



Tweede Kamer

DER STATEN-GENERAAL

Position paper

on the parliamentary procedures regarding decision-making on deployment of armed forces

The Hague, 3 september 2013

Dear colleagues,

The effectiveness and visibility of CSDP missions is one of the aspects of the Common Security and Defence Policy that is being reviewed by the High Representative of the Union for Foreign Affairs and Security Policy in the light of the European Council summit of 19 and 20 December 2013.

In the context of this review, the Dutch delegation would seize the opportunity to launch an exchange of views on the parliamentary procedures and practices regarding the national decision-making process on the deployment of armed forces and the participation in international missions, including missions in the framework of the CSDP. Such a discussion could lead to a better understanding and coordination of the various procedures in Member States, in this way strengthening the parliamentary dimension of CSDP missions.

In our opinion the Inter-Parliamentary Conference for the CFSP and the CSDP is a suitable platform for a discussion on this important subject. Our proposal is to request the next, Greek Presidency Parliament to add this topic to the agenda of the conference in Athens in Spring 2014.

To ensure a good and timely preparation, we suggest to consult the delegations on the respective national (parliamentary) procedures in advance of the conference in Athens. We have enclosed an outline of the procedures in the Netherlands as well as in some other EU Member States. We collected this information via the network of national parliaments' representatives in Brussels.

Wishing you a fruitful conference, dear colleagues,

Best regards,

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Head of Delegation to the CFSP and CSDP Conference

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PROCEDURES FOR PARLIAMENTARY APPROVAL OF PARTICIPATION IN INTERNATIONAL PEACE KEEPING AND MILITARY MISSIONS

Content and legal source

1. The Netherlands, Constitution (added in 2000)
2. Austria, *Bundesverfassungsgesetz über Kooperation und Solidarität bei der Entsendung von Einheiten und Einzelpersonen in das Ausland*, 1997
3. Belgium, Constitution
4. Denmark, Constitution
5. Estonia, Constitution and International Military Co-operation Act, amended in 2012
6. France, Constitution, amended in 2008
7. Germany, Deployment of Armed Forces Abroad (*Parlamentsbeteiligungsgesetz*), 2005
8. Luxembourg, *Loi relative à la participation du Grand-Duché de Luxembourg à des opérations pour le maintien de la paix (OMP) dans le cadre d'organisations internationales*, 1992
9. Slovenia, Defence Act
10. Sweden, Constitution
11. United Kingdom, General practices, no formal laws, although the practices are being revisited which might lead to codification

1. THE NETHERLANDS

The involvement of the Dutch Parliament (House of Representatives and Senate) in the decision making process regarding deployment of the armed forces is derived from article 100 of the Dutch Constitution (added in 2000). This article stipulates:

1. The Government shall inform the States General in advance if the armed forces are to be deployed or made available to maintain or promote the international legal order. This shall include the provision of humanitarian aid in the event of armed conflict.
2. The provisions of paragraph 1 shall not apply if compelling reasons exist to prevent the provision of information in advance. In this event, information shall be supplied as soon as possible.

The "Review Framework" (*Toetsingskader*) has become the general instrument to assess the government's intention to deploy the armed forces and structures the debate between government and parliament on individual military operations. This Review Framework - a list of particular political and military points of interest - was first introduced in 1995 and was linked to Article 100 of the Constitution - after that article came into force. The Review Framework is a flexible instrument as per individual mission, a decision will be made on which elements of the framework should be addressed. In general, the review will include an assessment of the political context of the conflict, the countries participating, the financial means available, the feasibility of the mission, the risks, the expected duration of deployment and the mandate of troops.

In a letter to Parliament, the government explains its decision along the lines of the Review Framework, followed by parliamentary scrutiny (predominantly in the House of Representatives). While parliamentary approval is not officially needed for deployments to start or continue, in practice the government will always strive for broad approval.

2. AUSTRIA

Austria has a special constitutional law regarding this matter but there seems to be no translation into English, only a German version:

Bundesverfassungsgesetz über Kooperation und Solidarität bei der Entsendung von Einheiten und Einzelpersonen in das Ausland

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001504>

For further information, see also Federal Constitution Para. 23f 1-4 (goto pdf-version):
https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_1930_1&ResultFunctionToken=def8b4c9-67ef-48c6-aec0-d29207a1c312&Position=1&Titel=Federal+Constitutional+Law&Quelle=&ImRisSeit=Undefined&ResultPageSize=50&Suchworte

3. BELGIUM

Article 167, §1, second alinea, of the Constitution stipulates that the King is in command of the armed forces and that he establishes the state of war as well as the end of the hostilities and that he informs thereupon both the chambers of the parliament as soon as the interest and the security of the State allow it and together with the relevant announcements.

The Belgian Constitution does not mention anything around the role of the national parliament for missions in foreign countries.

Following the recommendations of the Rwanda Committee (on the death of Belgian military at the start of the civil war (genocide) in Rwanda) arrangements have been made to inform the national parliament of the ongoing missions abroad.

A Committee for the monitoring of missions abroad has been put in place composed of members of the Belgian Senate and of the House of Representatives.

This committee meets on demand of the Chairman, the bureau, a member of the Committee or a member of the Government. Normally the Committee meets once a month or at least at the start of a new mission abroad, at the moment of the relief of troops, in cases of serious incidents and at the end of an operation. The meetings are behind closed doors (in camera). The Minister of Defence is in charge to present the relevant information about the missions and to answer the questions of the Members of the Committee. The Committee is only involved after the start of a mission and so does not have to approve the missions. The kind of information transmitted at these meetings is not specified, but is given under the cover of Confidentiality.

More detailed information can be found in attached document.

4. DENMARK

The Danish Constitution establishes the framework for the deployment of soldiers. It is apparent that the government cannot without consent of the Folketing send Danish forces in an operation in which they may have to use force against foreign states. In practice the consent of the Folketing is normally obtained in all cases where Danish forces are to use force to solve their tasks.

The parliamentary consent is obtained by a parliamentary decision dealt with by the Defense Committee. In other cases regarding the deployment of Danish soldiers the government can engage the Foreign Policy Committee in order to obtain the conse

5. ESTONIA

According to the Estonian Constitution and the International Military Co-operation Act the Parliament takes the decision to participate in international military operations (in Article 5 operations the decision of the Parliament has already been taken by ratifying the North Atlantic Treaty and the actual deployment can be decided by the Government). The procedure of the Parliament's decision is the following:

1. The necessary documents for the decision are drafted by the Ministry of Defence and approved by the Government, who then forwards them to the Parliament for adoption (technically, the Parliament could prepare the documents itself as well) . When taking the decision to participate in an international military operation the Parliament sets the maximum duration of the deployment, the area where the Estonian units are to be deployed and also the maximum number of troops.
2. After the Parliament's decision the Minister of Defence orders the specific unit to commence participation in the operation. The President, the Board of the Riigikogu and the chairman of the National Defence Committee of the Parliament are immediately informed of that order.
3. Once a month the Defence Forces gives an overview of all the operations to the National Defence Committee (that is not a require by law).

The International Military Co-operation Act is also available in English:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X90011K5&keel=en&pq=1&ptyyp=RT&tyyp=X&query=rahvusvahelise+s%F5jalise+koost%F6%F6>

6. FRANCE

According to the French constitution, in its article 35: A declaration of war shall be authorized by Parliament. The Government shall inform Parliament of its decision to have the armed forces intervene abroad, at the latest three days after the beginning of said intervention. It shall detail the objectives of the said intervention. This information may give rise to a debate, which shall not be followed by a vote.

Where the said intervention shall exceed four months, the Government shall submit the extension to Parliament for authorization. It may ask the National Assembly to make the final decision.

If Parliament is not sitting at the end of the four-month period, it shall express its decision at the opening of the following session."

So the French parliament is involved in different stages :

- It should be informed at the beginning (information under 3 days)
- It should authorize the pursuance of the intervention if it lasts more than 4 months

The procedure is rather new: it is the result of a change of the Constitution in 2008. The first application of this rule happened on September 22nd 2008, to authorize the continuation of French intervention in Afghanistan.

More than these constitutional rules, the minister of Defence can be received by the French parliament, in particular the Commission on foreign affairs, defence and armed forces at French Senate, in order to have formal or informal dialogue on these interventions.

Focus on the Serval operation :

- Information of the Parliament on January, 16th 2013
- Debate on the pursuance on April, 22nd 2013
- Meetings almost every week at French Parliament with Minister of Defence

7. GERMANY

1) Act governing Parliamentary Participation in Decisions on the

Deployment of Armed Forces Abroad of 18 March 2005

(Parlamentsbeteiligungsgesetz vom 18. März 2005 (BGBl. I S. 775),

unofficial translation),

2) The influence of the Defence Committee on international missions of

the Bundeswehr outside national and Alliance defence

(description of the Defence Committee's role with regard to international missions of the Bundeswehr, cf. link on the Bundestag webpage:

http://www.bundestag.de/htdocs_e/bundestag/committees/a12/aufgaben/aufg06.html

8. LUXEMBOURG

Participation to this type of missions is regulated by a 1992 law from 27th of July (see end of mail):

The Government is authorized to instigate participation in peacekeeping operations that are implemented within the framework of international organizations whereof the country is a member. Participation is decided by the Government in council, after consultation with the Foreign and European Affairs and Defence Committee. For each operation, a Grand Ducal regulation adopted on the mandatory advice of the State Council and the Working Committee (Foreign and European Affairs) decides the implementation strategy.

See for more detailed information:

Loi du 27 juillet 1992 relative à la participation du Grand-Duché de Luxembourg à des opérations pour le maintien de la paix (OMP) dans le cadre d'organisations internationales.

9. SLOVENIA

The Slovenian Constitution does not mention appointment of military units in international missions.

The National Assembly's competences regarding the armed forces include only situation when the peace in the country is endangered: in that case, the National Assembly decides on the use of the defence forces. In the event that the National Assembly is unable to convene, the President of the Republic shall decide on matters from the first and second paragraphs of this article. Such decisions must be submitted for confirmation to the National Assembly immediately upon its next convening.

The appointment of military missions abroad is however defined in the Defence Act, and it is solely in the competence of the Government.

Members of Slovenian armed forces are appointed to international missions only by the Government, while the National Assembly /committee on defence/is only informed of it.

In the year 2010, in view of appointment of the members of Slovenian armed forces in Afghanistan, there was a debate that the National Assembly should give its approval to the appointment. At that time the political groups of the then coalition parties SD and Zares suggested the change of legislation, which however never happened.

10. SWEDEN

Please find below the link to the Instrument of Government (constitutional law) <http://www.riksdagen.se/Global/dokument/dokument/laws/the-instrument-of-government-2012.pdf> and in Chapter 15 paragraph 16:

The Government may send Swedish armed forces to other countries or otherwise deploy such forces in order to fulfil an international obligation approved by the Riksdag. Swedish armed forces may also be sent to other countries or be deployed if:

1. it is permitted by an act of law setting out the conditions for such action; or
2. the Riksdag permits such action in a special case.

In each case the Government has to propose a bill to the Riksdag and has done so several times. The bill is referred to the committee on Foreign Affairs who calls to constitute a joint committee with the committee on Defence. This joint committee is ad hoc, but otherwise similar duties as a regular committee. However, it has a limited functioning period. Unfortunately no information in English is available. I enclose the link to the Swedish site where you at least can see the latest decisions taken to deploy forces: <http://www.riksdagen.se/sv/Utskott-EU-namnd/Sammansatta-utrikes--och-forsvarsutskottet/Beslut-i-korthet/>

11. UNITED KINGDOM

Key points in the response from the Foreign Affairs Committee in the House of Commons:

The UK does not have a written constitution. Under the Royal Prerogative, the Government acts on matters pertaining to defence and the Armed Forces on behalf of the Crown. There is no legally established role for Parliament in such matters, but the House of Commons has a role based on conventions built up through precedents, such as the vote on military action to Iraq in 2003.

There are no procedures or arrangements set down in legislation - only a general understanding that Parliament will be given a chance to express a view.

There is no formal procedure/arrangement between the UK Government and Parliament setting out Parliament's involvement in these matters. It is for the Government to decide whether or not to initiate a plenary vote on such issues (although other members can call a vote agreeing a view on a military operation, this would not bind the Government to act in a certain way). As examples, the Government has never put to a vote the commitment of UK troops in Afghanistan, but retrospectively sought Parliament's approval for the deployment of forces to Libya (three days after it had happened).

Formalising the arrangements for Parliament's involvement in these decisions has been suggested, and the current Government have indicated that they are 'exploring' this option, but it seems unlikely to happen soon.

The "Waging war" reports mentioned are available directly here:

<http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/236/236i.pdf>

<http://www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/51/51.pdf>

There is currently an inquiry which is revisiting the issue - which is evolving . The latest position is best set out by Government Ministers in their oral evidence to the Constitution Committee on 26 June: [http://www.parliament.uk/documents/lords-committees/constitution/Armed%20Force/ucCONST260613ev4\(NB\).pdf](http://www.parliament.uk/documents/lords-committees/constitution/Armed%20Force/ucCONST260613ev4(NB).pdf). There is no Government memorandum.