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# **Problems and Patterns in Parliamentary Scrutiny of the CFSP and CSDP**

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# Problems and Patterns in Parliamentary Scrutiny of the CFSP and CSDP

Ariella Huff

## Abstract

*The EU's Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) occupy a unique space in EU governance. Both policies have some Brussels-based, supranational elements, yet their formally intergovernmental status shields them from the mechanisms that national parliaments can use to scrutinise EU legislation, especially after Lisbon. For this reason, parliamentary scrutiny of these policy areas has often received little attention, from both MPs and academic scholars. Drawing on qualitative research and semi-structured interviews conducted as part of the OPAL project, this paper provides an empirical overview of the state of CFSP/CSDP scrutiny in seven national parliaments, applying a three-pronged framework of 'authority, ability and attitude' in order to compare across diverse chambers with different practices and institutional cultures. The paper demonstrates the extent of variation across parliaments in terms of both formal powers and the informal practices of scrutiny, and suggests potential modifications to the 'authority, ability, attitude' triad that may enable future researchers to explain why this variation occurs.*

## Problems and Patterns in Parliamentary Scrutiny of the CFSP and CSDP

*Ariella Huff*

The EU's Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) are situated at the nexus of two fields that have generally been perceived as problematic for parliamentary scrutiny: foreign and security policy, and EU integration. In a broad sense, foreign policy in general has long been treated in many countries as a matter for executive competence, with European legislatures having only limited – if any – involvement in policy-making and weak scrutiny mechanisms relative to other policy areas. This problem is replicated and, in some ways, exacerbated in the field of CFSP, where policymaking takes place at a level even more removed from national parliaments, and the scrutiny procedures available for EU legislation, such as the Early Warning System – discussed in more detail by the other papers in this volume – generally do not apply. Despite its stated goal of enhancing the role of national parliaments in both EU policy-making and scrutiny more generally, the Treaty of Lisbon in fact perpetuated this state of affairs by re-iterating the 'intergovernmental' nature of the CFSP decision-making process. Although this reflected the interests of Member States keen to ensure that the policy would not become governed by the supranational EU institutions, it has also meant that national parliaments have remained largely excluded from foreign policy-making and limited in their ability to scrutinise their governments. Moreover, it has maintained the EP's relatively low level of power to influence this policy.

Yet despite these constraints, many parliaments, including the EP, remain highly interested in aspects of EU foreign and security policy and actively attempt to influence and scrutinise it. Their activity in this field thus merits more extensive academic attention than it has received to date, particularly as much of the scholarship on parliamentary scrutiny of CFSP has elaborated the range of formal powers parliaments can use to influence or control their governments while paying comparatively little attention to the question of how these powers are deployed. This paper employs the interlinked concepts of 'authority, ability and attitude', developed in the literature on parliamentary scrutiny of defence policy, to explore the range of formal powers that legislatures can use in scrutinising their governments and to show how parliaments actually use these powers in practice (Born and Hänggi, 2005: 5). It focuses on seven case study countries – Britain, Poland, Germany, the Netherlands, Denmark, France and Italy – including some legislatures with a great deal of formal power (e.g. Germany, Netherlands) as well as some with

very little (e.g. the UK, France).<sup>1</sup> Drawing on evidence from parliamentary debates, questions and reports, as well as interviews with MPs and parliamentary clerks, the paper identifies several patterns relating to ‘ability’ and ‘attitude’ that have arguably been overlooked in much of the literature on this subject, and can provide a basis for developing a more systematic approach to using these concepts to make comparisons across different parliaments.

## Constraints on scrutiny

National and European parliamentary scrutiny of non-legislative policy areas remains somewhat under-studied relative to the volume of work that has been undertaken, particularly in the wake of the Lisbon Treaty, on the evolving role of parliaments in the EU legislative process. This field has received greater attention in recent years, as scholars have questioned whether the relative exclusion of parliaments from CFSP and CSDP decision-making and scrutiny has contributed to a ‘double democratic deficit’ or reduced the policies’ democratic legitimacy (Wagner, 2005; Bono, 2006; Stavridis, 2006; Sjørusen, 2011). Particular consideration has also been given to the roles of parliaments in CSDP policy-making and scrutiny, exploring the range of parliamentary controls over the use of military force and the deployment of troops abroad, especially by scholars associated with the RECON project at ARENA – Centre for European Studies at the University of Oslo (Peters, Wagner and Dietelhoff, 2008 and 2010; Peters, Wagner and Glahn, 2011; Lord, 2011). Focusing more specifically on the policy-making infrastructure of CFSP, this strand of the literature builds on work done by Born and Hänggi, among others, on the roles of parliaments in controlling and scrutinising the use of military force under more general international auspices, such as the UN (Born and Hänggi, 2004 and 2005; Dieterich, Hummel and Marschall, 2008).

These scholars have been particularly effective in outlining the significant problems that parliaments face in exercising control and oversight of CFSP and CSDP, where policy is shaped and directed not only by their own governments, but by 26 other Member States and the European institutions in Brussels. Bono, for example, has paid particular attention to how the CFSP decision-making process affects parliaments’ ability to control their governments’ actions, noting first and foremost the difficulty inherent in establishing ‘collective benchmarking practices’ in a policy field where parliaments enjoy widely different levels of formal power (Bono, 2006: 441). With respect to national parliaments, Bono pointed out that the opacity and secrecy of the CFSP decision-making process greatly hinders their ability to control and oversee their governments’ actions. She added that even national parliaments with strong mandating systems are hindered in their ability to constrain their governments by the intricate negotiation processes that characterise CFSP decision-making, as governments’ positions change over the course of

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<sup>1</sup> This primary research for this paper has been conducted as part of the Observatory of Parliaments After Lisbon (OPAL) project.

‘complex bargaining games’. This problem is exacerbated, she contended, by governments’ insistence that this process requires both secrecy and, in cases of proposed military intervention, urgency. This deprives parliaments of sufficient time and/or information to conduct proper scrutiny of proposed missions, as she demonstrated using the case studies of Operations Artemis and Concordia, in which both the British and French governments used claims of urgency to withhold access to critical documents even though negotiations for both missions took more than a month to complete (Bono, 2006: 443).

In 2011, writing in a *Journal of European Public Policy* Special Issue with specific focus on the democratic legitimacy of CFSP, Helene Sjursen took this argument about the complications inherent in cooperation further. She argues that the CFSP policy-making structures, particularly after the establishment of the EEAS, have become so intricate that it cannot properly be described as purely ‘intergovernmental’ – that, instead, ‘supranationalism and intergovernmentalism now live together under the same roof’ (Sjursen, 2011: 1084). Like Bono, Sjursen identified the intricacy and opacity of CFSP decision-making as particularly problematic for parliaments to follow and oversee, paying special attention to the roles of Brussels-based institutions. Chief among these is the Political and Security Committee (PSC), an ambassadorial-level committee tasked with monitoring the political direction of CFSP, delivering opinions to the Council and exercising political control over CSDP missions. Constructivist scholars in particular have argued for many years that the PSC plays a pivotal role in determining the policy priorities and direction of CFSP and CSDP (e.g. Meyer, 2006; Juncos and Reynolds, 2007; Howorth, 2010). Juncos and Reynolds have even characterised the PSC as ‘governing in the shadows’ (Juncos and Reynolds, 2007). This problem has become even more acute with the establishment of the EEAS, into which the PSC has been integrated. Sjursen argued that the EEAS also straddles the line between supranational and intergovernmental, epitomised by its leader, the High Representative, who on the one hand derives her authority from Member States but, on the other, serves as Vice President of the resolutely supranational Commission (Sjursen, 2011: 1084). There is no formal mechanism for national parliaments to oversee the functioning of the EEAS, and its opaque organisational structure makes focused, sustained scrutiny rather difficult and resource-intensive.<sup>2</sup> Even in the area of the Common Security and Defence Policy, in theory the most ‘intergovernmental’ aspect of the CFSP, there exist structures within the EEAS – kept somewhat separate from the rest of the organisation – including the EU Military Staff (EUMS), Crisis Management and Planning Directorate (CMPD) and Civilian Planning and Conduct Capability (CPCC) tasked with planning and executing CSDP missions. Member States may still be expected to supply troops and to foot the bulk of costs for military missions, but the diplomats and bureaucrats of the EEAS play a

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<sup>2</sup> The House of Lords European Union Sub-Committee on External Affairs published an extensive and comprehensive Report on the EEAS in March 2013. However, as this paper discusses in more detail below, the Lords is arguably unique among national legislative chambers in its capacity to conduct large-scale inquiries of this type. The report is accessible online at: <http://www.publications.parliament.uk/pa/ld201213/ldselect/ldeucom/147/147.pdf> (last accessed 17/04/13).

critical role in strategic planning and development for the policy as a whole as well as in directing individual operations. This is even more the case for civilian operations, which constitute the bulk of CSDP missions.

In addition to the not-quite-intergovernmental formal status of these institutions, Sjursen also takes note of the considerable literature on the socialisation of officials in Brussels, and relatively sparing use of national vetoes, to illustrate that CFSP decision-making processes are, in practice, less 'intergovernmental' than they appear to be (Sjursen, 2011: 1084-85). Juncos and Reynolds, for example, have argued that the working culture of the PSC strongly promotes consensus-building and problem-solving rather than hard bargaining in defence of national interests, with ambassadors enjoying huge room for manoeuvre in order to reach common positions (Juncos and Reynolds, 2007: 141). In this way the PSC is not only insulated from direct national parliamentary oversight, but also boasts a decision-making culture in which the types of national preferences that might be open to parliamentary scrutiny (e.g. through ministerial hearings) are not always actively defended or promoted. Before the Treaty of Lisbon, the Council Secretariat and its various working groups were also identified as having a strong influence on the agenda and policy direction of CFSP, with Juncos and Pomorska finding that the socialisation (or 'Brusselisation') of officials meant that, in many cases, diplomats were in practice willing to deviate significantly from their original instructions in order to achieve consensus (Juncos and Pomorska, 2011: 1110). This calls into question the ability of even the most powerful mandating parliaments to hold their ministers accountable for decisions made in the Council. More recently, Vanhoonacker and Pomorska have also examined the agenda-setting role of the EEAS, noting that although there remain many ways in which the EEAS has not yet maximised its ability to play this role, it has made significant progress in building its agenda-setting capabilities (Vanhoonacker and Pomorska, 2013: 6-7).

Yet although the presence of significant supranational elements in CFSP and CSDP governance would seem to suggest that the EP might provide a good avenue for augmenting the scrutiny carried out by national parliaments, in practice this is a highly contentious issue. The Lisbon Treaty, for example, made provision for the establishment of a new interparliamentary body for CFSP/CSDP scrutiny, but initial proposals that half of the delegates should be from the EP were met with strong resistance from national parliaments, who objected to such a high level of EP involvement (Interviews TK2, HoC1, BS1). Many Member State governments and national parliaments seem keen to preserve as much of the policy's intergovernmental formal structure as possible. This is not universally the case; MPs in some parliaments, most notably the Danish *Folketing*, cooperate closely with MEPs and share information on a regular basis (Interviews DK1, DK2). However, the strong reaction of several national parliaments against the prospect of enhanced EP involvement in inter-parliamentary scrutiny of CFSP, discussed in further detail

below, illustrates well the extent to which some national legislatures perceive the EP as a harbinger of increased supra-nationalism in CFSP governance and thus an unwelcome interloper in the field (Interviews HoC1, BS2, TK2).

Finally, there remain many important aspects of the EU's external relations, overlapping with CFSP/CSDP, that are Commission-led. These include the European Neighbourhood Policy (ENP) – directed and managed by the Commission – as well as international trade, development policy and the accession process. Within the Commission many of these policies are perceived as 'technical' rather than 'political', yet they arguably remain among the most politically important elements of the Union's foreign relations, providing the critical frameworks through which the EU interacts with its closest neighbours, as well as some of the EU's most powerful tools for influencing third countries (e.g. Deep and Comprehensive Free Trade Agreements [DCFTAs], visa regimes, etc.) (Huff, 2011: 13). On the one hand, this further complicates the picture of EU foreign policy governance, adding additional layers of complexity and opacity to the map of EU foreign and security policy structures. Yet on the other hand, the fact that instruments like DCFTAs are subject to the EU's typical legislative procedures can allow both national parliaments and the EP to make use of their normal scrutiny systems to oversee them. Perhaps counter-intuitively, this suggests that the more overtly supra-national elements of EU foreign and security policy may in fact be easier for parliaments to influence and scrutinise. This may be especially true for legislatures that enjoy high levels of power over EU affairs, most notably the EP.

## **Authority, ability and attitude**

Mitigating or overcoming these significant constraints to influencing and scrutinising EU foreign policy thus requires parliaments to have effective procedures, sufficient resources *and* the political will to deploy them. Born and Hänggi describe these interlinked concepts as 'authority, ability and attitude', which, taken together, offer a basis for comparison across several parliaments that can account for each legislature's unique institutional arrangements and culture (Born and Hänggi, 2005: 5). *Authority* refers specifically to the formal powers available to parliaments to legislate on foreign and security policy (e.g. whether parliament is required to authorise military deployments) and to scrutinise and oversee their own governments (e.g. freedom to hold inquiries, demand information, visit troops abroad, etc). Yet having formal powers of control and oversight is not sufficient to ensure adequate parliamentary scrutiny unless accompanied by *ability*, by which Born and Hänggi mean resources, staff support and expertise. Finally, they argue that all the formal power and institutional capacity in the world are meaningless without *attitude* – that is, the willingness of parliamentarians to use their powers in order to control, influence and/or scrutinise their leaders.

Much of the existing scholarship on the question of parliamentary scrutiny of CFSP/CSDP has focused primary on the ‘authority’ part of this triad, mapping the formal powers of European legislatures particularly as they relate to CSDP and the ability to deploy troops for EU missions. This has been supplemented by individual case studies tracking particular parliaments or specific operations, helping to illustrate how these formal powers have been used in practice (e.g. Wagner, 2006; Dieterich, Hummel and Marschall, 2008; Peters, Wagner and Dietelhoff, 2008 and 2010; Peters, Wagner and Glahn, 2011).

By contrast, the questions of ‘ability’ and ‘attitude’, although critical, have received less systematic attention. In particular, ‘ability’ has generally been seen to relate above all to the resources and staff support to which parliamentary committees have access in attempting to scrutinise CFSP (Born and Hänggi, 2005: 9; Peters, Wagner and Glahn, 2011: 2). Yet the broader question of institutional design – i.e. whether the EU scrutiny process is structured in a way that maximises the legislature’s ability to oversee CFSP and CSDP – deserves more consideration. ‘Attitude’, meanwhile, has been used by Peters, Wagner and Glahn, among others, to refer largely to informal ‘obstacles’ like public opinion and the media, that may put pressure on parliamentarians to respond to their governments in particular ways (Born and Hänggi, 2005: 11; Peters, Wagner and Glahn, 2011: 2). More systematic arguments can be made, however, that situate parliaments’ attitudes toward CFSP scrutiny in the context of their approach to EU affairs and foreign policy oversight more broadly, and that address the roles played by politicisation, controversy and party-political dynamics in encouraging parliamentarians to adopt CFSP as a political ‘cause’.

## **Authority**

With respect to the formal powers available to national parliaments for influencing and scrutinising CFSP, there remains a huge range across different countries and indeed individual chambers (in many bicameral systems, one chamber has a stronger role than the other). As Table 1 demonstrates, there are also differences in how parliaments approach scrutiny of different aspects of CFSP/CSDP, as some chambers have different procedures in place for controlling the use of military force than they do for other foreign policy tools (e.g. civilian operations, the imposition of sanctions, etc.).

**Table I** Formal powers of national parliaments and the EP over CFSP and CSDP

Power	UK	PL	DE	NED	DK*	FR	IT	EP
Binding mandating ( <i>ex ante</i> )	-	-	✓	✓ <sup>†</sup>	✓	-	-	-
Troop dispatch veto ( <i>ex ante</i> )	-	-	✓	-	N/A	-	✓	-
<i>Post hoc</i> questioning/inquiry	✓	✓	✓	✓	✓	✓	✓	✓
Budget veto over individual missions	-	-	-	-	N/A	-	✓	-
Ability to amend or veto overall FP budget	-	✓	✓	✓	✓	✓	✓	✓

\* Denmark does not participate in the Common Security and Defence Policy.

<sup>†</sup> The Dutch mandating system is considered to be politically binding, but it is informal.

On the whole, the key distinction is between parliaments that can exercise *ex ante* power over their governments, by issuing binding mandates that dictate the government's negotiating position, and legislatures that only have access to *post hoc* measures of control. In theory, mandating parliaments enjoy high levels of formal authority, as their governments are obliged to abide by these mandates throughout Council negotiations on CFSP issues. Germany and Denmark both boast formal mandating systems, as do many other Nordic countries (e.g. Sweden) and Austria.<sup>3</sup> Other parliaments lack the formal authority to issue legally binding mandates, but boast a system of *de facto* informal mandates that are considered to be politically binding on ministers. According to both parliamentarians and parliamentary clerks from the Dutch *Tweede Kamer*, which employs such a system, it is considered politically necessary for the government to ensure that CFSP decisions have the support of a majority of parliamentarians (Interviews TK1, TK2, TK3); their informal mandates thus operate in practice much like their more formal counterparts in Germany and the Nordic countries.

At the other end of the spectrum of formal powers are legislatures like the British, Polish, French and Italian parliaments, with no ability to dictate or control the government's negotiating position in CFSP matters *ex ante*.<sup>4</sup> Virtually all of these parliaments are empowered to conduct

<sup>3</sup> The Danish *Folketing*, often considered to be the prime example of a powerful mandating chamber, has an opt-out from CSDP, but is involved in some CFSP decision-making. It cannot participate in any EU strategy with a military element, but the Foreign Affairs Committee is responsible for holding ministers accountable for CFSP decisions and policies (Interview DK2)

<sup>4</sup> The Polish parliament has a type of 'soft' mandating system for EU legislation, first outlined in a 2010 Cooperation Agreement that obliges the government to adopt the same position as the European Union Committee, or else to explain

inquiries and publish reports on the government's actions, but all scrutiny of CFSP thus effectively takes place on a *post hoc* basis. *Post hoc* scrutiny of this kind, although generally considered to be less effective than *ex ante* mandating or veto power, can still provide a way for legislatures to hold their governments publicly accountable for their actions and thus to exert political pressure on future decisions (Dieterich, Hummel and Marschall, 2008: 8-9). The ability and opportunity to ask parliamentary questions (PQs) and interpellations, to initiate debates and to conduct in-depth inquiries all contribute to legislatures' ability to conduct such *post hoc* scrutiny. However, the use of these procedures, as later sections will demonstrate (see pp. 6-7), is heavily dependent on both the parliament's capacity and its attitude towards CFSP and CSDP, particularly since measures like PQs are typically used by opposition parties to interrogate governments and to draw attention to politically salient issues.

For many parliaments, scrutiny of military CSDP missions follows special procedures, often imposing much stronger constraints on governments than in other areas of CFSP. In a large number of EU Member States – including several that do not have mandating systems – the government must obtain *ex ante* parliamentary approval for the dispatch of troops, either in all cases (e.g. Italy and Germany) or in all but exceptional cases (e.g. the Netherlands) (Dieterich, Hummel and Marschall, 2008: 12).<sup>5</sup> However, at least in the case of the Italian Senate, it has been suggested that votes have at times been taken after missions had effectively begun – as a rubber-stamping formal exercise, but not, in practice, giving the parliament any opportunity to reject the government's plans (Interview IS1). Moreover, most parliaments that have strong *ex ante* controls over the dispatch of troops have no such powers over their governments' participation in civilian operations, which comprise the vast majority of CSDP missions.

Here Britain, France and Poland again stand on the other side of the spectrum; these governments are generally under no legal obligation to consult parliament or obtain its approval before using military force. There are certain exceptions to this, as in Poland, where parliament's approval is required for a declaration of war, but this is not applicable to the vast majority of military operations, and certainly not for the types of missions undertaken under the auspices of CSDP. This is not to suggest that parliaments remain without any role in practice; in Britain, for example, recent governments have turned to Parliament to obtain formal approval for large dispatches of troops (e.g. to Iraq in 2003). However this reflects political calculations rather than formal requirements, and there have not been *ex ante* votes on smaller-scale troop dispatches for EU missions like Operations Concordia, Artemis or Atalanta (Bono, 2006: 443).

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its decision. However, this does not apply to non-legislative areas of EU policy, including CFSP (though it does apply to other aspects of 'external relations' such as international agreements).

<sup>5</sup> More than half of Member State parliaments – 15 of 27, according to Dieterich, Hummel and Marschall – enjoy some level of *ex ante* power over troop deployments, suggesting that the treatment of military force as a unique and special case is, if not typical, at least widespread among European legislatures (Dieterich, Hummel and Marschall 2008: 12).

Finally, many national parliaments can, in theory, also exercise considerable ‘power of the purse’ over foreign and defence policy expenditure (Dieterich, Hummel and Marschall, 2008: 15). Most have at least some role in approving expenditure, though again there is a wide spectrum of powers ranging from those of the Dutch legislature, which is entitled to debate, amend and vote on the draft defence budget separately from the broader budget, to the Westminster system in which Parliament has no power to change the draft budget at all. However, Born and Hänggi point out that, given the difficulty of pulling troops or cutting funding in the middle of a mission, the ‘power of the purse’ generally does not compensate for the lack of *ex ante* control over deployment (Born and Hänggi, 2005: 7). Indeed, this point has been made regarding the Italian case, in which it has been argued that votes to renew the budget for individual CSDP missions, although legally required at regular intervals, remain in effect meaningless because the parliament knows it cannot reasonably pull funding from a mission that is already underway (Interview IS1).

With respect to the European Parliament, its powers remain, in formal terms, extremely limited in CFSP and CSDP matters, where it plays largely a deliberative role (Peters, Wagner and Diethoff, 2010: 11). The Treaty of Lisbon requires only that the High Representative ‘regularly consult’ the EP on CFSP issues, and ensure that its views ‘are duly taken into consideration’ (Art. 36 TEU). The EP’s greatest powers lie in its ability to wield a line-item block over the CFSP budget, although it has no control over *virements* between different items within the CFSP budget itself. Yet much of the most politically high-profile and controversial foreign and security policy expenditure, including for CSDP missions, continues to fall on Member States rather than within the Community budget.<sup>6</sup> Indeed, at EU level CFSP commands only a tiny sum relative to other lines of the overall ‘EU as a Global Player’ budget, such as the Development Cooperation Instrument and the European Neighbourhood and Partnership Instrument, which calls into question the practical significance of the EP’s budgetary powers in this field.<sup>7</sup>

Yet by this same token, the EP’s formal powers are considerably more extensive in policy areas that overlap with CFSP/CSDP, such as the ENP, international trade and development (indeed, the EP has Committees for both trade and development, in addition to one for foreign policy). Association Agreements, visa facilitation and readmission agreements and DCTFAs, which

<sup>6</sup> CSDP operations are funded using a combination of common-cost management and a ‘costs fall where they lie’ principle. ‘Common costs’ such as transport, HQ running costs, infrastructure and medical services are funded by the ‘Athena mechanism’, into which all Member States contribute annually on a scale determined by Gross National Income. The EP has no control over this. Everything else (capabilities, troops and staff, etc) is paid for by the participating Member States (EEAS fact sheet: <https://www.consilium.europa.eu/eeas/security-defence/csdp-structures-and-instruments/financing-of-csdp-military-operations?lang=en>, accessed 03/03/13)

<sup>7</sup> In 2011, for example, the CFSP comprised only 4% of total implemented payments under the ‘EU as a Global Player’ heading. By contrast, the Development Cooperation Instrument took 29% of the total budget, the European Neighbourhood and Partnership Instrument comprised a further 20% and the Instrument for Pre-Accession another 18%. (European Commission, ‘EU Budget 2011 Financial Report,’ [http://ec.europa.eu/budget/financialreport/expenditure/global/index\\_en.html](http://ec.europa.eu/budget/financialreport/expenditure/global/index_en.html), accessed 04/03/13)

constitute some of the most important legal frameworks for relationships with states in the Neighbourhood, must all be ratified by the European Parliament (Wisniewski, 2011: 4). The EP can also wield budgetary powers in all of these fields, and over the EEAS as well. In this way, the EP's relative exclusion from CFSP/CSDP governance and scrutiny arguably does not reflect the extent of its authority to scrutinise the EU's foreign policy as a whole, and gives the EP a foothold in the EU's foreign policy governance structures.

## **Ability**

Formal powers can only be effective if accompanied by a range of other attributes that determine a parliament's capacity to make use of them. Writing on defence policy scrutiny more generally, Born and Hänggi identify resources, administrative and expert support, as well as access to timely and accurate information, as key determinants of this capacity (Born and Hänggi, 2005: 5). These are indeed critical, but with respect to CFSP and CSDP, the *structure* of a legislature's scrutiny system arguably plays the most important role in determining whether a parliament is capable of exercising whatever formal powers it may have, be they mandating rights or even *post hoc* inquiries. This, in turn, can have a critical influence on the level and quality of resources and expertise that MPs can access in support of their scrutiny endeavours.

The EU scrutiny systems of many parliaments, particularly those without mandating systems, are designed primarily to respond to draft EU legislation, rather than to attempt to oversee the broad direction of policy in areas where documents may arrive in non-typical guises, after decisions have already been taken at European level (e.g. Council Joint Actions). Thus the structure of a chamber's EU scrutiny system acts as a key determinant of its ability to scrutinise CFSP and CSDP in a timely and effective manner. As Gatterman, Högenauer and Huff argue elsewhere in this Special Issue, on the whole, parliaments that are fully mainstreamed (i.e. involve the Foreign Affairs and Defence Committees systematically in EU scrutiny) are better equipped to oversee CFSP than those in which the EU Affairs Committee alone is responsible for the policy, as CFSP can be integrated into oversight of national foreign policy more generally, and the scrutiny process benefits from the policy expertise of FAC members (Gatterman, Högenauer and Huff, forthcoming).

This is especially true in parliaments where committees are supported by adequate funding and staff. Here, again, the picture across European parliaments is quite mixed. The *Tweede Kamer* provides a particularly good example of a legislature that is well set up for CFSP scrutiny. Its Foreign Affairs and Defence Committees have full responsibility for oversight of the policy; they choose their own priority areas for scrutiny and ministers must report directly to them both before and after relevant Council meetings. Moreover, these committees are well supported by cross-cutting EU staff who provide information on Council agenda items (though in this case, this

information is intended to be 'politically neutral') and other issues at MPs' request (Interviews TK2, TK3). The German *Bundestag* is structured in a similar way, with the Foreign Affairs Committee taking overall responsibility for both CFSP and CSDP; in the case of Operation Atalanta, for example, the Foreign Affairs Committee took charge but the European Affairs and Defence Committees played advisory roles. Similarly the EU affairs scrutiny system in the UK's House of Lords is uniquely well able to oversee CFSP; even though the chamber itself has very little authority over its government's actions in this area, it can maximise its *post hoc* powers to investigate government decisions and hold them publicly to account. The Lords' European Union Select Committee has six sub-committees focusing on particular policy areas, with sub-committee C (External Affairs) responsible for a wide range of CFSP-related issues, as well as for development and trade policy. In this capacity, the sub-committee has been able to publish a large number of reports on issues as varied as Operation Atalanta (the anti-piracy EU naval mission off the coast of Somalia), the EEAS, EU policy in Sudan and EU defence capabilities.

Other legislatures and individual chambers take a range of different approaches, many of which present a mixed bag of practices both effective and ineffectual. The UK House of Commons is in many respects poorly equipped for CFSP scrutiny: its document-oriented EU scrutiny system is largely concentrated in the European Scrutiny Committee (ESC) with other committees involved only on an *ad hoc* basis. The Foreign Affairs Committee can choose to investigate CFSP issues if it wishes, but is not fully responsible for CFSP scrutiny, unlike its Dutch counterpart. Since it is not required to investigate CFSP issues, the policy must compete alongside other pressing concerns for space on the agenda and therefore can at times be overlooked, particularly if there is little enthusiasm from members (this also relates to the question of attitude; see p. 8) (Interview HoC1). However, when the House of Commons FAC has taken an interest in particular CFSP issues or has incorporated EU policies into its broader inquiries – as it did, for example, in a 2012 report on piracy off the coast of Somalia – it has been able to call upon the support of one of its clerk advisors, who specialises in CFSP, and to visit the operation's HQ.<sup>8</sup>

A similar situation exists in the Polish Sejm, where the division of roles and responsibilities between the EU affairs committee and Foreign Affairs Committee in this field remains somewhat unclear (Interview SJP2). The Foreign Affairs Committee typically allocates only one meeting per annum to discussion of CFSP/CSDP, devoting the rest of their time to legislative aspects of EU foreign policy such as the ratification of international agreements and focusing to a large degree on procedural issues (Interviews SJP2, SJP3). The level of additional scrutiny given to CFSP thus depends on the interests of members (Interview SJP2). Moreover, one of the major weaknesses of both the British and Polish systems is that ministers are not formally required to discuss the

<sup>8</sup> Although this visit may have been made rather easy by the HQ's location in the London suburb of Northwood, a mere 45-minute drive from Westminster. House of Commons Foreign Affairs Committee, 'Piracy off the Coast of Somalia' 10<sup>th</sup> Report of Session 2010-2012 (Westminster: House of Commons, 11 December 2011).

agenda for upcoming Council meetings in person, in either the FAC or the EU Committees. The British parliament receives written communications from ministers before Council meetings, and the Sejm's EU Committee sometimes has officials from the Ministry of Foreign Affairs appear at this stage, but these practices are no replacement for the ability to interrogate ministers face-to-face *ex ante* (Interview SJP3).

Accessing information and documents in a timely manner represents one of the most critical problems hindering the ability of even formally strong parliaments to scrutinise CFSP, having been cited by members of several parliaments as especially difficult. One opposition party member of the *Bundestag* European Affairs Committee, for example, complained that the legislature did not obtain information about the impending launch of Operation Atalanta until very late, almost immediately before the mission's launch, despite the formal requirement for parliament to approve German participation in the operation (Interview BS1).<sup>9</sup> Similarly, an Italian parliamentary clerk claimed that the government gave so little information to the Senate before the operation that most of what the Senators knew when voting to approve the mission – which they did – could have been found 'on the Internet' (Interview IS1). It has also long been a bugbear of the House of Commons ESC that the majority of overrides to the scrutiny reserve system – the practice whereby the government is expected to refrain from making decisions at EU level until Parliament has had sufficient time to consider the issue at hand – are made by the Foreign Office in relation to CFSP and CSDP decisions, usually when Parliament is in recess, citing urgency as the justification.<sup>10</sup> Even a Danish former MEP remarked that members of the *Folketing* must use informal networks to acquire information, as they cannot rely on either government or EU sources to deliver documents in time to conduct proper scrutiny (Interview DK1).

Parliaments have been able, at least partially, to ameliorate this problem with the help of the national parliament representatives (NPRs) in Brussels, who serve as a critical nexus for the transfer of information, both through their informal meetings with one another and informally (particularly since they are co-located in the European Parliament building). One even reported that NPRs regularly shared documents and information with one another during critical negotiations, in cases where documents might not be making their way to national parliaments quickly enough via formal channels (Interview NPR2). However, the fact that parliaments and

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<sup>9</sup> In their study of parliamentary scrutiny of Operation Atalanta, Peters, Wagner and Glahn found that members of opposition parties often had less access to information than their counterparts in governing parties (Peters, Wagner and Glahn, 2011: 7). Initial OPAL interview evidence points to the same conclusion, but is not yet extensive enough to corroborate it.

<sup>10</sup> This problem was cited at length in evidence, both oral and written, given to the European Affairs Committee as part of its (currently ongoing) inquiry into the House of Commons scrutiny system. See, for example, House of Commons European Scrutiny Committee, 'David Lidington, Jill Morris and Ivan Smyth, Uncorrected Oral Evidence', Westminster: 31 October 2012, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/c711-i/c71101.htm>, accessed 03/03/13)

committees at times need to obtain documents through these informal channels suggests that difficulties in accessing timely information remain quite significant.

Having close links with the Commission, Council and EEAS has also proven critical for the European Parliament's ability to maximise its influence. Despite its relatively limited formal powers of scrutiny, the EP's Foreign Affairs Committee (AFET, its French acronym) is considered to be among the Parliament's most prestigious committees, and is also the largest, with two additional sub-committees focusing on human rights and security and defence (Peters, Wagner and Dietelhoff, 2010: 11). Coupled with the fact that constituency work places such small demands on MEPs' time relative to national parliamentarians, this means that MEPs have access to financial and time resources well beyond those of many national legislatures. When sitting in Brussels, the EP also enjoys the simple geographical advantage inherent in being able easily to invite members of other EU institutions to appear before AFET and other committees. Moreover, the EP has consistently and often successfully agitated to enshrine its right to access sensitive information in Inter-Institutional Agreements. For example, in 2002 the EP was able to secure an Inter-Institutional Agreement with the Council that allows a 'special committee' of the EP, including the AFET chair and four additional MEPs, to gain access to sensitive documents – i.e. information not released to the public – relating to security and defence policy (Rosén, 2011: 3). In 2010, the EP also successfully pressured the High Representative to ensure this practice would be maintained after the establishment of the EEAS (Wisniewski 2011: 15). In this way the EP's institutional capacity to scrutinise EU foreign policy can be said to be rather high relative to many national parliaments, although its authority remains somewhat more limited.

### **Attitude**

Like formal authority, the issue of ability/capacity is closely linked to the question of attitude. It is, after all, largely up to individual legislatures how they choose to organise and allocate their resources; whether they decide to invest time and energy into CFSP scrutiny, or agitate for reforms that might enhance their ability to do so, is contingent upon the extent to which CFSP oversight is seen as an important and worthwhile activity. As Born and Hänggi note, this reflects not just the perceived merits of the individual policies or missions under consideration, but also external pressures, including public opinion, and the broader context of the parliament's perceived role *vis-à-vis* government. Yet they also suggest that attitude is difficult to evaluate, requiring extensive qualitative analysis of the political conditions and dynamics in each country (Born and Hänggi, 2005: 11). Moreover, the question of attitude is also highly context-specific, as it must be seen within the context of each parliament's broader perceptions of its overall relationship to government and the goals it sets for itself in that respect. It is perhaps for these reasons that this part of the triad has received almost no academic attention to date, with no

attempt having been made to develop a systematic understanding of how this concept can be applied to CFSP and CSDP scrutiny.

Yet initial evidence points to two distinct, though inter-related, aspects of ‘attitude’ on which the willingness to conduct significant scrutiny is contingent. The first is whether the legislature has sufficient political will to conduct EU affairs scrutiny, and foreign policy scrutiny, more generally. A national parliament that is broadly uninterested in EU affairs, and/or tends to treat foreign and security policy as matters of executive privilege, is unlikely to put significant energy into CFSP and CSDP oversight. Indeed, this is even the case for legislatures with access to a range of formal powers to control and oversee its government. The Italian Senate, for example, has quite significant *ex ante* powers in the area of defence – it must approve of Council Joint Actions to dispatch missions in advance of the Council meetings, and has the power to renew or veto the budgets of individual operations – but one parliamentary clerk suggested that there remains an ‘unwritten rule’ that Senators will vote to approve the government’s decision (Interview IS1). According to the clerk, this reflects both a sense that defence policy in particular should be a matter for executive control, and, in that context, the calculation that supporting the government in this area is potentially advantageous for Senators seeking promotion (for example to ministerial posts). By contrast, the House of Lords has almost no power to influence the UK government directly with respect to EU foreign policy, but its External Affairs subcommittee is extremely active.

Even in parliaments that are relatively interested in both foreign affairs and EU scrutiny, CFSP is only one small aspect of these areas, and must compete with other policies and issues for attention, especially if there is no requirement that parliament engage with it on a systematic basis (i.e. through mandating, or regular ministerial visits to committees). One of the weaknesses of a system like that of House of Commons, for example, where CFSP scrutiny is conducted on an *ad hoc* basis, is that the extent to which such oversight takes place is heavily dependent on the interests of the members, and particularly the chair. Some FAC chairs in the past have been keenly interested in CFSP and CSDP and have pushed to keep it on the agenda; others, meanwhile, have decided not to expend the committee’s limited time and resources on it (Interview HoC1). By contrast, scrutiny of EU foreign policy constitutes a normal – indeed required – part of everyday scrutiny work in the *Tweede Kamer* and *Bundestag* Foreign Affairs Committees, particularly in light of the need to issue mandates to ministers before Council meetings.

The second aspect of ‘attitude’ relates to the extent to which CFSP/CSDP is politicised, or fits into established government versus opposition dynamics. This has particularly significant implications for ‘public’ scrutiny mechanisms such as plenary debates, PQs and interpellations, through which

parliamentarians – usually from opposition parties – can draw attention to particular issues and put political pressure on governments with whom they may disagree. Where CFSP or some aspect of it is perceived as politically controversial and fits neatly into established ‘fault lines’ between parties, it is likely to come up more often in debates and questions, as opposition parties seek to publicise their views and put government actions under public scrutiny. Conversely, if the policy or mission enjoys cross-party support, it is likely to receive rather less public attention; by the same token, a policy or mission that divides opinion *within* parties (particularly governing parties) may also receive relatively little attention, as MPs become wary of highlighting internal conflicts.

The case of the Polish Sejm, for example, illustrates the extent to which the development of a relatively high level of political consensus on CFSP and CSDP, especially where the parliament has few powers of formal control, can result in fairly limited *de facto* scrutiny of the policy. The Polish government is not required to consult parliament before dispatching troops abroad, nor can the legislature wield significant ‘power of the purse’ over missions (most of which are funded by a Special Budgetary Reserve; the Sejm approves the overall figure of the Reserve, but cannot control how that money is used). In the years leading up to Poland’s EU accession, participation in CSDP was perceived to be quite controversial, and unpopular with several right-wing parties (Interview SJP1). Deputies asked a number of questions about the policy, both written and oral, and brought it up in debate where possible. However, for a number of reasons the policy began to enjoy more widespread support across the mainstream of the political spectrum after 2004-2005, becoming a priority area for Polish EU policy in more recent years. The subject is still debated at least once every year, as the Foreign Minister by convention appears before parliament annually to discuss the progress of Polish foreign policy, but overall the number of PQs and open plenary discussions about it has dropped sharply. Even within the Foreign Affairs Committee, only unusually controversial aspects of CFSP/CSDP are now subject to significant discussion, despite the efforts of the few deputies who continue to dispute the legitimacy of the EU as a foreign and defence policy actor (Interviews SJP2, SJP3).

A similar pattern has emerged in the House of Commons over the last decade. Public debates and discussion about CSDP in the House of Commons reached a peak during the early 2000s, as the Conservative Party adopted the issue as one of the pillars of their broader Eurosceptic narrative and used it regularly as a battering ram against the Labour government<sup>11</sup>. Since that time the volume of *public* and explicitly politicised debate on the issue has dropped sharply, especially after the 2010 elections that brought the Conservatives to power along with the ostensibly more pro-European Liberal Democrats. The two parties in Britain’s governing coalition now have little incentive to initiate major debates on the policy since it exposes cleavages both between and

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<sup>11</sup> See, for example, the contentious PMQ session and plenary debates held on 22 November 2000 (House of Commons, Hansard vol. 357) and the Opposition Day debate of 27<sup>th</sup> October 2003 (House of Commons, Hansard vol. 412).

within them; meanwhile Labour, in opposition, have little reason to draw attention to a policy for which their support is lukewarm and ambivalent at best. More ‘technical’ scrutiny of CFSP/CSDP has carried on in the FAC and EAC (which have members from all parties), but the number of PQs and debates on the subject has dropped dramatically, though there are on occasion flurries of activity in relation to specific operations like Atalanta and the recent launch of an EU Training Mission to Mali.<sup>12</sup>

The EP, meanwhile, appears to be extremely interested in scrutinising CFSP and CSDP, despite its lack of formal powers to control or influence these policies – as evidenced, in part, by the popularity of the AFET committee and sub-committees. Indeed, the EP’s eagerness to become more involved in CFSP scrutiny represents the strongest aspect of its authority, ability and attitude triad, at times to the chagrin of national parliaments (Interviews HoC1, BS2, STP1). This case demonstrates well that attitude is not only an equally important element of the triad, but can in fact be the catalyst for parliaments to strive for more authority and ability. The EP has done so, for example, by attempting quite aggressively to maximise its role in the post-Lisbon redevelopment of the Conference of Foreign Affairs Committee Chairpersons (COFACC), initially requesting that half the delegates to the new conference be from the EP, despite the ostensibly ‘intergovernmental’ structure of the policy (Interview HoC1, BS2).<sup>13</sup>

## Conclusion: can’t scrutinise, won’t scrutinise?

It is thus clear even from these few case studies that no one part of the ‘authority, ability and attitude’ triad is sufficient to ensure effective parliamentary scrutiny of CFSP/CSDP, at either national or European level. The three are, of course, interlinked, and can reinforce one another – the highly motivated EP, for example, has consistently attempted to enhance both its authority and its ability to scrutinise CFSP – but the particular relationships and dynamics between them are unique to each parliament. In fact, perhaps counter-intuitively, there does not appear to be a consistent, direct relationship between the three at all. A picture thus emerges of a widely varied field, in which some legislatures both enjoy and exercise strong authority to direct their governments and hold them accountable (e.g. the *Tweede* and *Eerste Kamer*); some have little power but the resources and willingness to make use of the mechanisms at their disposal (the House of Lords and EP); some have a great deal of formal authority, but choose not to exercise it (the Italian parliament); while others, potentially as yet unexamined, may have no authority, no resources, and little motivation to acquire them.

<sup>12</sup> For example, a debate on EUTM Mali and EUTM Somalia took place in the European Committee – an *ad hoc* body to which a number of MPs are appointed to debate specific issues on the recommendation of the ESC – on 16 January 2013. The transcript is available here:

<http://www.publications.parliament.uk/pa/cm201213/cmgeneral/euro/130116/130116s01.htm>

<sup>13</sup> By contrast, the House of Lords proposed that the EP should have the same number of delegates as each national parliament (House of Lords European Union Committee, 2011: 9).

By examining authority, ability and attitude separately, this approach provides a systematic framework within which to compare across national parliaments and the EP, without ignoring the unique contexts in which each legislature operates and the particular way that each perceives its role *vis-à-vis* both its own government and the EU. In particular, a number of patterns emerge that appear to add significant complexity to the existing academic literature on parliamentary scrutiny of CFSP, not least by delving beyond the examination of formal powers to begin exploring the factors that enable parliaments to maximise the effectiveness of their powers, and the question of whether MPs are even motivated to use such powers in the first place.

Regarding the question of *authority*, it appears that the power to vote *ex ante* on the dispatch of troops abroad is, perhaps, of rather less practical significance in CFSP/CSDP than it might initially seem. Parliaments may lack the information needed to make decisions and/or the willingness, in practice, to defy their governments (especially where governments are supported by large parliamentary majorities). Moreover, over two-thirds of CSDP missions are civilian in nature, not subject to the same stringent rules as military missions, and thus tend to be overlooked. Instead, the ability to issue mandates to ministers involved in CFSP- and CSDP-related Council negotiations – whether legally or politically binding – provides a much clearer indication of a parliament's level of formal power to control its government's decisions *ex ante*.

This also raises a critical question for future research. Might it be possible that parliaments with the authority to issue binding mandates can be *empowered* by their governments' pursuit of common policies through the CFSP/CSDP, and the transfer of certain foreign policy competences (e.g. international trade agreements) to the EU level? In Denmark, for example, the Constitution stipulates that the government is responsible for foreign policy, though it must 'consult' and 'inform' the legislature (*Folketing* Foreign Policy Committee; Interview DK2). Although the *Folketing's* Foreign Policy Committee would be classified as 'strong' relative to FACs in many other parliaments, the mandating procedures for EU affairs scrutiny in Denmark are stronger still, by comparison. This is also the case in Poland, where the government is obliged by a 2010 agreement to adopt the position of the parliament on EU legislation (although this is not legally required), thus giving parliament the power to ratify international agreements between the EU and third states. In this way, national parliaments that enjoy mandating powers in EU affairs, but not in other aspects of 'foreign policy', may in fact find EU-level policies somewhat easier to scrutinise than those carried out at national level. If this is found to be the case, it would cohere well with the way in which the EP has used its powers in fields like the ENP, as well as its budgetary authority, to gain greater influence over CFSP than a narrow examination of its formal power might suggest.

The second pattern evident in this paper relates to the effect of a parliament's general EU scrutiny system on its *ability* to monitor developments in CFSP and to make its views known. Where CFSP and CSDP scrutiny are integrated into the more general foreign and security policy scrutiny agenda, or alternatively are given special attention (as in the House of Lords, though this system is relatively unique), these case study parliaments report being considerably better equipped to oversee the policy than those in which scrutiny is more *ad hoc*. This apparent pattern may provide a way for parliaments to enhance their *de facto* capabilities in CFSP scrutiny, without having to acquire significant new formal powers. It also links closely to the broader debate on the potential future 'mainstreaming' of EU affairs scrutiny in national parliaments, explored by Gatterman, Hoegenauer and Huff elsewhere in this Online Series.

Finally, it is clear that a parliament's *attitude* to conducting scrutiny may be of critical importance in determining whether any CFSP scrutiny takes place at all – regardless of the formal powers or resources at the legislature's disposal. This represents arguably the most fruitful ground for future research, as the findings of this paper are preliminary at best. Simply put, parliaments with little interest in the EU, or little interest in foreign and security policy, seem unwilling to devote their time and energy to scrutinising CFSP and/or CSDP, even if they are formally empowered to do so. Moreover, the degree to which the policy is controversial or politicised appears to constitute a major determinant of the amount of public attention it is likely to receive, so that even parliaments with diligent committees may not be holding their governments publicly accountable, engaging the media or communicating with constituents about CFSP. The attitude of MPs toward CFSP/CSDP scrutiny thus has profound implications for the democratic legitimacy of the policy, impacting significantly on both the level and the quality of the scrutiny that takes place. It thus merits considerable further investigation, ideally aimed at identifying factors that may account for the widely differing levels of interest in CFSP scrutiny across parliaments – particularly because there does not appear to be any direct correlation between a parliament's degree of formal power in this field and its willingness to use that power.

Yet despite the relatively nuanced picture that emerges from this study, the fundamental problem remains that even the strongest parliaments relative to their own governments are able only to influence one of 27 decision-making states, and have no ability whatsoever to oversee the actions and decisions of European institutions such as the EEAS. More effective interparliamentary cooperation, including with the EP, offers the only viable way to begin overcoming these constraints, or at least to mitigate their effects. It would be particularly helpful in addressing the common problem of poor access to timely information, and in providing parliaments with a better overall picture of how CFSP issues are viewed in other countries (and thus what the negotiating positions of Member State governments might be). Yet the negative response of national parliaments to the EP's expansionist approach to its own powers illustrates a key paradox

inherent in the question of how best to organise CFSP scrutiny: any attempt to enhance the role of the EP is generally seen by national parliaments as undermining the intergovernmental nature of CFSP, and thus reinforcing the problems they face in controlling and overseeing their own governments. Unless this issue can be resolved, neither national parliaments nor the EP can provide a level of scrutiny sufficient to assuage concerns that the policy remains fundamentally lacking in democratic accountability and legitimacy.

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*Note: all interviews are anonymous. They are listed here by legislative chamber, with the exception of the national parliament representatives.*

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BS1: Member of Parliament, Left Party. Berlin: 23/05/12

BS2: Member of Parliament, CDU. Berlin: 24/05/12

House of Commons:

HoC1: Policy specialist (clerk), Foreign Affairs Committee. Westminster: 23/05/12

HoC2: Parliamentary clerk, European Affairs Committee. Westminster: 23/05/12

Folketing:

DK1: Former MEP. Skovbrynet: 27/11/12

DK2: Member of Parliament, Social Democratic Party. Copenhagen: 22/11/12

Sejm Rzeczypospolitej Polskiej:

SJP1: Advisor to Polish President. Warsaw: 25/05/10

SJP2: Parliamentary clerk, Foreign Affairs Committee. Warsaw: 25/04/13

SJP3: Member of Parliament, Law and Justice. Warsaw: 18/04/13

SJP4: Analyst, Sejm Bureau of Research. Warsaw: 19/04/13

Senat Rzeczypospolitej Polskiej:

STP1: Parliamentary clerk, European Affairs Committee. Warsaw: 23/04/13

Senato della Repubblica:

IS1: Parliamentary clerk, Defence Committee. Rome: 14/11/12

Tweede Kamer:

TK1: Parliamentary clerk, European Affairs Committee. Den Haag: 09/12/11

TK2: Parliamentary clerk. Den Haag: 27/03/12

TK3: Member of Parliament, D66. Den Haag: 20/06/12

Eerste Kamer:

EK1: Member of Parliament, VVD. Den Haag: 23/10/12

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NPR1: Brussels, 20/03/12

NPR2: Brussels, 25/04/12

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