



Policy Brief

Democratic Control of Armed Forces

From National to European Oversight

ABSTRACT

This policy brief examines the current state of play of democratic control of armed forces in European countries and suggests possible ways to transfer democratic oversight mechanism on the European level. Special attention is given to the different forms of parliamentary approval in European states as well as to complaint mechanisms.

Introduction

Never have European leaders so unanimously agreed on the project of deeper defence cooperation than today, in the face of damaged trust in their major ally across the Atlantic, the departure of the biggest military power from the EU and a persistent threat posed by Putin's Russia. But when leaders are pushing for more intense cooperation among their 27 member states, they will have to overcome certain structural obstacles. These will be in their way, regardless if they aim to achieve the ultimate goal of a European army, a European Defence Union¹ or, less ambitiously, just want to live up to the state of collaboration that is institutionally already provided by the treaty of Lisbon.

What are these obstacles? In the current debate on European defence integration as well as in the recently published reflection paper of the European Commission on the future of European defence², three fields of problematic factors are frequently mentioned. Firstly, there is the challenge to accommodate 27 diverging military cultures. How do different approaches to training, leadership and combat affect the overall effectiveness of European forces? And how could the integration process take this cultural variety into account? Secondly, there is the argument that integrated European forces require democratic control not only on the national but also on the European level. But the European Parliament does not yet have the necessary competences to exercise this role. Thirdly, there is the fragmentation of the defence market that is severely limiting the potential of European armed forces. The main obstacle here is the interest of member states to preserve their national industries.

This policy brief will explore the current status quo of the democratic control of armed forces in Europe, acknowledging that while the underlying ideas are the same, the exact nature, structures and procedures vary a lot between countries. At the same time, institutional structures at European level are explored, with a view on their current and future involvement in democratic control of the armed forces.

Current State of Play

Placing armed forces under democratic control is one of the major achievements of Western democracies in the last century. Parliamentary oversight mechanisms were established with the aim to hold armed forces democratically accountable towards

¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0435+0+DOC+XML+V0//EN>

² https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-defence_en.pdf

state and society and make sure that their deployment is controlled by elected authorities.

There are different components of democratic control of the armed forces: parliaments decide about the budget allocated to the military force, parliaments or governments approve and end missions abroad, visit troops in missions abroad and in the barracks at home and install an ombudsman which is competent to deal with military personnel³. Although these basic components exist in almost all European countries, the specific rules and regulations are different from one country to another. Two components will be shortly examined in the following section.

a) Ensuring democratic control of the use of military force – parliamentary approval

In the EU member states, there are different legislations concerning the deployment of troops in missions abroad. Largely two groups of states can be distinguished: those in which the parliament has the right to approve or reject military missions abroad and those in which this right is exclusively with the executive power⁴.

In those EU member states where the parliament is entitled to decide about a military mission abroad, there are three different types of parliamentary approval:

- In Austria, Cyprus, Denmark, Estonia, Germany, Ireland, Latvia, Lithuania, Spain and Sweden the parliament must approve the military mission before troops can be deployed.
- In the Czech Republic, France and Slovakia the government can decide on a military mission and only ask the parliament for approval when troops are already deployed.
- In Bulgaria, Hungary, Romania and Slovenia, there are so many permissibly exemptions, that the parliamentary approval is only rarely used in practice.

In Belgium, Greece, Luxemburg, Malta, the Netherlands, Poland, Portugal and the United Kingdom the executive power can decide about military missions. The parliaments of those countries have the right to request information and consultation but are not involved in the decision making.

In Italy the legal status of the parliamentary approval is currently subject to debate.

³ While some countries have a general ombuds institution which is also competent for the armed forces, others have a dedicated ombudsman for military personnel. This publication showcases different approaches to complaint and oversight mechanisms, highlighting the importance of having a functioning system in place, rather than singling out the "best practice" in the field: <https://www.dcaf.ch/ombuds-institutions-armed-forces-handbook>

⁴ <https://www.bundestag.de/blob/414818/b59a80c42151fc4f7a2b6acb4d6b6888/wd-2-163-12-pdf-data.pdf>

In general, it can be added that while governments and defence ministries of the different European states are quite often (formalized) contact to exchange views and best practices regarding missions abroad, this is not the case for many parliamentarians. While different forums for exchange (such as the NATO Parliamentary Assembly or the Interparliamentary Conference on CFSP and CSDP) exist, information exchange between parliamentarians compared to governments and ministries, seems to lack behind.

b) Ensuring democratic procedures within the military force – complaint mechanisms

Ombudspersons play a vital role when it comes to investigating and reporting misconduct of military personnel and problems faced by servicemen and -women during missions but also at home. European states have regulated the work of national ombudspersons quite differently and given them different sets of tasks and competencies. One of the examples, where the Ombudsperson is granted a lot of rights is Germany. Here, the Parliamentary Commissioner for the Armed Forces is to be given access to all places and materials relevant for his inquiry into individual complaints and will manage such complaints from the beginning until the end. The situation is quite different at European level: A few years ago, it was not clear whom to turn to in case of complaint concerning personnel in EU missions. After an investigation launched by the EU Ombudsman, it appeared that problems should be solved in the field and only arrive at the EU Ombudsman' Office as a last resort option. The Office of the EU Ombudsman can however use its network and transfer complaints it receives to the component national authorities to find immediate and practical solutions to problems faced by EU citizens. Furthermore, although the EU Ombudsman lacks the competence to make binding decisions, the office can use its right to own initiative investigations and consequently its critique and advice are being heard and respected by EU authorities.⁵

Possible Ways to Move on

Different rules and competencies regarding democratic control of the armed forces are not per se a problem, but rather a manifestation of the diversity of European legal systems. When discussing ever closer integration in defence matters, it

⁵ See for further references:

<https://www.ombudsman.europa.eu/cases/decision.faces/en/51481/html.bookmark>

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-002058&language=EN> (on the general complain procedure in EU missions

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-003183&language=FR>

<https://www.ombudsman.europa.eu/cases/correspondence.faces/en/66788/html.bookmark>

however becomes obvious that the degree of complexity is quite high. Adaptations of democratic control mechanisms might thus be needed but of course depend on the degree of integration or autonomy that is desired. Preparing a European Army to be democratically accountable or facilitating closer cooperation under the PESCO⁶ umbrella will necessarily require different forms of adaptation of democratic control mechanisms.

Two scenarios will be described below, but it should also be clear that there are many possibilities for in-between solutions and adaptations.

a) Living-up to state of collaboration provided for in the Lisbon Treaty - PESCO

- National parliaments should step-up their collaboration and exchange on issues of parliamentary control.
- The European Parliament should discuss military missions under EU flag more intensely and follow-up more closely on the deployment of troops abroad.
- The European Ombudsman should continue to act as an intermediary between different national ombuds institutions and should use its powers to denounce the concrete problems of military personnel in EU missions.
- National ombuds institutions should continue their collaboration, including through the “International Conference of Ombuds Institutions For the Armed Forces (ICOAF)”⁷, and eventually step up their cooperation.

b) Daring new forms of integration - European Army

- A common European defence budget should be controlled by the European Parliament, where the Subcommittee on Security and Defence (SEDE) should be upgraded to a fully-fledged committee.
- The SEDE Committee should also be involved in the decision whether and under which circumstances to send the European Army into missions abroad.
- A DG Defence, headed by a European Defence Commissioner should be created, forming the executive power for European defence policies.
- The European Ombudsman should also act as military ombudsman to ensure that the armed forces themselves are democratic and complaint mechanisms are in place. Additionally, or alternatively, the European Parliament should elect a parliamentary ombudsman for the armed forces.

⁶ https://eeas.europa.eu/headquarters/headquarters-Homepage/34226/permanent-structured-cooperation-pesco-factsheet_en

⁷ <http://www.icoaf.org/>