



European Security and Defence Assembly Assembly of Western European Union

The President

Paris, 18 February 2010

Dear Colleague,

The Lisbon Treaty is now in force, as we all know, and includes a so-called "mutual assistance" clause as well as a "solidarity" clause.

A number of EU governments, including the majority of the signatory states of the modified Brussels Treaty, advance the premise that these Lisbon clauses now replace Article V of the WEU Treaty (which set up the Western European Union).

Be that as it may, there is now an imminent danger that if the WEU States give notice of denunciation (12 months) of the WEU Treaty then the only body which currently brings together national Parliamentarians to scrutinise security and defence issues at the European level – the ESDA – will be dissolved as part of the process: without any real replacement. It is therefore essential for the 27 EU Member States to take a formal decision, prior to any denunciation of the modified Brussels Treaty, to maintain interparliamentary scrutiny in this area in line with the relevant provisions of the Lisbon Treaty.

This is why I am writing to you personally to ask you to take every opportunity to bring this situation to the attention of your Government – individual ministers as appropriate – and your Parliament: your Speaker and the Chairmen and members of your European Affairs, Foreign Affairs and Defence Committees in particular.

Enclosed are two short briefing papers which I would urge you to read and use as ammunition if, like me, you wish to ensure the continuity at minimal cost of a proper inter-parliamentary dimension for the scrutiny of what remains an intergovernmental domain: Europe's Security and Defence.

For my part, I and a number of key colleagues from the Presidential Committee continue the crusade to try and make our Governments and Parliaments aware of just what is at stake. We cannot do this on our own – we need your help, urgently!

With very best wishes,

Yours sincerely,

Robert WALTER, MP

Encs.: Action Brief

Parliamentary scrutiny of the CFSP/CSDP in the Lisbon Treaty: the facts



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ACTION BRIEF

**The consequences of the Lisbon Treaty
for WEU, the Assembly and parliamentary scrutiny of CFSP/CSDP**

A. Entry into force of the Lisbon Treaty may have serious consequences for the Assembly

1. The Lisbon Treaty Protocol on the role of national parliaments in the EU foresees the possibility of COSAC (Conference of European Affairs Committees) organising conferences on matters relating to the Common Foreign and Security Policy (CFSP), including the Common Security and Defence Policy (CSDP) (Article 10 of Protocol No 1). The protocol promotes interparliamentary exchange but provides no details as to how it is to be organised. So far, COSAC has made no moves to implement the protocol and it is clear that some time will be needed before it can fulfil its new role in relation to national parliaments. A number of governments consider that if the Assembly continues its present work, it would be “duplicating” the new role assigned to COSAC.

It is difficult to imagine how COSAC in its current form could exercise proper interparliamentary scrutiny of CFSP and CSDP. It would need to be considerably adapted. COSAC has no committees, does not vote recommendations and, until now, has not produced any detailed reports on political issues. It has been concerned mostly with practices and procedures relating to the implementation of European legislation.

COSAC suffers from the same weakness inherent in most conference models, i.e. while it may be a vehicle for exchanges of views between parliamentarians, it does not necessarily make provision for a structured dialogue with the EU executive.

The Speakers of EU parliaments, who met only 10 days after the entry into force of the Lisbon Treaty, do not seem themselves to consider COSAC to be the right solution. Instead they believe that a twice-yearly meeting of Chairmen of national Foreign Affairs and Defence Committees with the European Parliament would suffice for parliamentary scrutiny of CFSP.

2. The Lisbon Treaty contains a solidarity clause and provisions on mutual assistance. A majority of WEU governments now argue that these provisions could replace the modified Brussels Treaty. But the “common European defence”, first mentioned in the Maastricht Treaty still does not exist and will not exist in the foreseeable future. Moreover, legally, the Lisbon Treaty does not provide an equivalent to the binding collective defence commitment enshrined in Article V of the modified Brussels Treaty.

3. Many governments are also putting forward the current financial crisis as an imperative for closing down WEU but they have so far not taken account of the Assembly’s far-reaching proposals for substantial savings. Closing the organisation would, in the short term, involve substantial extra expenditure.

4. The European Parliament, in a recent draft report by the Chairman of its Subcommittee on Security and Defence (Arnaud Danjean, France), has reiterated its call for the abolition of WEU, arguing that cooperation between the European Parliament and national parliaments “will replace the prerogatives misappropriated” by the Assembly (Draft Report 2009/2198, 8.12.2009).

National parliamentarians must make it clear to their governments that denouncing the modified Brussels Treaty, with the concomitant disappearance of the Assembly, would immediately lead to a massive loss of power for national parliaments and clear the way for the EP to assign itself a competence which it has not been given either by governments or by the Lisbon Treaty.

B. What should be the response to these four challenges?

- **Make the distinction between the future of WEU and that of interparliamentary scrutiny of CSDP**
 1. Governments could denounce the modified Brussels Treaty if they take the view that WEU has fulfilled its role and that the treaty has become obsolete, including the collective defence commitment it contains (Article V).
 2. There is a need to find a satisfactory system for interparliamentary scrutiny of the intergovernmental common European foreign, security and defence policy in which national parliaments can play a role appropriate to their prerogatives.

At the level of senior civil servants and even at the political level, some foreign ministries are now in favour of denouncing the modified Brussels Treaty during the course of the current year. At least one government takes the view that the treaty and the collective defence commitment it contains could still serve future purposes. The majority of governments consider that if a treaty that has existed for more than half a century were to be denounced, this should be done in an orderly fashion and by consensus – although one government is currently envisaging unilateral action. A few ministries have started, or are in the process of starting, consultations with their national parliaments. All governments are sensitive to the opinion of their national parliaments.

If WEU and its Assembly are dissolved without a new structure for national parliamentarians having first been set up, the European Parliament will immediately realise its publicly declared ambition to scrutinise the common European foreign, security and defence policy and fill the resulting void despite the stated view of governments not to grant any new responsibilities to the European Parliament in this field (Lisbon Declaration No 14). It is in the interest of both national governments and national parliaments not to abandon the existing body for interparliamentary exchange until a new structure is up and running.

- **Argue that an Assembly model for interparliamentary cooperation is possible under the Lisbon Treaty**

The Lisbon Treaty provides scope for national parliaments to set up a structure for the exercise of their sovereign rights as recognised under that treaty.

The interpretation of what national parliaments can achieve under the Lisbon Treaty can be timid or bold. A cautious interpretation would lead to limited involvement of national parliaments, for instance if only one annual conference on Common Foreign and Security Policy (CFSP), more than likely hosted by the European Parliament in Brussels, were to be held without a written report by governments and in the absence of any follow-up mechanism.

The bolder interpretation would lead to a fully fledged system of parliamentary scrutiny of what remains a prerogative of national governments for the foreseeable future, involving the adoption of reports drafted and voted in committee and meetings taking place in member states' capitals. This would increase transparency and bring EU policy closer to the citizens and public opinion. For example, it is first and foremost national parliamentarians, and not anyone else, who are called to account when lives are lost.

- **Take the following concrete steps**

- Members of the Assembly should make clear to their governments, in particular at the level of their prime ministers, foreign ministers and ministers of defence, to their presidents/speakers of Parliament and to their parliamentary colleagues that abolishing a democratic assembly without having set up a replacement structure would be unacceptable and result in a serious loss of influence by national parliaments.
- National parliaments should stand up against the European Parliament's attempts to take over their prerogatives or limit the exercise of their sovereign rights in the field of security and defence.
- Members of the Assembly need to continue their communication drive to ensure a continued role for the tried and tested assembly-style model of interparliamentary scrutiny. This model best serves the interests of national parliaments in this field of intergovernmental policy.
- In response to the immediate financial concerns of governments the Assembly and WEU governments should work together to identify measures to rationalise and streamline the whole organisation which could lead to substantial savings.
- Parliamentarians should make clear to their governments that under the Lisbon Treaty interparliamentary cooperation based on the assembly model would be possible and would protect national governments against unconstitutional interference by the European Parliament in intergovernmental policy.
- National parliaments need to find ways of reaching agreement among themselves and with the European Parliament on the requirements that they wish to be met by the new interparliamentary structure foreseen by the Lisbon Treaty. The current or the next EU Presidency should invite all relevant actors to a conference to discuss the implementation of Lisbon Treaty Protocol No. 1.
- Members of the Assembly should suggest to their national parliaments that they invite the President of the Assembly to hearings in the relevant committees.



European Security and Defence Assembly Assembly of Western European Union

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Parliamentary scrutiny of the CFSP/CSDP in the Lisbon Treaty: the facts

The Lisbon Treaty strengthens the role of national parliaments

False: if the ESDA/WEU Assembly were to disappear, the national parliaments would lose an independent tool for interparliamentary scrutiny which the Lisbon Treaty does not replace.

For the CFSP/CSDP the Lisbon Treaty promotes a conference model that limits independent scrutiny by national parliamentarians and strengthens the role of the European Parliament through a system that combines supranational and interparliamentary responsibilities within the EU. While the EP will have all the necessary budgetary and organisational means to review EU operations, engage in a dialogue with the EU executive and convey its opinions, national parliamentarians will be confined to conferences enabling them to exchange views but in which there is no provision for a structured dialogue with the appropriate EU authorities, and which give them little or no opportunity to make their voice heard.

The conference model will be much more about keeping national parliaments informed about what the EU is doing and of the European Parliament's views on that, than about providing EU leaders with political guidance from the national parliaments of the EU member states.

The ESDA/WEU Assembly has no legitimacy for scrutinising the CFSP/CSDP

False: any member of the ESDA/WEU Assembly who is member of the national parliament of an EU member state is also a European parliamentarian.

Given their constitutionally mandated role in the scrutiny of their national defence budgets, national parliamentarians in fact have greater legitimacy to discuss and influence the CFSP/CSDP than do the members of the EP. Indeed, without national capabilities there is no CSDP: the Lisbon Treaty rightfully gives the national parliaments information and consultation rights in this area.

The EP claims that the ESDA/WEU Assembly has misappropriated prerogatives with respect to the parliamentary scrutiny of the CFSP/CSDP.

False: in fact the European Parliament is trying to sideline a body made up of national parliamentarians from EU member states which has full legitimacy and treaty-based competence to discuss and scrutinise all aspects of European security and defence.

The Assembly has the competence to scrutinise all intergovernmental activities of the national governments in the field of European security and defence, regardless of the framework in which the governments have chosen to pursue those activities. That is why NATO has never objected to ESDA/WEU parliamentarians taking an interest in its activities.

Maintaining the ESDA/WEU Assembly would mean duplication

False, because the competences of members of the European Parliament and those of national parliaments are complementary, not identical.

The transfer of the ESDA/WEU Assembly to the EU or its continued existence as a body helping national parliaments to fulfil their role regarding CFSP/CSDP at a European level would allow national parliamentarians to make use of a sovereign instrument for interparliamentary cooperation while the European Parliament could take its own responsibilities as a supranational institution.

An amalgamation of the responsibilities of the European Parliament with those of the national parliaments will lead to a lack of institutional clarity; cooperation can work only in a limited number of areas. It is illusory to believe that the European Parliament and the national parliaments could decide “together” about issues such as defence spending or the deployment of troops for CSDP operations.

CFSP and CSDP are common European policies and the European Parliament is therefore the sole body with legitimate parliamentary oversight

False: while they are common policies, CFSP and CSDP are not supranational but intergovernmental policies.

Member states have made it clear that they do not want to lose control over these policies: the larger ones because they want to retain a high degree of autonomy when it comes to their own foreign and security policy, and the smaller ones because they do not want to be dictated to by the larger ones and forced to contribute to military operations. The EU will not have a truly common defence until “the European Council, acting unanimously, so decides”. Such a decision would then require the member states to adopt it “in accordance with their respective constitutional requirements”. It is therefore premature to entrust the EP alone with parliamentary oversight of that policy.

An intergovernmental policy calls for interparliamentary oversight by those parliaments entitled to exercise such supervision when governments cooperate with one another over policies that are essentially national: namely the national parliaments of EU member states.