reflected on the possible contribution of the democratic audit to an actual improvement of the CFSP's normative democratic legitimacy. In that regard, rather than to propose concrete measures, it reflected on guiding principles that could help, or give guidance to, the debate about such measures.

XV. Democratic auditing and foreign policy

Summary: *This final chapter returns to the method of democratic auditing. It reflects on possible further steps and about what the thesis can tell us with regard to the suitability of this approach for the evaluation of a foreign policy's normative democratic legitimacy. In that regard, it also ponders on the use of the framework to assess the democratic legitimacy of foreign policies other than that of the European Union.*

1. Future assessments of the EU's common foreign security and defence policy

As mentioned before, the audit that has been carried out in this thesis essentially concerns a snapshot of the CFSP for a given period. More precisely, the focus of the assessment has been on this policy since Lisbon, and data mainly run until end 2016. But, of course, like every other policy, the CFSP is constantly *on the move*. While *grand reforms* are not a regular thing (the last one dates to the Lisbon treaty, and a next one seems not very likely in the foreseeable future), this does not mean that the policy does not evolve. How will the next High Representative be appointed, and the one after that? Will the current revision of the Athena-mechanism lead to changes in the way in which CFSP missions are financed? Will the European Parliament use its increasing assertiveness to demand more access to secret documents? Or, will the attempts to review the Interparliamentary Conference's rules of procedures indeed prove to reinforce the working of this conference? But also, what will be the impact of Brexit on the way the CFSP is run? Or, will the fact of Donald Trump sitting in the Oval Office indeed lead to closer European defence cooperation (cf. Chapter VIII, 2)? And, most importantly, how will all of this impact on the policy's normative democratic legitimacy? (How), for instance, will the increased defence integration launched in the summer of 2017 take into account democratic control? And, if the EU indeed takes up a stronger role in the search for a solution to the Israeli-Palestinian conflict, (how) will citizens have a say about what that role actually will implies or about the general line of action that the Union will hold on to in that regard? The CFSP of 2021 will not be completely the same as that of 2016, that of 2026 in turn will show differences with that of 2021… In that way, the findings and observations of this audit in fact have limited tenability; they apply to the CFSP of 2016, not per se to that of 2026.

Therefore, carrying out the audit again in the future (certainly when basic changes would be introduced to the CFSP, for instance in the context of a further Treaty reform), would be a

useful exercise. This not only because it can keep us up to date about how exactly the CFSP responds to the demands for public control with political equality, but also because it can offer us an understanding about how this response evolves over time. The present audit can thereby serve as a point of reference (cf. Chapter III, 2). Like the assessment of other foreign policies according to the same assessment framework (cf. *infra*), this can also help develop our view about what is not only philosophically desirable but also practically feasible. With regard to democratic shortcomings, it can help us distinguish more clearly between those that are fundamentally problematic and those that, in the end, appeared to be rather transient aspects of a currently still relatively new policy.

2. Further use of the assessment framework and the development of an external measurement standard

Hitherto being used to evaluate countries or the EU's overall political system, this study has been the first to carry out a democratic audit of a particular policy. It did so on the basis of an assessment framework that was presented as both case-specific enough to capture the particularities of the policy under scrutiny, as well as general enough in order for it to be applied to similar types of policy (cf. Chapter IV, 4). Concretely, this means that the assessment framework, being developed to evaluate the specific case of the EU's CFSP, also could be used for the assessment of other foreign policies; and – possibly with certain changes with regard to specific indicators – to public policies more in general.

As to the employment of the assessment framework for the audit of other foreign policies, this would be more than just a valuable exercise with regard to each of these other foreign policies in itself. It would also have the advantage that it will bring with it the possibility of comparison. It could help understand if certain problems are typical for foreign policy in general, rather than being linked to a specific foreign policy in particular. Or, to the contrary, it could show the democratic variety that exists among different foreign policies, thus making clearer which problems are specific to a particular foreign policy. Although the idea of carrying out a comparison is as such not an objective of a democratic audit; the assessment of different foreign policies according to the same framework, can stir up discussion about what exactly are democratically acceptable practices for a foreign policy. That is, rather than leading to a simple good vs bad judgement of one foreign policy against another, the evaluation of other foreign policies could enable us to develop an external, more author-independent evaluation perspective.

In order to be realistic measures of democracy, criteria and indicators should honour an *ought implies can attitude* (cf. Chapter II, 1). As I argued, 'can' should hereby however not just be understood as what already exists. But, given that the evaluation of just one policy can make it sometimes difficult to fully understand what may be expected, studying how other policies live up to the different criteria, may help us obtain a better image of what might be considered practically feasible. The assessment of the CFSP's normative democratic legitimacy revealed the existence of certain democratic shortcomings; that is, aspects of the overall demand of public control with political equality with regard to which the EU's foreign policy did not seem to answer convincingly. Yet, by lack of some comparative benchmark, it has not always been easy to make a well reflected judgement about the actual severity of these shortcomings. When we take for instance the way through which key decision-makers are nominated (Chapter VI), or the organisation of transparency and secrecy (Chapter X), the audit found certain problems. Yet how serious these problems really are, to what degree we may expect them to disappear, and in what way they are unique for the CFSP, is more difficult to say. The audit carried out in this thesis, does not make a comparative claim. The simple assertion, for instance, tha*t "other international organisations are even less transparent"* (or something similar*),* in that sense does not play a part in the current evaluation of this policy's normative democratic legitimacy. In this regard, the evaluation of other foreign policies according to the same set of criteria and indicators would be a valuable endeavour, as in the end it could help the gradual development of a best- worst practice standard. To the extent that more and more other foreign policies are evaluated according to the same – or at least a similar – assessment framework, a better understanding about what can actually be demanded will occur. Ergo, a measurement standard based on a comparison of best and worst practices will be increasingly practicable. Given that this audit has chosen for the use of, what I have called an argumentative measurement standard, essentially because so-far such a more independent, best-worst practice standard was missing (cf. Chapter V, 2); it is obvious that if such a more *independent* standard would become available, it could contribute to the further development of an accurate and realistic assessment of a foreign policy's normative democratic legitimacy.

3. A democratic audit of other foreign policies: two exploratory examples

In fact, how indeed would other foreign policies respond, if we were to subject them to a democratic audit? While executing such an audit is not in the scope of this thesis, I propose here two exploratory examples by discussing the first criterion of the assessment framework, i.e. *Licensing to govern*, for both Belgian and Swiss foreign policy. The reason for choosing

these cases lies with their *relative similarity* to the EU. As the EU's sociocultural structure, institutional system and political practices bear considerable analogy to these consociational polities (Papadopoulos and Magnette 2010, 711-12; also: Lijphart 1999, 33), comparison will presumably be more straightforward than with more differentiated cases. Although both democratic auditing and its basic definition of democracy are essentially model-unspecific, and as such do not mean to assess but one type of democracy set-up (cf. Chapter III, 3 and IV, 2.2), an initial focus on more similar cases therefore may be considered a justified road to follow. That is, rather than immediately applying the assessment framework to strongly different contexts, a first, exploratory application to somewhat similar cases can present a useful testing ground for the application of the assessment framework to other foreign policies. In that sense, while the following case studies about *licensing to govern* do not pretend final judgement about how the respective policies answer to that criterion, I believe that they can indeed show how the audit framework is not only specific enough to cover a particular case but also general enough to cover somewhat similar cases (cf. Chapter IV, 4), i.e. other foreign policies. Also, it can help reflect more practically on the development of more external best-worst practice standards and give indications on what that would actually imply.

3.1 Licensing to govern in Belgian foreign policy

3.1.1   How are key officials of Belgian foreign policy appointed?

In Belgian Foreign security and defence policy, the central actor in the decisional process officially is the federal government (art. 167 Const.). Under its constitutional appellation of *The King*[277] the government is said to direct the international relations and to command the armed forces[278]. In reality, however, it is not the whole government but rather a more select group composed of the prime minister, the minister of Foreign Affairs (FA) and the minister of Defence that has the lead over Belgium's foreign and security policy. Assisted by their respective ministerial cabinets and administrations, this decisional triangle (Moyse and Dumoulin 2011, 12) holds the final decision-making power regarding the Belgian participation in international crisis operations and foreign security policy more in general. Although, the Belgian government acts officially as a collegiate body[279], in reality, the decisional triangle and

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[277] The Belgian Constitution historically speaks of *The King* as the head of the executive. In reality, however, this role has been taken over by the government since long.

[278] Relevant is that by according these powers to the government, the Constitution de facto excludes the Parliament from foreign policy-making (cf. Vande Lanotte 2003, 710).

[279] Loi spéciale de réformes institutionnelles du 8 août 1980, art.96 ejustice.just.fgov.be/ cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=1980080802 [09.06.14]

more generally *the Kern*[280] are the actors holding key political responsibility (cf. Moyse and Dumoulin 2011, 46).

According to art. 96 of the Belgian Constitution, **ministers** officially are appointed and dismissed by the king. Reality however is much less straightforward. As indicated before (cf. note 277), the Constitution speaks of *The King* in a quite complicated way: sometimes it really is the person of the king that is referred to, sometimes the king covered by a minister, but much more often *The King* is in fact the federal government (Dewachter 2001, 15). In the particular case of the appointment of ministers, however, things are even more confusing, as the government can of course not appoint ministers without itself being in existence first. Given the strong fragmentation of the Belgian political landscape in which political parties play a preponderant role[281], the parties - and often more specifically the party leaders – are the ones who decide about ministerial portfolios and persons. After a coalition agreement is forged and accepted by the general assembly of each party of the newly formed majority, it is up to each party to nominate the persons that will hold office for the portfolios that it obtained during the coalition negotiations. In that sense, a party can - with the informal agreement of its coalition partners - nominate whomever it wants without any real control by the Parliament (cf. Dowding and Dumont 2008, 128-29). Although in the end, the Parliament (since 1995[282] only the Chamber) has to approve the whole government, it can in no way judge the nomination of an individual minister. This becomes particularly clear when the post holder changes in the course of a legislative term. Although in recent years both the minister of foreign affairs and of defence stayed the same for the duration of a legislative session, cabinet changes in the course of a legislature are not uncommon. For instance, in the first half of the 1990's, under the Government Dehaene I, the person of the minister of foreign affairs changed twice[283]. And, more recently, under the government Di Rupo, three major rearrangements have taken place. In such instance, the Parliament does not have to give renewed approval (Senelle 2004, 213). As former prime minister Mark Eyskens (2000, 49) critically points out, ministers are therefore

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[280] A restricted ministerial meeting place, developed through custom, which brings together the most important ministers of the government, normally the prime minister and vice prime ministers (Monette 2002, 42).

[281] In this context, Belgium is repeatedly referred to as a partitocracy (Cf. Devos 2006, 283-85; Peters 2006, 1081; Walgrave 2004, 2; De Winter 1996, 219).

[282] Following the so called 4th State reform of 1993.

[283] Willy Claes was foreign minister from 7 March 1992 to 10 October 1994, followed by Frank Vandenbroucke until 22 March 1995, whom was in turn folowed by Eric Derycke until 23 June 1995.

first and foremost representatives of their party and party structures exercise a very strong power over their ministers. How exactly ministers are chosen and on what grounds is up to each party and seems substantially decided by the party leader (Dewachter 2001, 368, 380-81). In that way, of the three pillars of the above-mentioned decisional triangle only the first one, the prime minister, obtains his position as a direct result of elections as (s)he generally is the leader of the party that won the elections – but even that should not be seen is a principle rule. Neither the appointment of the minister of foreign affairs, nor that of the minister of defence has however to be directly linked to elections. And, neither the population itself or the parliament, nor even the prime minister (Dehaene 2000, 29) can really control these appointments. Also, for the people and the parliament, having no access to the limited decision-making centre behind ministerial nominations, it is very difficult to know on what basis exactly these appointments are made. Although the parliament is searching to limit the informal power of the party leaders in the process of the appointment of ministers, it seems inherently condemned to fail in its efforts. It is common to the Belgian political system that before dissolving itself in the prospect of new elections the three pillars of the legislative branch - which are the two houses of the federal parliament as well as The King - each present a list of constitutional articles they wish open for revision under the next legislature. Subsequently, the final, common, list[284] only contains these articles proposed by each of the three pillars. Given that the government (in its capacity of King) is an integral part of the legislature, and this government will most probably not be inclined to give the parliament a stronger say in its appointment, it is rather implausible that the relevant article 96 will be put forward for revision. Attempts, such as the amendment proposed in 2014 by Stefan Van Hecke, MP for the Flemish greens, seems therefore a lost fight. Van Hecke's proposal to reconsider art. 96 Const. because "It is a fiction that The King still appoints and dismiss the ministers and secretaries of state. That in fact is done by the party leaders"[285] - I would say evidently - didn't make the final list. Besides, there is the traditionally tendency towards strong party discipline, which makes that MP's in the Belgian parliament tend to vote along predefined party-lines (cf. Depauw 2002; De Winter and Dumont 2003). Given that party leaderships, certainly of majority parties, obviously have not much to gain by

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[284] It is the publication of this common list that according to article 195 Const. automatically dissolve both houses of the parliament and thus lead to new elections.

[285] Belgian Chamber of Representatives, 24 April 2014, *Projet de déclaration de révision de la Constitution – Amendements déposés en séance plénière - N° 273 de M. VAN HECKE* dekamer.be/ flwb/pdf/53/3567/53K3567005.pdf [09.06.14]

giving up their informal nomination prerogative, it seems implausible that they will encourage this point to be brought up in political debate.

Keeping in mind this in reality non-existent access of the parliament or the people to the nomination of the key foreign policy actors, the picture turns even more problematic when looking also at second line decision-makers. A particularity of the Belgian political system is the key role held by the **ministerial cabinets**, nowadays officially referred to as policy units. A minister who takes office is entitled to a ministerial cabinet consisting of advisers whom he can appoint or dismiss personally according to his own preferences[286] (Suetens and Walgrave 2001). Not part of the administrative hierarchy, cabinets are composed of non-elected - mainly party - confidents. Although the Copernicus reform (1999-2003) aimed, amongst others, to diminish these cabinets, in reality not much seemed to have changed since (De Jaegere 2010). Notwithstanding their new denomination these cabinets still have a very important say in the development of a policy and they essentially continue to be designated on the sole basis of the minister personal preferences. Linked with these strong cabinets is also the - behind the scene - interference of the political parties in matters of security and defence. Given the coalition character of the federal government[287] and the general ubiquity of political parties in the decision-making process (cf. note 281 *supra*), decisions taken in matters of security and defence are strongly dependant on the positions taken by the different parties that are part of the coalition (Moyse and Dumoulin 2011, 19, 42, 51). The involvement of the parties with security and defence affairs however strongly contrasts with their public interest in these matters. A glance at the electoral programs of the 12 parties elected for the federal Chamber of representatives during the elections of 25 May 2014 for instance reveals a very minor attention for matters of foreign security and defence. Varying in a simple percentage of the number of pages of their overall electoral program, it does not pass 3,24% (CD&V)[288]. The strong party-involvement

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[286] Belgian Official Journal (Moniteur belge), Royal order of 19 July 2001 fedweb.belgium.be/nl/binaries/K.B.%20van%2019.07.2001%20-%20A.R.%20du%2019.07.2001_tcm120-22281.pdf [09.06.14]

[287] Given the communitarisation of the political parties since the 1960's by which parties were split up along linguistic lines, this makes that government coalitions with up to six parties are not exceptional. This also makes it almost impossible that the three actors of the decisional triangle would belong to the same party. Hence, except for the government Leterme II (Nov. 2009-Dec. 2011) this has never been the case in post-WW II history.

[288] This result is based on an exploratory, evaluation and as such is just mentioned as an indicative example.

with foreign security and defence, especially in contrast with their rather public apathy, hence at least raises questions regarding their democratic licensing in this domain.

The larger administrative hierarchy is a last type of key actor. With regard to foreign security and defence policy these are the **Federal Public Service for Foreign Affairs** and the **Ministry of Defence**. Although the above-mentioned Copernicus reform aimed amongst others to professionalize and depoliticize the appointment of civil servants (cf. Thijs 2003, 468-74), we see that it is still the government that decide on all top-level positions. Heads of the administration are appointed as the result of a package deal between the coalition partners without any control of the parliament, and political balances and sensibilities in the end seem more important than the objective evaluations executed by Selor, the federal selection office[289]. Foreign Affairs does not seem an exception to this rule. Dirk Achten, who became in 2008 president of the board of director generals, and hence the leading official of the FSP Foreign Affairs, did so without any previous diplomatic experience or parliamentary say but was before, since 2004, chef de cabinet of then foreign affairs minister Karel De Gucht[290]. More generally, it has been criticized that also other top-ranking officials of Foreign Affairs, such as ambassadors are designated, without any parliamentary backing and that the nomination procedure lacks transparency. The constitutional origin of the problem is essentially the same as with regard to the nomination of ministers. According to art. 107 Const., The King *"appoints civil servants to positions in the general and foreign affairs administrations of the State"*, which makes that given the changing reality mentioned before this prerogative now falls onto the government. And, just as is the case with ministerial nominations, the appointment of top ranking diplomats seems under strong party control. While initial candidates for the diplomatic services are recruited on the basis of a selection procedure organised by Selor[291], their further career path, especially with regard to top-level post seems much more politically defined. For instance, based on a list published by the journal *De Tijd*, we can conclude that 8 of the 29 diplomats that are part of the so-called diplomatic movement of 2014, which normally is organized during the summer, were previously working on a federal ministerial cabinet. A ninth

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[289] Knack, 03.09.2013, "Afrekenen met kwalijke benoemingspolitiek: acht adviezen aan de overheid" knack.be/nieuws/belgie/afrekenen-met-kwalijke-benoemingspolitiek-acht-adviezen-aan-de-overheid/article-opinion-104667.html [09.06.14]

[290] Apache.be, 18.11.2011, "(*)nvdr – Achten Dirk" apache.be/nvdr/2011/11/18/achten-dirk/ [10.06.14]

[291] Cf. Federal Public Service for Foreign Affairs, *Procédure de sélection* diplomatie.belgium.be/fr/sur_lorganisation/travailler_aux_affaires_etrangeres/a_letranger/en_tant_que_statutaire/procedureselection [07.02.18]

is working as ambassador for Antwerp Port and is of CD&V-signature[292]. The president of the Senate can invite newly appointed ambassadors to the Senate (Belgian Senate, phone call 04.11.16), but this obviously does not give any parliamentary involvement in that appointment as such. A bill, introduced in 2011 by senator Karl Vanlouwe (N-VA)[293], asking parliamentary consultation for ambassadorial nominations was rejected in the Senate Commission, mainly on the grounds that the proposal is unconstitutional[294].

3.1.2   How is the Belgian foreign policy's overall governance structure defined?

With regard to the overall institutional governance structure of the Belgian foreign policy it has first of all to be pointed out that it is of course mainly the result of a long history and tradition which was for a long time strongly defined by the king in his personal capacity. Only since the end of WW II and the so-called Royal Question, has the government taken over the full responsibility over foreign affairs (Coolsaet 2001, 357). Unable to cope with the rapid changes of the international setting in the post war period, the Parliament was no match for the government who therefore was free to define the country's foreign policy (Witte et al. 2005, 256). This has led to the above described situation in which the government - and more specifically the decisional triangle - took over the constitutional role of The King and assured foreign and defence policy to be one of its prerogatives. Also, the parliament has little input to give regarding the organisational structure of Foreign Affairs or Defence institutions, or their possible reorganisation, as they do not deviate from the general rule that the executive organizes its own services (Mast et al. 2006, 91). This we see confirmed by the last main reorganisation of Foreign Affairs and Defence as part of the earlier mentioned Copernicus reform. The structural changes and the rewriting of the organisational chart of the then Ministry of foreign affairs was put through as a purely administrative operation executed under the guidance of the government, the parliament was largely left out of the whole process and only appealed upon

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[292] Cf. *De Tijd*, 18.04.2014, "Didier Reynders zendt zijn zonen uit" tijd.be/nieuws /politiek economie_belgie/Didier_Reynders_zendt_zijn_zonen_uit.9491206-3136.art [09.06.14]

[293] Karl Vanlouwe, "Proposition de loi instaurant un avis parlementaire dans le cadre de la nomination des chefs de missions diplomatiques and de postes consulaires belges", *Belgian Senate*, 6 July 2011 senat.be/www/?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj =application/pdf&MIvalObj=83887631 [09.06.14]

[294] Belgian Senate, *Proposition de loi instaurant un avis parlementaire dans le cadre de la nomination des chefs de missions diplomatiques et de postes consulaires belges (de M. Karl Vanlouwe ; Doc. 5-1150) - Discussion générale* senate.be/www/?MIval=/consulteren/publicatie 2&BLOKNR=23&COLL=H&LEG=5&NR=95&SUF=&VOLGNR=&LANG=nl [09.06.2014]

when really unavoidable[295]. Besides, with regard to Defence, even the government didn't seem able to put through the reform against the will of the army; reason why Defence is still not restructured to a Federal Public Service but continue to work under the old structure of a Ministry[296]. Within this institutional structure, and although different committees are - of course - involved in the strategic and operational planning of security and defence policy, the final decision power stays with the decisional triangle and their (chefs de) cabinet. Notwithstanding the principle of consensus (cf. *supra*, we see that the government at large merely ratifies what has been previously decided within the more restricted Kern or decisional triangle (Claes 2000, 43).

3.1.3   Conclusion: licensing to govern in Belgian foreign policy, normatively democratic?

When looking at the Belgian foreign security and defence policy, many observations seem at odds with the democratic criterion of licensing to govern. Although the ambiguous appointment of ministers by party leaders, applies to all members of the government; it is in particular dubious with regard to foreign and security policy. Given the traditionally strong role of the federal executive in this domain, it certainly can be asked if it is democratically defendable that even the nomination of those holding key political responsibility, is in no way controlled by the Parliament. Besides, as these ministers their first line advisers and assistants are mainly party-confidents, who obtained their post for a large part based on the personal preferences of the minister - and maybe some high-ranking party members - the situation becomes even more problematic. The problem with the ministerial nominations is not so much that they are not elected for their function by the people directly - in the European tradition of the parliamentary democracy that is in fact never the case[297]- but that the control of the elected parliament over their nomination is almost non-existent. The strong grip of the parties also manifests itself with regard to administrative appointments. Although the Copernicus reform tried to turn the tide, the nomination of top-level officials and ambassadors seems still considerably determined by

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[295] Georges Monard, "Copernicushervorming. Rol van de politieke actoren", *KU Leuven- Faculteit Sociale Wetenschappen* soc.kuleuven.be/io/ned/vorming/studiedag/pdf/20080603_ Georges% 20Monard.pdf [09.06.14]

[296] De Morgen, 07.05. 2011, "Tussenstand: hoe het leger een platte praatbarak werd" demorgen. be/dm/m/nl/2461/Opinie/article/detail/1260822/2011/05/07/Tussenstand-Hoe-het-leger-een-platte-praatbarak-werd.dhtml?originatingNavigationItemId=2461 [09.06.14]

[297] cf. De Wereld Morgen, 17.11.2011, "Technocraten aan de macht ondemocratisch? Niet noodzakelijk" dewereldmorgen.be/artikels/2011/11/17/technocraten-aan-de-macht-ondemocratisch-niet-noodzakelijk [09.06.14]

party-considerations and coalition balances. Just as in the case of the appointment of ministers, the parliament does not seem able to turn this trend around.

Following a long tradition in which initially the King, in his personal capacity had an important say; the overall governance structure of foreign security and defence policy constitutionally stays strongly dominated by the executive power. This, linked with the preponderant role of the political parties, seems to strongly limit the possibly of the parliament - let alone the people - to influence the way in which the Belgian foreign security and defence policy is organized. Although individual MP's try to change things and launch initiatives, for instance to bolster the parliamentary say in the nomination of individual ministers or ambassadors, they seem hindered by the system in place which clearly puts them in a disadvantageous position. Finally, it can even be wondered who holds the real key decisional power. Although, the government officially acts under consensus, the more restricted Kern or even decisional triangle often takes the actual decisions. Given the tight relation they have with their respective ministers, as factual appointing authority; in this context too, the party cenacles hold grip on the matter.

3.2 Licensing to govern in Swiss foreign policy

3.2.1 How are key officials of Swiss foreign policy appointed?

In Switzerland, foreign relations are the competence of the Confederation (art. 54 § 1 Federal Constitution). While the Cantons can organize their own foreign policy within the scope of their competences and can deal directly with lower ranking foreign authorities (art. 56 FC), the federal government alone is responsible for conducting foreign policy at the national level (art. 184.1 FC). This federal government, the *Federal Council*, is composed of seven ministers, called Federal Councillors whose selection is defined by both formal rules and informal practice. According to law (art. 175 FC, art. 132 LParl), Federal Councillors are elected for four years by the Federal Assembly[298] following each general election of the National Council. Each member is elected individually. Complementary elections can take place when a member resigns or dies mid-term (art. 133 LParl). Elections take place by secret ballot, and a candidate must obtain an absolute majority in order to be elected. Once elected, Federal Councillors can neither be impeached nor be voted out of office by a motion of no confidence. On the other hand, given that each Councillor has to be elected individually and Councillors in office need the renewed support of an absolute majority of the Federal Assembly every four years in order

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[298] Both the National Council and the Council of States.

to stay in office, they hold individual responsibility towards the Parliament. In that way, the Swiss executive incorporates both a parliamentary and a presidential dimension (Lijphart 1999, 35). While there are no formal rules concerning a Councillor's time in office, traditionally they stay until they themselves decide to resign, which on average is after somewhat less than 10 years (Kriesi and Trechsel 2008, 80). Further informal rules apply to the actual composition of the Federal Council. First of all, although every adult Swiss citizen is eligible for election[299], in practice only active politicians, with many years of experience, are elected. While the constitution (art. 175 § 4) indeed declares that the Federal Council's composition has to respect a regional and linguistic balance, the concrete interpretation that is given to this requirement results from unwritten agreement and tradition. Besides, the Federal Council also incorporates a stringent political equilibrium in which each of the main political parties holds a predefined number of seats, the repartition of which does not automatically change after each election[300]. In practice this means, that a resigning member is generally replaced by someone from the same political party. The need for a parliamentary majority for each candidate in order to be elected as a Federal Councillor however limits the party's freedom in this regard, as they cannot be sure that their proposed candidate(s) will be accepted by Parliament. And, many examples exist where official party candidates had to make way for an outsider (Klöti et al. 2014, 196, 215). Parliament thus holds a clear grip over the initial nomination of the key executive decision-makers.

Within the Federal Council, there is no hierarchy among the members. Although each of the Councillors heads one of the seven federal departments – the repartition of which is decided by the government itself – with regard to actual decision-making they act as a collegial body (art. 177.1 FC). Thus, decisions about a concrete policy or action are taken, not by an individual Councillor according to the policy domain involved but have to be taken by the Federal council as a whole. The President of the Confederation, a role exercised by rotation for one year by one of the Councillors, only acts as a primus inter pares and does not hold any additional power in comparison with the other members. Decisions are taken by consensus as a result of internal discussions (cf. Klöti et al. 2014, 203-4; Kriesi and Trechsel 2008, 75-76). This also applies to matters of foreign security and defence. Each member subsequently will (have to) defend the

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[299] They do not have to be a member of Swiss parliament and even do not necessarily have to be an official candidate.
[300] This so-called magic formula did not change between 1959 and 2003, after which it was adapted in favour of the Swiss People's Party, due to this party's consolidation as the country's largest political formation.

decision that has been taken, even when (s)he personally does not agree. So, also with regard to foreign policy, this means that the key political decision-maker is the Federal Council as a whole.

In contrast to the previously discussed Belgian case, Swiss ministers do not have their own political cabinet, but only one or two **personal collaborators** which they can select to their own discretion and who are integrated into the general secretariat of their department. These persons do not have to be civil servants (Göransson 2008, 14-15). They do not so much coordinate or intervene in the administration but assure logistic and communication tasks for their councillor (Fortier et al. 2016, 81) As shown by the selection made by Ignazio Cassis, the new head of the *Federal Department of Foreign Affairs* (DFA), a Councillor can also decide to take over his predecessor's personal collaborators. Upon entering office in November 2017, Cassis changed but one of the two collaborators of his predecessor, Didier Burkhalter[301]. This, of course is not so astonishing when taking into account that new Councillors normally are from the same political party as the one they replace. Due to this absence of a real ministerial cabinet, the actual execution and further elaboration of the Federal Council's decisions therefore lies directly with the federal administration. Given the institutional context and the political organisation of the country, this administration holds an important position in the Swiss decision-making process that goes beyond that of just an ordinary *executioner* (cf. Giauque 2013, 42). From an organisational point of view, the administration is divided into seven **departments**, each of which is headed by one of the Councillors and deals with one or more policy domains. With regard to foreign relations in general, the Swiss case is rather peculiar because in practice hardly any department or office does not play a role in it. Where it concerns for instance the important field of foreign economic affairs, responsibility lies with the *Federal Department of Economic Affairs, Education and Research* (DEA) rather than with the *Federal Department of Foreign Affairs*. But, also other departments, like the *Federal Department of Environment, Transport, Energy and Communications* (DETEC) or the *Federal Department of Finance* (FDF) are directly involved in foreign affairs that concern their competencies (Goetschel et al. 2002, 67-8). However, with regard to foreign security policy in particular, things are all in all quite straightforward, as essentially two departments are involved: The DFA and the *Federal Department for Defence, Civil Protection and Sports* (DDPS). Within the DFA,

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[301] Cf. 24 heures, 03.11.17, "Cassis nomme ses collaborateurs personels" 24heures.ch/suisse/Cassis-nomme-ses-collaborateurs-personnels/story/28378359 [09.01.18]

it is especially the *Division for Security Policy* (which in itself is part of the *Directorate for Political Affairs*) that is tasked with foreign security (Goetschel 2014, 633).

Where it concerns the selection of the federal administration's personnel, this is formally organised by the Federal Regulation of 3 July 2001 (OPers) [302]. For the Department of Foreign Affairs, further rules are set out in a separate Regulation of 20 September 2002 (O-Opers – DFAE)[303]. With regard to the diplomatic service, art. 17 of this regulation stipulates that candidates have to pass a concourse, an internal formation and a final exam, all of which are evaluated by an Admission Committee. A member of parliament can be represented in this committee (DFA, e-mail 12.01.18). The appointment (= transfer) of diplomats to senior posts abroad is a formal competence of the Federal Council (art.6.a O-Opers – DFAE), who, following an internal procedure, takes the final decision[304]. Only in rare cases, do people come into high level posts in the diplomatic service without taking the *concours* (entry exam) and subsequently climbing the diplomatic career ladder[305]. For the DDPS, the selection, appointment and career of the *Groupement Défence*, and the military personnel more in general is organised by the Regulation of 9 December 2003 (O pers mil)[306]. While the presence of such elaborated legislative rules seems to be in line with the traditional idea of the Swiss administration and diplomacy being neutral and apolitical institutions, questions can be asked as to how much this is actually the case. First of all, although, the number of high-level administrators with a formal party membership is limited, this does not imply the absence of ideological ties and a more general party affiliation between the head of a department and the top of his/her department[307]. Furthermore, formal politicization may well be limited and most positions within the administration indeed are stable and do not change when a new councillor enters office (Fortier et al. 2016, 78); with regard to certain top-level positions this seems to be

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[302] *Ordonnance sur le personnel de la Confédération* du 3 juillet 2001 (OPers) admin.ch/opc/fr/ classified-compilation / 20011178/index.html [09.01.18]

[303] *Ordonnance du DFAE concernant l'ordonnance sur le personnel de la Confédération* du 20 septembre 2002 (O-OPERS – DFAE) admin.ch/opc/fr/classified-compilation/20021667/index. html [09.01.18]

[304] cf. *Evaluation de la procédure de nomination des cadres supérieurs par le Conseil federal. Annexe au rapport du Contrôle parlementaire de l'administration à l'intention de la Commission de gestion du Conseil national du 20 juin 2013*, pp.70-8 biblio.parlament.ch/e-docs/373229.pdf [09.01.18]

[305] *Evaluation du personnel du service diplomatique. Rapport du Contrôle parlementaire de l'administration à l'intention de la Commission de gestion du Conseil des Etats du 10 août 2015*, pp.4428-9 parlament.ch/centers/documents/fr/bericht-pvk-2015-08-10-f.pdf [09.01.18]

[306] *Ordonnance du DDPS sur le personnel militaire* du 9 décembre 2003 (O pers mil) admin.ch/opc/ fr/classified-compilation/20031654/index.html [13.02.18]

[307] Tages Anzeiger, 15.10.2015, "Parteien-Check bei den 65 höchsten beambten" tagesanzeiger. ch/schweiz/standard/die-berner-schattenregierung/story/15281409 [07.02.18]

changing. The replacement of a Federal Councillor is increasing accompanied by changes at the head of the Federal department that is concerned (Giauque 2013, 42-43; also: Schedler and Eicher 2013, 382)[308]. If we look at the DFA, we indeed see how the last three Councillors in office (Micheline Calmy-Rey – 2003-12, Didier Burkhalter – 2012-17 and Ignazio Cassis since November 2017) changed the department's Secretary General shortly after their arrival. Given that art. 2 OPers bestows the right to do so on the Federal Council, at first sight this could be seen as being in line with the legal rules in place. Yet, as the Parliament[309] notes, in practice the Federal Council as a body is not involved and just accept what is proposed by the department in question, each of which uses its own procedures (cf. also Göransson 2008, 15). The FC does not debate these appointments. Thus, where it concerns the nomination of such top-level appointments, the Federal Council as a body mainly accepts without further discussion the choice of an individual Councillor and department.

While neither the people directly, nor their elected representatives in the Parliament (can) really control individual appointments within the administration, the Swiss Federal Parliament proves rather active in keeping an eye on how in general such appointments do take place. This happens through the ***Parliamentary Control of the Administration*** (**PCA**) – the evaluation service of the Federal Assembly – which conducts mandated studies about the legality, opportunity and efficiency of the federal authority[310]. Especially in recent years this organised evaluation by the Swiss Federal Parliament has been considered as comparatively strong (Sager et al. 2017, 253). Among the evaluations that are carried out, a regular focus is on the Confederation's personnel policy (ibid, 255). The previously cited reports of 2013 and 2015 (cf. note 304 and 305 *supra*) are clear examples of how this control indeed also covers the selection and appointment of personnel in service of the federal administration, including diplomatic and military personnel. All in all, these reports seem to show satisfaction with how such selection and appointment does take place. What however is recognized as problematic, is the above mentioned limited involvement of the Federal Council as a body in the selection of senior officers. With the so-

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[308] Also: Evaluation de la procédure de nomination des cadres supérieurs par le Conseil fédéral. Rapport du Contrôle parlementaire de l'administration à l'intention de la Commission de gestion du Conseil national du 20 Juin 2013, p.2738 parlament.ch/centers/documents/fr/BB-BX-kader-bericht-f.pdf [13.02.18]

[309] cf. *Nomination des cadres supérieurs par le Conseil federal. Rapport de la Commission de gestion du Conseil national du 15 Novembre 2013*, p.2706 parlament.ch/centers/documents/fr/bericht-gpk-n-2013-11-15-f.pdf. Also : *Évaluation de la procédure de nomination des cadres supérieurs par le Conseil fédéral* (cf. note 308 *supra*), pp.58-9.

[310] *The parliamentary control of the administration* parlament.ch/en/organe/committees/parliamentary-control-administration-pca [09.01.18]

called *affaire Nef* as a notable example of an appointment turning bad[311], the limited involvement of the Government indeed is questionable. Although it is to be applauded that most selections are made on the basis of competence and merit (or that these elements at least play a role too), the Federal Council inclines to neglect its political responsibility over the administration. The Federal Assembly may well be able to oversee the way in which the administration works and how it selects its personnel, actual authority can only be exercised by the Federal Council. The current situation, in which individual departments are largely independent towards the Federal Council as an institution with regard to the appointment of high level officials leads to an uncontrolled delegation of competences. This is not to say that nominations to key offices within the administration should become politicised in a *Belgian way*, but that for these appointment for which the Federal Council has direct authority (i.e. these listed in the previously mentioned art. 2 OPers), she indeed should be really involved[312].

3.2.2   *How is the Swiss foreign policy overall governance structure defined?*

In the previous study about the EU's CFSP, we saw how foreign policy happens through a governance system that is (at least partially) distinct from what is common to other policy domains. For instance, the European Commission, which is normally the EU's key executive, plays no role of real importance in matters of foreign security and defence. And, with the EEAS, foreign policy is mainly carried out by a body that differs in both structure and competences from the *normal* Commission and Council administration. The same goes for Belgium, where, in practice, we found a restricted triangle composed of the prime minister, the minister of foreign affairs and the minister of defence deciding on foreign policy, and not the government as a whole. In Switzerland, however, such difference between the governance system of foreign policy compared to that of other policies, does not really exist (cf. previous remark about the involvement of the different departments in the development and execution of Foreign affairs). This is arguably due to the fact that for a long time, foreign policy in Switzerland was not considered to be a particularly important policy field; a situation for instance mirrored by the fact that until the end of the 19th century, Switzerland did not have a proper foreign affairs department (cf. Goetschel 2014, 624). Besides, although foreign policy is considerably more

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[311] In January 2008, Roland Nef becomes head of the Swiss army. Soon afterwards, however, controversy arises about his appointment when it is revealed that already during the process of his selection, a criminal complaint is running against him for sexual abuse. In the aftermath of the affair, the then Federal Councillor of Defence, Samuel Schmid, is heavily criticized for his weak political control over this key appointment.
[312] Cf. note 309 *supra*.

executive dominated than domestic policy processes (Goetschel et al. 2002, 84-6), this still seems to be much less the case than in other countries (Goetschel 2014, 624). Furthermore, certainly since the 1990ies, we see an increasing impact on foreign policy by the Swiss parliament (Schneider 1999, 42; also: Lammers 2015, 91-92).

What however is most notable with regard to this governance system, is that in Switzerland, the people indeed hold the final say over its structure and change. Concretely, in Switzerland, there exist different instruments of **direct democracy**, through which the people can impact directly on the organisation of government and parliament, the legislative procedure and policy-making at all levels of the federal state. Given their scope and role, these institutions of direct democracy *"embody a truly system-formative device"* (Kriesi et Trechsel 2008, 49). While, in practice, the basic structure of Swiss governance has changed remarkably little since its creation in the constitution of 1848 (cf. Varone 2014, 346), the people hold the possibility to do so. Said otherwise, the final word about who are to be the key decision-makers or how they are to be appointed, stays with the people.

More concretely, at all time, the people can launch a **popular initiative** that searches to introduce such reform. Thus, for instance, the number of seats in the Federal Council (seven), the election mode of Federal Councillors (individually, by the Federal Assembly) or the government's basic decision-making principle of collegiality could be changed at all time, if a double majority of people and cantons decides so (art. 140.1(a) FC). Four times, an initiative has been launched concerning the composition and election of the Federal Council[313]. Yet, in all these cases both a majority of the people and a majority of the cantons rejected the proposed changes. The last time, in 2013, it concerned an initiative launched by the Swiss People's Party which sought to introduce the direct election by the people of the Federal Council. But the project received strong disapproval: 76.3% of the popular votes and all the cantons rejected it[314]. The people can also decide about the administration. If they wish to do so, they can propose changes to, and vote on, for instance, the exact repartition of competences between departments,

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[313] Conseil Fédéral, *"L'initative populaire: 125 ans d'histoire"* admin.ch/gov/fr/accueil/documentation/dossiers/125-ans-initiatives-populaires.html [11.01.18] (state of affairs: December 2017: my count)

[314] Votation No 570. Tableau récapitulatif bk.admin.ch/ch/f/pore/va/20130609/det570.html [10.01.18]

or the internal organisation of these departments. Two initiatives have been launched in that regard, yet, again, neither was successful[315].

Although these results could easily lead us to conclude that the actual importance of such initiatives is quite limited, in practice things are less black and white. In reference to the dichotomy between *democratic hardware* and – *software* (cf. Chapter V, 3 *supra*), it indeed is true that while the people formally have the power of initiative, in reality they are seldom successful in using it to actively set the course. While this is not in the scope of this discussion (and in any case, this observation applies to Swiss politics in general and not to foreign policy in particular), it indeed can be wondered why none of the in total six popular initiatives that aimed to reform the Federal Council or the administration were accepted. Yet, on the other hand, while the people's active power seems all in all limited, they certainly can exercise indirect or reactive guidance. Popular initiatives for that matter, though seldom accepted as such, can lead to counterproposals by the government which while being less radical than the initial initiative nevertheless introduce some of the initiative's ideas (Lutz 2006, 48-9; also: Linder and Wirz 2014, 156-7). Besides, at multiple occasions **optional referendums** have been held about a law or federal decree that concerned aspects of the federal administration's internal organisation. In 9 out of 20 cases, such a referendum has led to the annulment of the legal act in question[316]. In the other 11 cases, the people approved the proposed law or decree. In 1996, for instance, a reform of the *Law concerning the organisation of government and administration* (LOGA) was successfully contested by optional referendum[317]. Answering to the main critics of those who opposed the law, the government subsequently made the necessary changes to the proposal of law[318]. This new version passed without further popular contestation. With regard to security and defence policy in particular, it should be kept in mind that also laws about the organisation and working of the army can be contested. Actually, 6 of the 20 referenda mentioned above concerned the military. In 5 of these cases, the people in the end accepted the disputed act.

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[315] In 1922, an initiative "*concerning the eligibility of federal officials to the National Council*" was rejected admin.ch/ch/f//pore/vi/vis20.html. In 2000, an initiative "*for a fair representation of women in the federal authorities*" was rejected admin.ch/ch/f//pore/vi/vis235.html [12.01.18]
[316] Chancellerie fédérale ChF, "*Répertoire chronologique des demandes de referendum*" bk.admin.ch/ch/f/pore/rf/ref_2_2_3_1.html [11.01.18] (state of affairs: December 2017: my count)
[317] Votation No 431. Tableau récapitulatif bk.admin.ch/ch/f/pore/va/19960609/det431.html [10.01.18]
[318] FF 1996 V1

3.2.3 Conclusion: licensing to govern in Swiss foreign policy, normatively democratic?

In Switzerland, the parliament decides about the key executive decision-makers and can scrutinize the appointment of senior officials through its evaluation service, the PCA.

While these are obviously promising observations, some nuancing comments are appropriate. First of all, there is the minimalistic involvement of the Federal Council in the selection of the federal administration's senior officers. According to law, the Federal Council is the competent authority for the appointment and dismissal of certain categories of, high-level, civil servants. In practice however, it is revealed that the Government barely exercises this responsibility. These administrative officials are chosen by individual (heads of) departments without much debate and control by the rest of the federal Council. This can be considered democratically problematic, because it leads to a situation in which the concrete nomination of important decision-makers happens factually uncontrolled. Given that in Switzerland the chain of delegation from the people over the Federal Assembly to the Federal Council is well defined[319], this last one's control over the appointment of senior administrative officers indeed can be considered to be enough in order for these appointments to be democratically acceptable. Then of course, the absence of such control presents a democratic shortcoming. So far, the critique expressed by the Parliament through its evaluation reports, did not result in any relevant change on the matter.

Where it concerns the overall governance structure of Swiss foreign policy, an important point lies with the fact that it largely overlaps with the overall Swiss governance system. That is, at governance level, maters of foreign policy and security are essentially decided and executed through the same system and structures as other policies. This leads to a situation in which the discussion of the foreign policy structure largely coincides with a discussion about the governance structure more in general.

With regard to the development or reform of said governance structure, we saw how the people can exercise control through means of direct democracy instruments. The actual power of the people, however, should not be understood wrongly. It essentially concerns an indirect, retroactive power. That is, given that they are rarely accepted as such (and in case of governmental or administrative reform so far never), initiatives not so much define governance

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[319] This makes the situation different from the previously discussed European case, in which the appointment of the appointing authority itself (being the High Representative) showed certain democratic weaknesses (cf. Chapter VI).

directly but they can push the government in a certain direction. And, as is shown by the successful optional referenda about law and decrees on the organisation of the administration or the military, the people can guide the overall governance structure retrospectively.

3.3 Comparing the EU, Belgium and Switzerland

As pointed out before, the evaluation of different foreign policies could help us gain insight into the diverse ways in which foreign policies deal with demands for democratic legitimacy and the possible problems they encounter in that regard. In this respect, the above discussions of *licensing* in Belgian - and Swiss foreign policy involve some interesting observations when comparing them with the previous assessment of the EU's Common foreign and security policy.

First of all, in Belgium, and even more so in Switzerland, the distinction between the foreign policy governance structure in particular and the overall governance structure more in general turned out to be much less pronounced than in the EU. We see three different situations. First of all, in case of the EU, the organisation of the foreign policy governance shows clear differences with the *normal* EU governance system. The appointment procedure for the High Representative differs from that of other Commissioners; the responsible administration, the EEAS, is clearly distinct from the more general Commission and Council administration; and compared to other policy domains, the EU Council acts more as part of the executive, rather than as part of the legislative. Secondly, In Belgium, we see both differences and overlaps between foreign policy in particular and public policy in general. While, for instance, in theory, the key political decision-makers are the same, namely the government, in practice, the more limited decisional triangle forms the real locus of foreign policy decision-making. Yet, on the other hand, the way in which the members of this triangle are appointed is not different from that of other ministers. Finally, in Switzerland, foreign policy does not dispose of a distinct governance system, neither in theory, nor in practice.

This observation gives to think about the origins of possible democratic shortcomings that could be observed in each of the different cases. Where for the EU, the democratic problems observed with regard to licensing for an important part can be traced back to the particular context of foreign policy-making, in Belgium or Switzerland this is much less the case. Thus, for instance, in Belgium, the *partitocratic* appointment of both key political decision-makers and senior officials is not so much characteristic for foreign policy, but for the Belgian system all together. Or in Switzerland, the (possible) involvement of the people in the definition of the governance

structure is not particular for foreign policy. This, of course, has its relevance for possible rectifications of the observed problems.

Furthermore, at least compared to Belgium, the EU seems not to be doing so badly… Of course, as said before, the evaluation of different foreign policies should not just lead to simple binary verdicts of one foreign policy against another, but this observation nevertheless gives food for thought. It more concretely shows how he assessment of different policies can help to put into perspective their respective strengths and weaknesses. Finding out about the strengths or weaknesses of other foreign policies and how these come about, should make us prudent about all too strong conclusions (be it positive or negative) about the democratic qualities of a specific foreign policy. In that sense, it can help us reach a more balanced and well-considered evaluation of a policy's democratic legitimacy.

Finally, from a more methodological point of view, certainly the Swiss case demonstrates very well why a focus on but one dimension of democracy (in this case the selection of key decision-makers) is insufficient to develop a clear insight in a policy's overall democratic legitimacy. Within the *Swiss discussion*, I touched upon the existence of direct democracy and the way in which it allows the people to decide on the actual governance system in place. Yet, initiatives and referenda do also play a role in the direction and development of the foreign policy as such. A remarkable example of popular **participation** is, for instance, the initiative on UN membership accepted in 2002[320]. With regard to optional referenda, we can cite, among many others, the 2005 vote on Swiss accession to the Schengen area[321], or the 2014 popular rejection of the purchase of 22 Gripen jet fighters[322]. These referenda seem to grand a considerable **overrule** power to the people (cf. Schneider 1999, 46-48). Furthermore, a sole focus on the selection of key public decision-makers for instance also does not take into account the participation of the cantons or the involvement of interest groups in the so-called pre-parliamentary phase (cf. Manuel Fischer's (2012, 191-99) chapter on Schengen/Dublin). It is obvious that to fully grasp the democratic state of affairs of the Swiss foreign policy's democratic legitimacy, these elements have to be studied more comprehensively. Not doing so

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[320] Initiative populaire fédérale 'pour l'adhésion de la Suisse à l'Organisation des Nations Unies (ONU) bk.admin.ch/ch/f/pore/vi/vis292.html [23.01.18]

[321] Votation No 517. Tableau récapitulatif bk.admin.ch/ch/f/pore/va/20050605/det517.html [23.01.18]

[322] Votation No 584. Tableau récapitulatif bk.admin.ch/ch/f/pore/va/20140518/det584.html [23.01.18]

leads to a biased and uncomplete image of how Swiss foreign policy answers to demands of public control and political equality.

4. A democratic audit of the CFSP, and of other (foreign) policies: final remarks

Both the future study of the CFSP and the assessment of other foreign policies can contribute to an increased understanding of normative democratic legitimacy in foreign policy. But also, they could add to a further reflection on, and fine-tuning of the assessment framework in itself; as well as advance our comprehension about both the suitability and inconveniences of democratic auditing as a method for the evaluation of a (foreign) policy. Two last points deserve attention in that regard.

A first element concerns the assessment framework as such. While starting from the same basic principles of public control with political equality as did previous audits, this thesis presented an original framework that is adapted to the evaluation of the democratic state of a policy, rather than of a political system. In that regard, it presented criteria according to the idea of a policy as a circular process composed of an input-, throughput- and output phase. Although, I believe, this makes sense from a theoretical point of view, and certainly was helpful for the selection of the relevant criteria that together covered the whole policy process; it has to be recognized that in the actual assessment, the distinction between those three phases did not really played much of a role. Neither when carrying out the evaluation, nor where it concerns the findings that came out of it, the input-throughput-output divide seemed to have been of particular importance. The assessment of the different indicators indeed led to a better understanding about how well criteria are lived up to and how they mutually connect, as well as gave us a more comprehensive view about the CFSP's overall normative democratic legitimacy (cf. Chapter V, 1); but, there seems little evidence that findings structure themselves – or for that matter could be usefully structured – according the divide of the three policy phases. The findings pointed to both weaknesses and strengths; and revealed the existence of multiple overlaps and interconnections between them (cf. *supra*, but not so in particular along the lines of this trichotomy.

Even though I do not think that in itself this situation is problematic for the assessment that has been carried out, it can make us wonder if building up the criteria according to a different logic could help improve the framework of assessment. With reference to the flexibility incorporated by the democratic audit approach (cf. Chapter III, 3), future research can argue to structure criteria in a different way or reconsider the way they relate to each other. Yet, it could also

come to conclude that the input-throughput-output divide indeed is relevant in order to fully grasp the actual democratic organisation of the foreign policy in question. Said otherwise, it is not because, in the end, this distinction seemed not particularly important to understand the strength and weaknesses of the current CFPS democratic setting, that it cannot be of more determining relevance in the future, or for another foreign policy.

A second point of attention concerns the method of measurement and the data gathering on which the audit is built. While audits of other foreign policies and of the future CFSP can, as explained, add to the development of both the actual assessment framework and the measurement standard, it is inherent to democratic audit as a method of evaluation that these assessments will carry on to be essentially qualitative exercises. They will continue to result from the reasonable authoritative judgement of the evaluator, both with regard to the data that are used, and the judgement that is based on these data. Although, in that way, they will continue to incorporate some of the researcher's inherent subjectivity; as claimed when discussing the method of measurement and data gathering (cf. Chapter V, 2-3), and as demonstrated in the second part of this thesis: when done with modesty, this should not devaluate the validity of findings and observations. A good case in point, in this regard, is the discussion about written parliamentary questions in the European Parliament (cf. Chapter XII, 1). Due to the limited possibility for systematic consultation of these questions, it was not possible to obtain an exact overview of all questions that concern CFSP and CSDP related issues. Hence, in order to evaluate the overview relevance of written questions, an arguably representative selection had to be used. Even more so where it concerned the content of said questions and their answers, and their validity as oversight tools, I had to opt for a purely personal judgement. Even though in that way, the numbers that came out of this concrete assessment, indeed, cannot claim to represent exact values; as argued, they give indications about a general trend that allow us to include these findings as relevant elements of the overall judgement.

With this example in mind, the essentially qualitative approach and the argumentative nature of the assessment's final judgements could (and should) never completely disappear from a democratic audit. Inherently linked with both the method's starting points and goal, they in fact proved fundamental to the comprehensive evaluation of the CFSP's normative democratic legitimacy carried out in this thesis. And, these methodological elements will keep their relevance when studying other foreign policies, or future European foreign policy. Given that they introduce an assessment flexibility that is most relevant when studying the, after all, somewhat particular field of foreign policy, and how it responds to the valid demands of public

control with political equality, they indeed make democratic audit a useful tool for the study of a foreign policy's normative democratic legitimacy.

5. Conclusion

In this last chapter, attention turned to possible future use of the assessment framework that has been proposed and used within this thesis. It elaborated on how such future use can contribute to the further development of the assessment framework and the measurement standard that has been applied. In that regard, I explored the use of the assessment framework by applying the first criterion of licensing to govern to both Belgian and Swiss foreign policy. Finally, I discussed two methodological points that have to be taken into account in case of such further use. The first one was about how the input-throughput-output divide, essential to the built-up of the assessment framework, relate to the findings about - and overall appreciation of the CFSP's normative democratic legitimacy. Secondly, I also explained why the qualitative approach and argumentative nature, being essential aspects of the democratic audit method, will keep their relevance throughout possible future audits of foreign policy.

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European Parliament, information obtained by e-mail:

- 19 Mai 2015 (about: written questions, answering time)

- 30 August 2016 (about: Special Committee for access to documents related to CFSP/ CSDP/ meetings with the HR)

- 22 December 2016 (about: monitoring CSDP-missions by EP delegations)

- 10 January 2018 (about: Members of the Special Committee for access to documents related to CFSP/ CSDP

(In case of information obtained by e-mail from EU-institutions through intermediary of the Europe Direct Contact Centre, I list them under the EU-institution mentioned in the response as the one being consulted.)

Member of European Parliament, information obtained by e-mail:

- 18 August 2016 (about: Special Committee for access to sensitive documents on the CFSP)

- 13 February 2017 (about: EP control of CFSP budget)

Questionnaire among MSP:

- Response by national parliament, 16 December 2016

Swiss Department of Foreign Affairs, information obtained by e-mail:

- 12 January 2018 (about: Selection of DFA personnel/ Swiss diplomatic service)

Furthermore, see the documents and other sources, referred to in detail in the relevant footnotes.

Annexes

Annex 1: Overview of different assessment frameworks

	Democratic Audit of European foreign policy		UK audit (Beetham)		IDEA		EU audit (2004 book) (Lord)		EU Audit (RECON) (Lord)	
Key principles	Public control and Political equality		Public control and political equality + five mediating values that give further substance to these key principles		Public control and political equality + five mediating values that give further substance to these key principles		Public control and Political equality		Public control and Political equality	
Focus	policy		system		system		system		system	
Units of assessment	8 "Democratic Ccritera" > 21 "Empirical indicators" (+ 1 transversal rule > 3 indicators)		4 "Components" > 30"Indices" or "Democratic Audit Criteria" (DAC's)		4 "Sections" > 15 "Overarching questions" > 75 "Search questions"		5 "Democratic Values" > 12 "European Union Democratic Audit Tests " (EUDA's)		10 "Democratic Audit Indicators" > 26 "Measures"	
	(input related)		Free and fair elections (> 6)	1	Citizenship, law and rights (4 > 22)	1	Citizenship (> 2)	1	Rights (2)	1
	Licensing to govern (> 4)	1	Open, accountable and responsive government (> 12)	2	Representative and accountable gouvernement (6 > 34)	2	Authorization (> 2)	2	Free and fair elections (> 6)	2
	Budget (> 2)	2	Civil and Political Rights & Liberties (> 5)	3	Civil society and popular participation (3 > 12)	3	Representation (> 4)	3	Choice and political competition (> 5)	3
	Participation (> 3)	3	A democratic society (> 7)	4	Democracy beyond the state (2 > 7)	4	Accountability (> 2)	4	Electoral participation (> 4)	4
	Public debate (> 1)	4					Constitutionalism (> 2)	5	Representation (> 4)	5
	(throughput related)								Civic capabilities (> 3)	6
	Transparency (> 4)	5							Civil society (no specific measures defined)	7
	Reason-giving (> 2)	6							Public sphere (> 3)	8
	(Output related)								Rule of law (no specific measures defined)	9
	Oversight (> 4)	7							Demos and the polity (> 2)	10
	Overrule (> 1)	8								
	+ transversal rule: Legal basis (> 3)									

Other democratic assessment frameworks

	Democracy Barometer (Bühlmann et al.)		V-Dem		Polyarchie (Dahl)		Michael Saward	
Key principles	Freedom, Equality and Control		electoral, liberal, majoritarian, consensual, participatory, deliberative and egalitarian		Political equality		Public control and political equality	
Focus	system		system		system		system	
Units of assessment	9 "Functions" > 18 "Components" > 51 Subcomponents > 100 Indicators		7 "Principles" > 51 "Components"/ "Subcomponents" > 362 "Indicators"		5 "democratic criteria" (to be realised through 7 "political institutions")		5 categories of in total 24 "requirements" or "conditions"	
	(Functions of Freedom)				Voting equality	1	Basic freedoms (5)	1
	Individual liberties (> 2 > 6 > 12)	1	Electoral > 2 > 5 > 38	1	Effective participation	2	Citizenship & Participation (11)	2
	Rule of law (> 2 > 6 > 12)	2	Liberal > 2 > 3 > 23	2	Enlighted understanding	3	Administrative codes (5)	3
	Public sphere (> 2 > 6 > 12)	3	Majoritarian > Niy *(*)*	3	Control of the agenda	4	Publicity (1)	4
	(Functions of Equality)		Consensual > Niy	4	Inclusion	5	Social Rights (2)	5
	Transparency (> 2 > 5 > 9)	4	Participatory > 8 > 25 > 120	5				
	Participation (> 2 > 6 > 12)	5	Deliberative > 2 > 0 > 5	6				
	Representation (> 2 > 6 > 13)	6	Egalitarian > 2 > 2 >12	7				
	(Functions of Control)							
	Competition (> 2 > 6 > 12)	7						
	Mutual constraints (> 2 > 5 > 9)	8						
	Governemental capacity (> 2 > 7 > 14)	9	* Niy = No indices yet					

Annex 2: The assessment framework - overview

2 key principles of democracy (= fundamental values, essential to any democratic organisation/ process)	*... to be realised through the presence of ...*	**8 democratic criteria**	*... each of which can be measured by:*	**19 empirical indicators**
Public control And Political equality				
		1. Licensing to govern		1. Officials, holding key positions in the foreign policy decision-making structure are either directly elected by the people, or appointed in a transparent and open way.
				2. There is room for close, popular or parliamentary, scrutiny of the procedure and process of appointment and removal.
				3. When not the people directly, at least their elected representatives have a clear say in the development or the reformulation of the foreign policy's overall governance structure and the nomination procedures that are part of it.
		2. Budget		4. In general lines, the foreign budget is integrated in the normal budget and overviewed by a directly elected body, which has the final say on its adoption.
				5. In case of necessary urgent spending, elected officials take the final decision; and a directly elected body can, at least ex-post, scrutinize this spending.
		3. Participation		6. (Popular participation) Individual citizens or civil society organisations have access to foreign policy makers and their visions and ideas are duly considered.
				7. (Parliamentary participation) A directly elected body participates actively in the conduct of the foreign policy. Not only is it regularly informed about the overall direction of the foreign policy as well as about specific dossiers, but it can also weight on the overall direction of the foreign policy.

4. Public debate		8. The foreign policy in question is spoken about in the media; the decisions, actions and actors of the foreign policy are reported on and discussed by different media sources.
		9. The public can, and does, inform itself directly on the actions of the foreign policy actors and the development of the foreign policy.
5. Transparency		10. The public has access to all relevant foreign security related documents according to the same rules and procedures applying to other (internal) policy fields. In practical terms, there exist recognized procedures and institutionalized structures (such as for instance a digitally accessible register of documents) ensuring convenient access to documents related to the foreign policy in question.
		11. If reasons of public or private interest justify the restriction of such access; that is, when the content or existence of documents is concealed from the public; clear-cut reasons are formally accounted for and publically communicated, at least when asked for.
		12. Restrictions do not simply result from executive discretion but have precise legal foundations. The rules for transparency and secrecy are not defined by the executive holder of the document alone, but in active consultation with a directly elected body. Concretely this means that the decision to keep specific information hidden from the public may well result from the executive's own considerations, but the framework of such considerations and the boundaries of the executive's space to conceal are the result of democratic deliberation.
		13. If confidential information is sealed from public access, at least some directly elected persons have access to these secret documents and highly secured information.

6. Reason giving		14. Reasons for foreign policy decisions and actions need to exist and as long as their disclosure does not jeopardize the coherent and smooth execution of the foreign policy, or endanger public or private interest, they are made widely and easily accessible, for instance through public statements or in policy documents, on websites or through the mass media.
		15. When however, secrecy is arguably justified, at least some elected representatives know about the reasons behind specific decisions.
7. Oversight		16. (Legislative oversight) There exists institutionalized monitoring by a directly elected body. Through regular meetings, (the possibility of) asking questions or formal hearings and audits, a legislature can monitor the daily actions and behaviour of the foreign policy actors.
		17. (Societal oversight) Through journalistic, academic non-governmental as well as individual citizens' supervision, problems within the daily developments of the foreign policy can be revealed.
		18. (Societal oversight) The results of this oversight are (or at least can be) picked up by citizens who themselves are not directly involved in the oversight activities.
		19. (Societal oversight) The legislature uses oversight by societal actors as fire alarm input to its oversight efforts.
8. Overrule		20. The people, or their elected representatives, hold the institutional possibility to overrule executive decisions with regard to the fundamental orientations of the foreign policy; or when issues of war and peace and the deployment of troops are concerned.
+ Legal basis		a. Licensing, budget control, participation, transparency, reason-giving, oversight and overrule are backed by clear legal regulations.

		b. Those who may be affected by the non-respect of these legal rules, can denounce this through legal action.
308		c. A competent court can scrutinize foreign policy under the same conditions as other policies.

Annex 3: Questionnaire for national parliaments (example Polish Sejm)

Role of the Polish Sejm in the EU's Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP)

Contact:

Ewoud Lauwerier

University of Lausanne - IEPHI

+41 21 692 31 77

ewoud.lauwerier@unil.ch

(This questionnaire contains six questions)

This survey is about the role and competences of your national parliament in CFSP and CSDP. It consists of six short sets of closed questions and should take no more than 10 minutes to complete. You can always use the "Comments" boxes after each set of questions for further clarifications or comments

1. Within the Sejm, which is the competent parliamentary committee to deal with matters of CFSP and CSDP?

   CFSP: European Affairs committee - In case of *Other*, which? ☐

   CSDP: European Affairs committee - In case of *Other*, which? ☐

- Comments:

→ *Given that Member States can participate in EU military and civilian missions…*

2. What is the role of the Sejm in the country's decision to participate in **EU military missions**?

	Yes	No
A **mandate from the Sejm is needed** (ex ante) before Poland can participate in EU military missions. *The executive can decide the country's participation, only when it disposes of a previous mandate of the Sejm that authorizes it to do so.*	☐	☐
Approval by the Sejm is needed (ex post) before Poland can participate in EU military missions. *The executive's decision to participate has to be approved by the Sejm before the actual deployment of troops and material can take place.*	☐	☐

In case approval is needed, which of the following applies?

In plenary, always	In plenary, threshold	In Committee, always	In committee, threshold
☐	☐	☐	☐

(T*hreshold*: approval is needed only in case participation exceeds a certain level, financially or with regard to the number of national personnel that is involved)

- In case of a threshold, what would this be?

3. What is the role of the Sejm in the country's decision to participate in **EU civilian missions**?

	Yes	No
A **mandate from the Sejm is needed** (ex ante) before Poland can participate in EU civilian missions. *The executive can decide the country's participation, only when it disposes of a previous mandate of the Sejm that authorizes it to do so.*	☐	☐
Approval by the Sejm is needed (ex post) before Poland can participate in EU civilian missions. *The executive's decision to participate has to be approved by the Sejm before the actual deployment of troops and material can take place.*	☐	☐

In case approval is needed, which of the following applies?

In plenary, always	In plenary, threshold	In Committee, always	In committee, threshold
☐	☐	☐	☐

(T*hreshold*: approval is needed only in case participation exceeds a certain level, financially or with regard to the number of national personal that is involved)

- In case of a threshold, what would this be?

- Comments:

→ *Given that EU military missions are financed for an important part through the so-called "cost lie where they fall" principle; i.e. every participant covers own expenditure...*

4. What is the role of the Sejm **in the financing of the country's participation in EU military missions**?

	Yes	No
The Sejm is informed about the costs of participation **before** a mission is launched.	☐	☐
The Sejm is informed about the costs of participation **after** a mission is launched.	☐	☐
The Sejm **has to approve** the budget of participation in a mission (as part of an overall approval, or in a separate act) **in plenary**.	☐	☐
The Sejm's **competent committee has to approve** the budget of participation in a mission (as part of an overall approval, or in a separate act).	☐	☐

- Comments:

→ *Given that two central organs of the CFSP/CSDP are the **Political and Security Committee** (PSC) and **Coreper II**, which are composed of Member State representatives at **ambassadorial level**…*

5. What is the role of the Sejm in the **appointment of the country's representative in the PSC or Coperer II**?

	Yes	No
The Sejm is **consulted** about the appointment of the country's **PSC** representative.	☐	☐
The Sejm has to **approve** the appointment of the country's **PSC** representative.	☐	☐
The Sejm is **consulted** about the appointment of the country's **Coreper II** representative.	☐	☐
The Sejm has to **approve** the appointment of the country's **Coreper** representative.	☐	☐
The appointment of representatives to the PSC and Coreper follows a procedure, similar to that of other ambassadorial posts within Poland's foreign policy.	☐	☐

- Comments:

> → *Given that the CFSP not only implies military and civilian EU missions, but also sanctions against third states or persons, the EU's international position in matters of security or defence, or the EU's role as mediator in international conflicts...*

6. What is the role of the Sejm regarding the launching, prolongation and termination of **EU sanctions** as well as CFSP/CSDP matters more in general?

	Yes	No
The Sejm is formally **informed** about **EU sanctions**.	☐	☐
The Sejm is **consulted** on **EU sanctions**. *Its opinion is asked for in order to determine the country's position regarding such sanctions.*	☐	☐
In general, the **government regularly informs** (= at least once a year) the Sejm about major CFSP/ CSDP developments and the country's participation therein.	☐	☐
The Sejm organizes **regular debates** (= one or more per year) about recent development within CFSP/ CSDP (both in plenary or in the competent committee).	☐	☐
The Sejm publishes **regular reports** about recent developments within CFSP/CSDP.	☐	☐
The **competent minister** (foreign affairs, defence, …) is regularly invited (= at least once a year) to **appear before the Sejm** (in plenary or in the competent committee) to comment on the government's position with regard to matters of CFSP/CSDP.	☐	☐

- Comments:

Thank you very much!

Annex 4: Direct democracy in EU Member States

1990 - 2016	Total	Internal issues	Nat. FSDP	Int. Rel. (not EU)	EU accession	EU FSDP	Other EU issues	Remark
Austria	3		2		1			2 national referenda in FSDP: future of professional army; general conscription
Belgium	0							
Bulgaria	2	2						
Croatia	4	3			1			2/3 national issue referenda took place in 1991, and were about the country's independence from Yugoslavia
Cyprus	1	1						In fact this sole referendum was partly - indirectly - about EU accession: *"Foundation of a Reunified Republic of Cyprus and as result accession to the European Union"*
Czech Rep.	1				1			*(since Januari 1993)*
Denmark	7	1					6	Treaty changes and enlargments/ Euro/ EU police and judical cooperation -> one of the issues for initial refusal of ToM was Defence cooperation: DK obtained an opt-out
Estonia	4	3			1			*(since 1991)*
Finland	1				1			
France	4	2					2	ToM, European Constitution
Germany	0							
Greece	1						1	The referendum cocerned the Greek bailout and thus the Greek future in the Eurozone
Hungary	8	6	1		1			Referendum on EU accession, but also on NATO accession
Ireland	26	18		1	1		6	Ratification of the Rome Statute of the International Criminal Court; ToL (2x), ToN, ToA
Italy	56	55	1					On civil service
Latvia	10	9			1			
Lithuania	21	19	1		1			The only "National FSDP" is on the withdrawl of Sovjet troops in 1992
Luxemb.	4	3					1	European constitution
Malta	3	2			1			
Netherl.	2						2	European constitution; Ukraine-EU Association Agreement
Poland	10	9			1			
Portugal	3	3						
Romania	5	4			1			
Slovakia	18	14	3		1			Accession to NATO; nuclear weapons and military bases: in fact one referendum in 1997 and the voter tunout was too low
Slovenia	22	20	1		1			Accession to NATO
Spain	1						1	European constitution
Sweden	2				1		1	Introduction Euro
UK	2	1			1			"EU Accession" = 2016 referemdum about leaving the EU *(stranfly enough this referendum was missing in the Direct Democracy Database...)*
(Todays) EU28	221	175	9	1	16	0	20	

Searched by: National → Selected on Country - Year selection → From 1999, To 2016 (searched on: 05.05.2017)

(Source: Direct Democracy Database, c2d.ch/votes.php?table=votes*)*

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Annex 5: EU Transparency Register - CSO fields of interest (06.2008 - 12.2016, per year)

	TOTAL	%	2008	%	2009	%	2010	%	2011	%	2012	%	2013	%	2014	%	2015	%	2016	%
Agriculture and Rural Development	722	27,21%	30	45,45%	48	35,82%	48	33,10%	61	27,11%	49	23,67%	58	32,40%	81	26,21%	140	25,04%	207	24,97%
Audiovisual and Media	440	16,58%	12	18,18%	21	15,67%	24	16,55%	35	15,56%	35	16,91%	32	17,88%	55	17,80%	107	19,14%	119	14,35%
Budget	355	13,38%	23	34,85%	32	23,88%	27	18,62%	45	20,00%	30	14,49%	25	13,97%	30	9,71%	59	10,55%	84	10,13%
Climate Action	817	30,80%	25	37,88%	43	32,09%	43	29,66%	78	34,67%	71	34,30%	68	37,99%	79	25,57%	166	29,70%	244	29,43%
Communication	553	20,84%	11	16,67%	25	18,66%	25	17,24%	33	14,67%	45	21,74%	40	22,35%	67	21,68%	134	23,97%	173	20,87%
Competition	436	16,43%	31	46,97%	35	26,12%	32	22,07%	32	14,22%	24	11,59%	38	21,23%	44	14,24%	86	15,38%	114	13,75%
Consumer Affairs	623	23,48%	33	50,00%	45	33,58%	46	31,72%	58	25,78%	37	17,87%	48	26,82%	63	20,39%	129	23,08%	164	19,78%
Culture	738	27,82%	19	28,79%	51	38,06%	44	30,34%	60	26,67%	65	31,40%	45	25,14%	114	36,89%	143	25,58%	197	23,76%
Customs	184	6,94%	6	9,09%	9	6,72%	10	6,90%	9	4,00%	15	7,25%	13	7,26%	19	6,15%	25	4,47%	78	9,41%
Development	900	33,92%	31	46,97%	60	44,78%	58	40,00%	83	36,89%	87	42,03%	52	29,05%	92	29,77%	163	29,16%	274	33,05%
Economic and Financial Affairs	608	22,92%	34	51,52%	50	37,31%	45	31,03%	54	24,00%	36	17,39%	45	25,14%	61	19,74%	114	20,39%	169	20,39%
Education	1159	43,69%	26	39,39%	74	55,22%	66	45,52%	105	46,67%	95	45,89%	72	40,22%	144	46,60%	246	44,01%	331	39,93%
Employment and Social Affairs	870	32,79%	30	45,45%	65	48,51%	57	39,31%	87	38,67%	78	37,68%	57	31,84%	91	29,45%	166	29,70%	239	28,83%
Energy	700	26,39%	28	42,42%	45	33,58%	43	29,66%	70	31,11%	50	24,15%	62	34,64%	73	23,62%	138	24,69%	191	23,04%
Enlargement	372	14,02%	24	36,36%	37	27,61%	31	21,38%	38	16,89%	30	14,49%	26	14,53%	45	14,56%	52	9,30%	89	10,74%
Enterprise	579	21,82%	28	42,42%	33	24,63%	36	24,83%	47	20,89%	42	20,29%	47	26,26%	62	20,06%	134	23,97%	150	18,09%
Environment	1191	44,89%	42	63,64%	77	57,46%	84	57,93%	110	48,89%	99	47,83%	97	54,19%	117	37,86%	244	43,65%	321	38,72%
External Relations	635	23,94%	23	34,85%	43	32,09%	37	25,52%	71	31,56%	64	30,92%	44	24,58%	82	26,54%	108	19,32%	163	19,66%
Financial Stability Financial Services and Capital Markets Union	168	6,33%	5	7,58%	3	2,24%	4	2,76%	7	3,11%	8	3,86%	10	5,59%	8	2,59%	32	5,72%	91	10,98%
Fisheries and Aquaculture	371	13,98%	16	24,24%	30	22,39%	14	9,66%	28	12,44%	23	11,11%	31	17,32%	42	13,59%	70	12,52%	117	14,11%
Food Safety	562	21,18%	24	36,36%	34	25,37%	26	17,93%	54	24,00%	39	18,84%	49	27,37%	62	20,06%	103	18,43%	171	20,63%
Foreign and Security Policy and Defence	470	17,72%	12	18,18%	29	21,64%	18	12,41%	59	26,22%	43	20,77%	32	17,88%	61	19,74%	86	15,38%	130	15,68%
General and Institutional Affairs	524	19,75%	29	43,94%	45	33,58%	41	28,28%	58	25,78%	39	18,84%	34	18,99%	75	24,27%	78	13,95%	125	15,08%
Home Affairs	420	15,83%	21	31,82%	28	20,90%	37	25,52%	57	25,33%	35	16,91%	29	16,20%	39	12,62%	67	11,99%	107	12,91%
Humanitarian Aid	581	21,90%	15	22,73%	44	32,84%	28	19,31%	61	27,11%	56	27,05%	35	19,55%	59	19,09%	117	20,93%	166	20,02%
Information Society	753	28,38%	22	33,33%	48	35,82%	52	35,86%	65	28,89%	45	21,74%	48	26,82%	92	29,77%	161	28,80%	220	26,54%
Internal Market	589	22,20%	32	48,48%	41	30,60%	40	27,59%	60	26,67%	41	19,81%	46	25,70%	73	23,62%	115	20,57%	141	17,01%
Justice and Fundamental Rights	968	36,49%	28	42,42%	61	45,52%	65	44,83%	114	50,67%	85	41,06%	66	36,87%	111	35,92%	188	33,63%	250	30,16%
Public Health	906	34,15%	35	53,03%	54	40,30%	45	31,03%	80	35,56%	75	36,23%	56	31,28%	91	29,45%	165	29,52%	305	36,79%
Regional Policy	696	26,23%	30	45,45%	50	37,31%	48	33,10%	48	21,33%	56	27,05%	43	24,02%	85	27,51%	120	21,47%	216	26,06%
Research and Technology	964	36,34%	29	43,94%	55	41,04%	61	42,07%	79	35,11%	73	35,27%	74	41,34%	107	34,63%	197	35,24%	289	34,86%
Sport	250	9,42%	7	10,61%	17	12,69%	14	9,66%	12	5,33%	24	11,59%	16	8,94%	29	9,39%	46	8,23%	85	10,25%
Taxation	361	13,61%	22	33,33%	30	22,39%	28	19,31%	32	14,22%	22	10,63%	29	16,20%	38	12,30%	58	10,38%	102	12,30%
Trade	540	20,35%	32	48,48%	38	28,36%	30	20,69%	50	22,22%	43	20,77%	38	21,23%	49	15,86%	110	19,68%	150	18,09%
Trans-European Networks	609	22,96%	23	34,85%	52	38,81%	38	26,21%	52	23,11%	58	28,02%	43	24,02%	64	20,71%	106	18,96%	173	20,87%
Transport	495	18,66%	23	34,85%	35	26,12%	38	26,21%	50	22,22%	38	18,36%	37	20,67%	41	13,27%	84	15,03%	149	17,97%
Youth	860	32,42%	21	31,82%	53	39,55%	50	34,48%	75	33,33%	66	31,88%	58	32,40%	112	36,25%	174	31,13%	251	30,28%
Total number of (newly) registered NGO's	2653		66		134		145		225		207		179		309		559		829	

"%" = percent of CSOs that mention the particular domain among their fields of interest in comparison to the total number of CSOs that registered for that year.

(source: EU Transparency Register ec.europa.eu/transparencyregister/public/homePage.do)

	Genios				Europresse				Gopress			
	2005-2009		2010-2016		2005-2009		2010-2016		2005-2009		2010-2016	
TOTAL	54767323		101505774		27231167		84197765		7629936		17050210	
European Union	1642687	3.00%	3309643	3.26%	431206	1.58%	1159819	1.38%	56822	0.74%	135757	0.80%
POLITCAL FUNCTIONS												
Commission president	28713	0.05%	68414	0.07%	25711	0.09%	71515	0.08%	2733	0.04%	10427	0.06%
Federal Chancelor	451288	0.82%	684978	0.67%	42672	0.16%	160476	0.19%	6003	0.08%	24986	0.15%
French president	23277	0.04%	35534	0.04%	80844	0.30%	192455	0.23%	4778	0.06%	12648	0.07%
High representative	4020	0.01%	22163	0.02%	4881	0.02%	8655	0.01%	433	0.01%	1433	0.01%
Secretary of State	41068	0.07%	72136	0.07%	52917	0.19%	144594	0.17%	2024	0.03%	4946	0.03%
INSTITUTIONS												
Council of the European Union	14876	0.03%	14959	0.01%	5098	0.02%	18071	0.02%	1112	0.01%	3199	0.02%
Court of Justice	1690	0.00%	5209	0.01%	1256	0.00%	16085	0.02%	200	0.00%	2874	0.02%
ECB	90263	0.16%	393273	0.39%	78099	0.29%	447109	0.53%	18365	0.24%	58174	0.34%
EEAS	220	0.00%	1457	0.00%	137	0.00%	2337	0.00%	10	0.00%	1006	0.01%
European Commission	265674	0.49%	507914	0.50%	203064	0.75%	537226	0.64%	45689	0.60%	97761	0.57%
European Council	10878	0.02%	23366	0.02%	22076	0.08%	92185	0.11%	3804	0.05%	16074	0.09%
European Parliament	101043	0.18%	216267	0.21%	70539	0.26%	209965	0.25%	15649	0.21%	43434	0.25%
MILITARY MISSIONS												
EU military and civilian missions	8290	0.02%	7756	0.01%	5326	0.02%	6658	0.01%	640	0.01%	877	0.01%
ISAF	35040	0.06%	38922	0.04%	16446	0.06%	21944	0.03%	1790	0.02%	1550	0.01%
KFOR	6195	0.01%	8912	0.01%	2657	0.01%	1978	0.00%	358	0.00%	258	0.00%
PERSONALITIES												
Barroso/ Jean-Claude Juncker	46970	0.09%	107753	0.11%	35167	0.13%	97095	0.12%	6657	0.09%	20119	0.12%
Bush/ Obama	362879	0.66%	564482	0.56%	367987	1.35%	777838	0.92%	48705	0.64%	90847	0.53%
Condoleezza Rice/ Hillary Clinton/ John Kerry	50671	0.09%	116081	0.11%	70152	0.26%	209219	0.25%	5238	0.07%	16873	0.10%
Gerhard Schröder/ Angela Merkel	544980	1.00%	1149297	1.13%	78030	0.29%	317118	0.38%	9923	0.13%	48183	0.28%
Jacques Chirac/ Nicolas Sarkozy/ François Hollande	134191	0.25%	239824	0.24%	470114	1.73%	1167302	1.39%	26105	0.34%	66396	0.39%
Jean-Claude Trichet/ Mario Draghi	22104	0.04%	93751	0.09%	26090	0.10%	107934	0.13%	4400	0.06%	15380	0.09%
Josep Borell/ Pöttering/ Jerzy Busek/ Martin Schulz	5936	0.01%	57531	0.06%	2264	0.01%	22262	0.03%	309	0.00%	5066	0.03%
Kofi Annan/ Ban Ki Moon	44714	0.08%	66743	0.07%	55498	0.20%	117685	0.14%	3930	0.05%	8313	0.05%
Rodrigo Rato/ Dominique Strauss-Kahn/ Christine Lagarde	4709	0.01%	33972	0.03%	15153	0.06%	78133	0.09%	869	0.01%	6223	0.04%
Solana/ Catherine Ashton/ Mogherini	21710	0.04%	44820	0.04%	22414	0.08%	61979	0.07%	2092	0.03%	6170	0.04%
Van Rompuy/ Donald Tusk	0	0.00%	57968	0.06%	0	0.00%	63150	0.08%	0	0.00%	22446	0.13%
EUROPEAN POLICIES												
Common agricultural policy	5505	0.01%	10138	0.01%	17037	0.06%	28822	0.03%	977	0.01%	1841	0.01%
Common foreign and security	2215	0.00%	2501	0.00%	1298	0.00%	1772	0.00%	161	0.00%	244	0.00%
Erasmus programme	1349	0.00%	4448	0.00%	1556	0.01%	5481	0.01%	418	0.01%	945	0.01%
European asylum policy	508	0.00%	3640	0.00%	48	0.00%	418	0.00%	45	0.00%	313	0.00%
European Defence	1554	0.00%	2120	0.00%	1472	0.01%	2253	0.00%	238	0.00%	587	0.00%
European energy policy	2136	0.00%	2184	0.00%	640	0.00%	1191	0.00%	180	0.00%	244	0.00%
European foreign policy	3120	0.01%	4871	0.00%	8362	0.03%	10853	0.01%	366	0.00%	780	0.00%
European migration policy	242	0.00%	818	0.00%	70	0.00%	395	0.00%	34	0.00%	174	0.00%
Schengen	27403	0.05%	57594	0.06%	7497	0.03%	46579	0.06%	1271	0.02%	10676	0.06%
Eurocrisis	0	0.00%	170856	0.17%	0	0.00%	65519	0.08%	0	0.00%	14305	0.08%

European Union	*"Europäische Union" OR "Europäischen Union" OR "European Union" OR "Europese Unie" OR "Union européenne" OR "Union europea" OR "Unione europea" (I did not use "EU" because this could also refer to other things, same goes for "UE")*

POLITCAL FUNCTIONS

Commission president	*"EU-Kommissionspräsident" OR "EU-Kommissionschef" OR "Präsident der Europäischen Kommission" OR "Präsident der EU-Kommission" OR "President of the European Commission" OR "President of the EU-Commission" OR "EU Commission President" OR "European Commission President" OR "Voorzitter van de Europese Commissie" OR "Europees Commissie Voorzitter" OR "Président de la Commission européenne" OR "Président de la Commission de l'UE" OR "Presidente de la Comisión Europea" OR "Presidente della Commissione europea"*
Federal Chancelor	*"Bundeskanzler" OR "Bundeskanzlerin" OR "Federal Chancellor" OR "German Chancellor" OR "Bondskanselier" OR "Chancelier fédéral" OR "Chancelier allemand" OR "Chancelière fédérale" OR "Chancelière allemande" OR "Canciller federal" OR "Canciller de Alemania" OR "Cancelliere federale" OR "Cancelliere della Germania" OR "Cancelliera federale" OR "Cancelliera della Germania"*
French president	*"französische Präsident" OR "französischen Präsident" OR "französicher Präsident" OR "Präsident von Frankreich" OR "französische Staatspräsident" OR "französischen Staatspräsident" OR "französischer Staatspräsident" OR "Staatspräsident von Frankreich" OR "French president" OR "President of France" OR "President of the French Republic" OR "Frans President" OR "President van Frankrijk" OR "president van de Franse Republiek" OR "Président de la France" OR "Président français" OR "Président de la République française" OR "Presidente de Francia" OR "Presidente de la República Francesa" OR "Presidente francés" OR "Presidente della Repubblica francese" OR "Presidente della Francia" OR "Presidente francese"*
High Representative	*"EU-Außenbeauftragte" OR "Hohe Vertreter der EU" OR "Hohe Vertreter der Europäischen Union" OR "Hoher Vertreter der EU" OR "Hoher Vertreter der Europäischen Union" OR "Hohe Vertreterin der EU" OR "Hohe Vertreterin der Europäischen Union" OR "Hohe Vertreterin für Außen" OR "Hohe Vertreter für Außen" OR "Hoher Vertreter für Außen" OR "High Representative of the Union" OR "EU High Representative" OR "High Representative of the European Union" OR "High Representative of the EU" OR "High Representative for foreign" OR "Hoge Vertegenwoordiger voor Buitenlandse" OR "Hoge Vertegenwoordiger van de Europese Unie" OR "Hoge Vertegenwoordiger van de EU" OR "EU-Hoge Vertegenwoordiger" OR "Hoge vertegenwoordiger van de Unie" OR "Haut Représentant de l'Union" OR "Haute Représentante de l'Union" OR "Haut Représentant européen" OR "Haute Représentante européenne" OR "Haut Représentant pour les affaires étrangères" OR "Haute Représentante pour les affaires étrangères" OR "Haut Représentant de l'Union européenne" OR "Haute Représentante de l'Union européenne" OR "Haut Représentant de l'UE" OR "Haute Représentante de l'UE" OR "Alto representante de la Unión" OR "alto representante de la UE" OR "Alto representante para" OR "Alto rappresentante dell'Unione" OR "Alto rappresentante dell'UE" OR "Alto rappresentante per gli affari"*
Secretary of State	*"Außenministerin der Vereinigten Staaten" OR "amerikanischen Außenministerin" OR "amerikanische Außenministerin" OR "Außenminister der Vereinigten Staaten" OR "amerikanischen Außenminister" OR "amerikanische Außenminister" OR "amerikanischer Außenminister" OR "US-Außenminister" OR "US-Außenministerin" OR "Secretary of State" OR "Amerikaanse Minister van Buitenlandse zaken" OR "Minister van Buitenlandse Zaken van de Verenigde Staten" OR "Minister van Buitenlandse Zaken van de VS" OR "VS-Minister van Buitenlandse Zaken" OR "Secrétaire d'État des États-Unis" OR "Ministre des Affaires étrangères des Etats-Unis" OR "Ministre américain des affaires étrangères" OR "Secretario de Estado de los Estados Unidos" OR "Ministro de Asuntos Exteriores de los Estados Unidos" OR "Segretario di Stato degli Stati Uniti" OR "Ministro americano degli Affari Esteri"*

Council of the European Union	*"Rat der Europäischen Union" OR "Rat der EU" OR "EU-Ministerrat" OR "Ministerrat der EU" OR "Ministerrat der Europäischen Union" OR "Council of the European Union" OR "Council of the EU" OR "EU-Council of Ministers" OR "Council of Ministers of the European Union" OR "Council of Ministers of the EU" OR "Raad van de Europese unie" OR "Raad van de EU" OR "EU-Ministerraad" OR "Europese Ministerraad" OR "Conseil de l'Union européenne" OR "Conseil de l'UE" OR "Conseil des ministres européens" OR "Consejo de la Unión europea" OR "Consejo de la UE" OR "Consejo de Ministros europeo" OR "Consiglio dell'Unione europea" OR "Consiglio dell'UE" OR "Consiglio dei ministri europei"*
Court of Justice	*"Gerichtshof der Europäischen Union" OR "Gerichtshof der EU" OR "EU Gerichtshof" or "Court of Justice of the European Union" OR "Court of Justice of the EU" OR "EU Court of Justice" OR "Hof van Justitie van de Europese Unie" OR "Hof van Justitie van de EU" OR "EU-Hof van Hustitie" OR "Cour de Justice de l'Union européenne" OR "Cour de Justice de l'UE" OR "Tribunal de Justicia de la Unión Europea" OR "Tribunal de Justicia de la UE" OR "Corte di giustizia dell'Unione europea" OR "Corte di giustizia dell'UE" (Name officially only introduced under Lisbon, but upon searching in the database it seemed already commonly used before)*
ECB	*"Europäische Zentralbank" OR "Europäischen Zentralbank" OR "EZB" OR "European Central Bank" OR "ECB" OR "Europese Centrale Bank" OR "Banque Centrale européenne" OR "BCE" OR "Banco Central Europeo" OR "Banca centrale europea"*
EEAS	*"Europäische Auswärtige Dienst" OR "Europäischer Auswärtiger Dienst" OR "Europäischen Auswärtigen Dienstes" OR "EU-Außendienst" OR "EEAS" OR "European External Action Service" OR "Europese Dienst voor Extern Optreden" OR "Service européen pour l'action extérieure" OR "SEAE" OR "Service des Affaires étrangères de l'Union" OR "Service européen des Affaires étrangères" OR "Servicio Europeo de Acción Exterior" OR "Servicio Exterior Europeo" OR "Servicio Exterior de la Unión Europea" OR "Servicio exterior de la UE" OR "Servizio europeo per l'azione esterna" OR "servizio per gli affari esteri dell'Unione"*
European Commission	*"Europäische Kommission" OR "Europäischen Kommission" OR "EU-Kommission" OR "European Commission" OR "EU-Commission" OR "Europese Commissie" OR "EU-Commissie" OR "Commission européenne" OR "Commission de l'Union européenne" OR "Commission de l'UE" OR "Comisión Europea" OR "Comision de la Unión Europea" OR "Comision de la UE" OR "Commissione europea" "Commissione dell'Unione europea" OR "Commissione dell'UE"*
European Council	*"Europäische Rat" OR "Europäischen Rat" OR "Europäischer Rat" OR "Staats- und Regierungschefs der Europäischen Union" OR "Staats- und Regierungschefs der EU" OR "European Council" OR "Heads of State and government of the European Union" OR "Heads of State and government of the EU" OR "Europese Raad" OR "Europese staats- en regeringsleiders" OR "Conseil européen" OR "chefs d'états and de gouvernements européens" OR "chefs d'états and de gouvernements de l'Union européenne" OR "chefs d'états and de gouvernements de l'UE" OR "Consejo Europeo" OR "jefes de estado o de Gobierno de la Unión Europea" OR "jefes de estado o de Gobierno de la UE" OR "jefes de estado o de Gobierno europeos" OR "Consiglio europeo" OR "capi di Stato o di governo dell'Unione europea" OR "capi di Stato o di governo dell'UE" OR "capi di stato o di governo europei"*
European Parliament	*"Europäische Parlament" OR "Europäisches Parlament" OR "Europäischen Parlament" OR "Europaparlament" OR "EU-Parlament" OR "European Parliament" OR "Parliament of the European Union" OR "Parliament of the EU" OR "Europarliament" OR "EU-Parliament" OR "Europees Parlement" OR "Europarlement" OR "EU-Parlement" OR "Parlement Européen" OR "Parlement de l'UE" OR "Parlement de l'Union européenne" OR "Parlamento Europeo" OR "Europarlamento" OR "Eurocámara" OR "Cámara Europea"*

EU military and civilian missions	*"EUPOL" OR "EUFOR" OR "EUCAP" OR "EUBAM" OR "EUSEC" OR "EUTM" OR "EUMM" OR "EUAM" OR "NAVFOR" OR "EULEX" OR "EUJUST" OR "EUPM" OR "EUPAT" OR "EU SSR" OR "EUAVSEC" OR "EUMAM" (I did not search on "Concordia", "Artemis", "Althea" or "Aceh Monitoring Mission", because to many other hits resulted from this search that did have nothing to do with EU missions --> So, I searched on the different abbreviations that so far have been given to the missions (missions here thus include both undergoing and finished")*
ISAF	*"ISAF" (NOT "International Sailing Organisation--> Makes difference of six hits for 2005...)*
KFOR	*"KFOR"*

PERSONALITIES

Barroso/ Jean-Claude Juncker	*2005-31 October 2014: Manuel Barroso. 1 November 2014-2016: Jean Claude Juncker --> I searched on "Jean-Claude Juncker" and not just on "Juncker" because this name seemed to result in too many unrelated hits.*
Bush/ Obama	*2005-19 January 2009: George W. Bush. 20 January 2009- 2016: Barack Obama --> I searched on "Bush" till 19 January 2009: from there on I searched on "Obama" --> Regarding "Bush", although this could include a certain number of unrelated hits, the use of "George Bush" or "George W. Bush" on the other hand seemed too restricted and seemed to exclude to many relevant results.*
Condoleezza Rice/ Hillary Clinton/ John Kerry	*2005-20 January 2009: Condoleezza Rice. 21 January 2009-1 February 2013: Hillary Clinton. 1 February 2013-2016: John Kerry --> I searched on "Condoleezza Rice", just "Rice" seemed to result in too many unrelated hits. For Hillary Clinton, I searched on "Clinton" NOT "Bill", I searched on "John Kerry", just Kerry seemed to result in too many unrelated hits*
Gerhard Schröder/ Angela Merkel	*Till 22 November 2005: Gerhard Schröder. Since then: Angela Merkel --> "Searched on "Gerhard Schröder", because just "Schröder" seemed to result in many unrelated hits.*
Jacques Chirac/ Nicolas Sarkozy/ François Hollande	*2005-15 May 2007: Jacques Chirac, 16 May 2007-15 May 2012: Nicolas Sarkozy. 16 May 2012-2016: François Hollande, --> 2005-15 May 2007, I searched on "Chirac". As from 16 May 2007 i continued with "Sarkozy". As from 16 May 2012, I continued with "François Hollande" (just "hollande" gave too many unrelated hits)*
Jean-Claude Trichet/ Mario Draghi	*2005-31 October 2011: Jean Claude Trichet. 1 November 2011: Mario Draghi --> Upon testing "Trichet" did not seem to give a relevant number of hits that could be considered as unrelated. Idem for "Draghi"*
Josep Borell/ Pöttering/ Jerzy Busek/ Martin Schulz	*2005-16 January 2007: Josep Borell. 16 January 2007 - 14 July 2009: Hans-Gert Pöttering.14 July 2009-17 January 2012: Jerzy Busek. 17 January 2012-2016: Martin Schulz. --> Upon testing, just "Borell" or just "Busek" did give too many unrelated hits. For "Pöttering" there seemed no relevant number of hits that could be considered as unrelated. I searched on "Martin Schulz" and not just on "Schulz" because this name seemed to give too many unrelated hits. --> For each person I searched for the exact time of his term. For 2007, 2009 and 2012 I added the relevant numbers for both succeeding terms*
Kofi Annan/ Ban Ki Moon	*2005-2006: "Kofi Annan". 2007-2016: "Ban Ki Moon"*
Rodrigo Rato/ Dominique Strauss-Kahn/ Christine Lagarde	*2005-31 October 2007: Rodrigo Rato. 1 November 2007 - 18 May 2011: Dominique Strauss-Kahn. 5 July 2011-2016: Christine Lagarde --> For November and December 2007 I combined the results for "Rodrigo Rato" and "Strauss-Kahn". 2008 till 13 May 2011: "Strauss-Kahn" (14 May: Sofitel Scandal breaks out. --> Supposedly too many hits not related to the function). From 5 July 2011: "Christine Lagarde" --> Just "Lagarde seemed to give too many unrelated hits" --> For 2011 I combinedthe results for "Strauss-Kahn" and "Christine Lagarde"*

Solana/ Catherine Ashton/ Mogherini	*2005-31 November 2009: Javier Solana. 1 December 2009-31 October 2014: Catherine Ashton. 1 November 2014-2016: Federica Mogherini --> For December 2009 I looked for Both "Solana" and "Catherine Ashton". I searched on "Catherine Ashton" and not just "Ashton" because this name seemed to result in too many unrelated hits --> For each person I searched for the exact time of his term. For 2009 and 2014 I added the relevant numbers for both succeeding terms*
Van Rompuy/ Donald Tusk	*Post created under Lisbon, operational since 2010. 1 January 2010 -31 November 2014: Herman Van Rompuy, 1 December 2014-2016: Donald Tusk. --> I searched for "Van Rompuy" and "Tusk")*

EUROPEAN POLICIES

Common agricultural policy	*"Gemeinsame Agrarpolitik" OR "Europäische Agrarpolitik" OR "Europäischen Agrarpolitik" OR "Gemeinsamen Agrarpolitik" OR "EU-Agrarpolitik" OR "Common Agricultural Policy" OR "European Agricultural policy" OR "Agricultural policy of the European Union" OR "Agricultural Policy of the EU" OR "Gemeenschappelijk landbouwbeleid" OR "Europees landbouwbeleid" OR "landbouwbeleid van de Europese Unie" OR "landbouwbeleid van de EU" OR "Politique agricole commune" OR "Politique agricole européenne" OR "Politique agricole de l'Union européenne" OR "Politique agricole de l'UE" OR "Política Agrícola Común" OR "Política Agrícola de la Unión Europea" OR "Política Agrícola de la UE" OR "Politica agricola europea" OR "Politica agricola comune" OR "Politica agricola dell'Unione europea" OR "Politica agricola dell'UE"*
Common foreign and security	*"gemeinsame außen- und sicherheitspolitik" OR "Europäische außen und sicherheitspolitik" OR "gemeinsamen außen- und sicherheitspolitik" OR "Europäischen außen und sicherheitspolitik" OR "außen- und sicherheitspolitik der Europäischen Union" OR "außen und sicherheitspolitik der EU" OR "CFSP" OR "common foreign and security policy" OR "European foreign and security policy" OR "foreign and security policy of the European Union" OR "foreign and security policy of the EU" OR "GBVB" OR "gemeenschappelijk buitenlands- en veiligheidsbeleid" OR "Europees buitenlands en veiligheidsbeleid" OR "buitenlands- en veiligheidsbeleid van de Europese Unie" OR "buitenlands- en veiligheidsbeleid van de EU" OR "PESC" OR "politique étrangère and de sécurité commune" OR "politique étrangère and de sécurité européenne" OR "politique étrangère and de sécurité de l'Union européenne" OR "politique étrangère and de sécurité de l'UE" OR "política exterior y de seguridad común" OR "política exterior y de seguridad europea" OR "Política exterior y de seguridad de la Unión Europea" OR "Política exterior y de seguridad de la UE" OR "Politica estera e di sicurezza comune" OR "Politica estera e di sicurezza europea" OR " politica estera e di sicurezza dell'Unione europea" OR " politica estera e di sicurezza dell'UE" (I did not use the german abreviation "GASP", because it seemed to include to many unrelated hits)*
Erasmus programme	*"Erasmus-programm" OR "Erasmus-Austausch" OR "Erasmus-Austausch" OR "Erasmus-Semester" OR "Erasmus-Studenten" OR "Erasmus programme" OR "Erasmus exchange" OR "Erasmus students" OR "Erasmus programma" OR "Erasmus uitwisseling" OR "Erasmus studenten" OR "programme Erasmus" OR "échange Erasmus" OR "étudiants Erasmus" OR "Programa Erasmus" OR "Movilidad Erasmus" OR "Estudiantes Erasmus" OR "Programma Erasmus" OR "Progetto Erasmus" OR "scambio Erasmus" OR "studenti Erasmus"*
European asylum policy	*Europäische Asylpolitik OR "Europäischen Asylpolitik" OR "Gemeinsame Asylpolitik" OR "Gemeinsamen Asylpolitik" OR "EU-Asylpolitik" OR "Asylpolitik der EU" OR "Asylpolitik der Europäischen Union" OR "Common Asylum policy" OR "European Asylum Policy" OR "EU Asylum Policy" OR "Asylum policy of the European union" OR "Asylum policy of the EU" OR "Gemeenschappelijk asielbeleid" OR "Europees asielbeleid" OR "Gemeenschappelijke asielpolitiek" OR "Europese asielpolitiek" OR "Asielbeleid van de Europese Unie" OR "Asielbeleid van de EU" OR "Asielpolitiek van de Europese Unie" OR "Asielpolitiek van de EU" OR "Politique d'asile commune" OR "Politique d'asile européenne" OR "Politique d'asile de l'Union européenne" OR "Politique d'asile de l'UE" OR "politica de asilo comun" OR "politica de asilo europea"*

	OR "politica de asilo de la Unión Europea" OR "politica de asilo de la UE" OR "Politica comune di asilo" OR "Politica europea di asilo" OR "Politica di asilo dell'Unione Europea" OR "Politica di asilo dell'UE"
European Defence	*"GSVP" OR "Europäische Verteidigungspolitik" OR "Europäischen Verteidigungspolitik" OR "Gemeinsame Sicherheits- und Verteidigungspolitik" OR "Gemeinsamen Sicherheits- und Verteidigungspolitik" OR "Verteidigungspolitik der EU" OR "Verteidigungspolitik der Europäischen Union" OR "Europäische Sicherheits- und Verteidigungspolitik" OR "Europäischen Sicherheits- und Verteidigungspolitik" OR "CSDP" OR "European defence policy" OR "Common security and defence policy" OR "Defence policy of the European Union" OR "Defence policy of the EU" OR "European security and defence policy" OR "security and defence policy of the European Union" OR "security and defence policy of the EU" OR "EVDB" OR "GVDB" OR "Europees Veiligheids- en defensiebeleid" OR "Gemeenschappelijk Veiligheids- en defensiebeleid" OR "Europees defensiebeleid" OR "Defensiebeleid van de Europese Unie" OR "Defensiebeleid van de EU" OR "PESD" OR "PCSD" OR "Politique européenne de sécurité and de défense commune" OR "Politique de sécurité and de défense commune" OR "Politique de défense de l'Union européenne" OR "Politique de défense de l'UE" OR "Politique de défense européenne" OR "Política Común de Seguridad y Defensa" OR "Política Europea de Seguridad y Defensa" OR "Política Europea de Defensa" OR " Política de Defensa de la Unión Europea" OR "Política de Defensa de la UE" OR "Politica di sicurezza e di difesa comune" OR "Politica di sicurezza e di difesa europea" OR "politica europea di difesa" OR "politica di difesa dell'unione europea" OR "politica di difesa dell'UE (I did not use the old german (ESVP) and english (ESDP) abreviations, because this resulted in too many unrelated hits)*
European energy policy	*"Energiepolitik der Europäischen Union" OR "Energiepolitik der EU" OR "Europäische Energiepolitik" OR "Europäischen Energiepolitik" OR "EU-Energiepolitik" OR "European Energy policy" OR "Energy Policy of the European Union" OR "Energy Policy of the EU" OR "Europese energiepolitiek" OR "Europees energiebeleid" OR "Energiepolitiek van de Europese Unie" OR "Energiepolitiek van de EU" OR "Energiebeleid van de Europese Unie" OR "Energiebeleid van de EU" OR "Politique énergétique européenne" OR "Politique énergétique de l'Union européenne" OR "Politique énergétique de l'UE" OR "Estrategia energética de la Unión Europea" OR "Estrategia energética de la UE" OR "Estrategia energética europea" OR "Politica energética de la Unión Europea" OR "Politica energética de la UE" OR "Politica energética europea" OR "Strategia energetica dell'Unione europea" OR "Strategia energetica dell'UE" OR "Strategia energetica europea" OR "Politica energetica dell'Unione europea" OR "Politica energetica dell'UE" (I did not search on "Gemeinsame...", "Common...", ... "Commune", ... because this resulted in few and confusing hits (for instance because they did not concern the EU policy)*
European foreign policy	*"europäische Außenpolitik" OR "europäischen Außenpolitik" OR "EU-Außenpolitik" OR " Außenpolitik der EU" OR "Außenpolitik der Europäischen Union" OR "European foreign policy" OR "EU Foreign policy" OR "Foreign policy of the European Union" OR "Foreign policy of the EU" OR "Europees buitenlands beleid" OR "EU-buitenlands beleid" OR "Buitenlands beleid van de Europese Unie" OR "Buitenlands beleid van de EU" OR "Politique étrangère européenne" OR "Politique étrangère de l'Union européenne" OR "Politique étrangère de l'UE" OR "Politique extérieure européenne" OR "Politique extérieure de l'Union européenne" OR "Politique extérieure de l'UE" OR "Política exterior europea" OR "Política exterior de la Unión europea" OR "Política exterior de la UE" OR "politica estera europea" OR "politica estera dell'Unione europea" OR "politica estera dell'UE"*
European migration policy	*"Europäische Migrationspolitik" OR "Europäischen Migrationspolitik" OR "EU-Migrationspolitik" OR "Migrationspolitik der EU" OR "Migrationspolitik der Europäischen Union" OR "European Migration Policy" OR "EU Migration Policy" OR "Migration policy of the European union" OR "Migration policy of the EU" OR "Europees Migratiebeleid" OR "Europese migratiepolitiek" OR "Migratiebeleid van de Europese unie" OR "Migratiebeleid van de EU" OR "Migratiepolitiek van de Europese unie" OR "Migratiepolitiek van de EU" OR "Politique d'immigration européenne" OR*

	"Politique d'immigration de l'Union européenne" OR "Politique d'immigration de l'UE" OR "política de migración europea" OR "política de migración de la Unión Europea" OR "política de migración de la UE" OR "politica migratoria europea" OR "politica migratoria dell'Unione Europea" OR "politica migratoria dell'UE" (I did not search on "Gemeinsame...", "Common...", ... "Commune", ... because this resulted in few and confusing hits; for instance because they did not concern the EU policy)
Schengen	*"Schengen"*
Eurocrisis	*"Eurokrise" OR "Euro-Krise" OR "European debt crisis" OR "Eurozone crisis" OR "European sovereign debt crisis" OR "Eurocrisis" OR "Europese staatsschuldencrisis" OR "Crise de la dette dans la zone euro" OR "crise de la zone euro" OR "crise de l'Euro" OR "Crisis del Euro" OR "crisis de la zona euro" OR "Crisi del debito sovrano europeo" OR "crisi dell'Euro" OR "crisi dell'Eurozona" (since 2010)*

Annex 7: Codes related to CFSP or CSDP in the Council register of documents

CFSP/PESC	COMMON FOREIGN AND SECURITY POLICY
COADM	CFSP : ADMINISTRATIVE AFFAIRS
COAFR	CFSP : AFRICA
COARM	CFSP : (AD HOC) CONVENTIONAL AMRS EXPORTS
COASI	CFSP : ASIA AND OCEANIA
COCON	CFSP : CONSULAR AFFAIRS
CODRO	CFSP : DRUGS
CODUN	CFSP : UN DISARMAMENT
COEST	CFSP : EASTERN EUROPE AND CENTRAL ASIA
COHOM	CFSP : HUMAN RIGHTS
COJUR	CFSP : (AD HOC) PUBLIC INTERNATIONAL LAW
COLAT	CFSP : LATIN AMERICA
COMAG	CFSP : MAGHREB-MASHREQ
COMAR	CFSP : LAW OF THE SEA
COMED	CFSP : MEDITERRANEAN
COMEM	CFSP : MIDDLE EAST AND GULF
COMEP	CFSP : MIDDLE EAST PEACE PROCESS
CONOP	CFSP : NON-PROLIFERATION
CONUN	CFSP : UNITED NATIONS
COPOL	CFSP : POLITICAL COOPERATION
COPRO	CFSP : PROTOCOL
CORLX	FOREIGN RELATIONS COUNSELLORS
COSCE	CFSP : OSCE (ORGANISM FOR SECURITY & COOP. IN EUROPE)
COSDP	COMMON SECURITY AND DEFENCE POLICY
COSEC	CFSP: (AD HOC) SECURITY
COSEE	CFSP : TRUKEY, CYPRUS, MALTA
COSTA	CFSP : CONFERENCE ON STABILITY IN EUROPE
COTEL	CFSP : COMMUNICATION
COTER	CFSP : TERRORISM
COTRA	CFSP : CANADA, UNITED STATES
COWEB	CFSP : WESTERN BALKANS
CSDP/PSDC	COMMON SECURITY AND DEFENCE POLICY
EUCAP SAHEL	EUROPEAN UNION CSDP MISSION IN NIGER
EUAVSEC	EUROPEAN UNION

Annex 8: Research organisations as input-providers to European Parliament questions

	2010-2016	About FSDP	About FP (not FSDP)
ARENA Centre for European Studies	0	0	0
Bruegel	12	0	0
Centre for Applied Policy Research (CAP)	0	0	0
Center for European Integration Studies	0	0	0
Centre for European Policy Studies (CEPS)	6	0	1
Centre for European Reform (CER)	1	0	1
Centre for Strategic and International Studies (CSIS)	2	0	1
Centre for the Law of EU External Relations (CLEER)	0	0	0
Center for Transatlantic Relations	0	0	0
Chatham House - Europe	4	1	0
Cicero Foundation	0	0	0
Clingendael Institute	0	0	0
CONCORD	1	0	1
Council on Foreign Relations - Europe	4	2	2
Deutsche Gesellschaft für Auswärtige Politik (DGAP)	0	0	0
Egmont Institute - Royal Institute for International Relations	0	0	0
European Centre for Development Policy Management (ECDPM)	0	0	0
European Council on Foreign Relations (ECFR)	5	3	2
European Institute of Public Administration (EIPA)	0	0	0
European Network of Economic Policy Research Institutes (ENEPRI)	0	0	0
European Peacebuilding Liaison Office (EPLO)	1	1	0
European Policies Research Centre (EPRC)	0	0	0
European Policy Centre (EPC)	3	0	1
European Policy Institutes Network (EPIN)	0	0	0
European Stability Initiative (ESI)	0	0	0
Finnish Institute of International Affairs (FIIA)	0	0	0
Foreign Policy Centre (FPC)	0	0	0
German Marshall Fund of the United States	3	0	1
Governance and Social Development Resource Centre (GSDRC)	0	0	0
Institute for European Environmental Policy (IEEP)	9	0	0
Institut für Europäische Politik (IEP)	0	0	0
Institut français des relations internationales (IFRI)	0	0	0
International Crisis Group (ICG)	7	6	1
International Institute for Strategic Studies (IISS)	1	1	0
ISIS Europe	1	0	0
Istituto Affari Internazionali (IAI)	0	0	0
Konrad-Adenauer-Stiftung, European Office	3	0	3
LSE European Foreign Policy Unit	0	0	0
South Centre	0	0	0
Stockholm International Peace Research Institute (SIPRI)	5	3	2
Stiftung Wissenschaft und Politik (SWP)	1	2	0
Swedish Institute for European Policy Studies (SIEPS)	0	0	0
The Lisbon Council	1	0	0
Trans European Policy Studies Association (TEPSA)	0	0	0
UN University Comparative Regional Integration Studies (UNUCRIS)	0	0	0
Carnegie Europe	7	2	1
TOTAL	**77**	**21**	**17**

1st column: Total number of times an organization was referred to as a source of information in a question asked by a MEP - 2nd column: Number of those questions that deal with matters of foreign security and defence - 3th column: Number of those questions that deal with matters of foreign policy, other than security and defence (for instance: development, economy, ...)

Source: European Parliament, Parliamentary questions europarl.europa.eu/plenary/ en/parliamentary-questions.html - Research organisations: Exploring EU Foreign Policy, Research Centres and Think Tanks eufp.eu/research-centres-and-think-tanks

Annex 9: CSOs as input-providers to European Parliament questions

	References in questions related to FSDP	References in questions related to FP (not FSD)	Remark
Amnesty International	316		The large majority of questions uses the information from AI to refer to a local situation and to ask what the EU did or will do about it: this shows the strong interwining between FSDP and HR/ development (*). **Also some questions on EU(MS) participation in CIA actions (torture) --> Example of real oversight of EU FP** . Also 1 question about NATO actions in Afghanistan and the postion/ reaction of the Council theron.
Avaaz	2	2	
Council for European Palestinian Relations	1		
Euclid Network		1	
eunews.az (eunews.az)	1		Eunews is in fact a media source, but apparently registered as an NGO
Euro-mediterranean human rights network (REMDH)	4		
European Bureau for Conscientious Objection (EBCO)	4		
Freedom House (FH)	12		
Front Line Defenders (FLD)	1		As always, info from this CSO about a specific case and question about what the HR already did about it/ will do about it.
Global Witness	4	1	Two questions about illegal timber trade are in fact resulting in a question to the HR how she thinks to react in order to assure the stability in that region (S-E Asia) - the 1 question marked as FP (not FSDP) is about the Kimberley process = rather trade than real FSDP.
Human Rights Watch (HRW)	305		These references to HRW show 1) that it is often difficult to make a clear distinction between FSDP and general FP in the way the EP uses its information as a source mostly about Human Rights in third countries. 2) that mostly, information from CSO is used to frame a local situation in order to know how the HR/ the EU thinks to react, what has been planned, or why nothing has been done about it yet.
Human Rights without Frontiers	1		In fact, maybe rather about Human Rights, but as this is often strongly interwined in the case of EU FSDP we can take it here as FSDP.
Human Rights Without Frontiers	7		
International Campaign for Tibet (ICT)	6		As always, the questions are about ill-treatment/ police brutality/... so in fact about HR; but with the idea to ask the HR/COM/Council how they think to respond or what they already did to respond.
International Crisis Group (ICG)	7		**! In this case, information is really about FSDP and the questions that folow from this information are really about the actual EU foreign policy actions**
International Federation for Human Rights (FIDH)	13		
Médecins Sans Frontières (MSF)	13	17	More than for other references, those to MSF can be better devided in not FSDP and FSDP, many questions are indeed about local situations, but in that context specifically about the outbreak of diseases. For the FSDP questions, the problem stays the same: it is difficult to distinguish questions about Human Rights/ development from "real" FSDP-questions
NCRI	2		
Nonviolent Radical Party Transnational Transparty (NRPTT)		1	Only a reference in the argument, not really reffered to as a source.
Oficina Internacional de Derechos Humanos - Acción Colombia	1		On the situation in Columbia
Open Dialog Foundation (ODF)	1		About the dention of an Ukrain pilot by separatists
Open Doors International (ODI)	2	1	Again difficult to categorize the questions. Open Doors is refered to with regard to information about persecution of Christians, rather Human Rights more gernally. But, in fact we could say that I categorized a question as FSDP each time there is asked about EU's current or future action on the field.
OXFAM International	5	32	
Portes Ouvertes	1		On the persecution of Christians and how the EU (of the MS) should react to that
Save the Children International	18	9	
Transatlantic Institute (TAI)	1	1	One question on Iranian nuclear programme
Transnational Institute (TNI)	1		**! An example of a question where info from a CSO is used to directly exercice control over EFSDP: Question about EU money used for the development of drones**
Transparency International (TI)	1	9	Here I marked the majority of questions about FP as "not FSDP" because questions here deal with financial (development) support and as such less concern concrete, on the ground, EU
Unrepresented Nations and Peoples Organization (UNPO)	1		
World Organisation against Torture (OMCT)	9		...But in fact as always: CSO is used to state something about a local situation, and then the HR/COM/ Council is asked about it
World Uyghur Congress (WUC)	2		Again, not really about FSDP, but still somehow liked with FSDP
TOTAL number of references:	**742**	**74**	
TOTAL number of CSO's refered to:	*29*	*10*	

Reason to include questions that essentially refer to CSOs as information sources about Human Rights/ Development issues and to categorize them here as FSDP: every time a question concerns concrete actions that have been carried out, will be carried out, or should be carried out in reaction on these Human Right problems (is it by sending a mission, proclaiming sanctions or taking up a role as mediator), the question in fact concerns the EU's foreign security and defence policy.

Source: European Parliament, Parliamentary questions europarl.europa.eu/plenary/en/parliamentary -questions.html - European Transparency Register ec.europa.eu/transparencyregister /public/homePage.do