

Report of the Commission on the Review and Safeguarding of Parliamentary Rights regarding Mandates for Bundeswehr Missions Abroad

Summary of Proposals and Recommendations made by the Commission

The mandate for the Commission established by the German Bundestag with its decision of 20 March 2014 was to examine ‘how parliamentary rights can be safeguarded on the road to progressive Alliance integration and despite the growing diversity of tasks.’ Greater military integration is increasing the mutual dependencies between the Alliance’s members and entails political commitments that also affect the practical exercise of parliament’s rights in relation to the deployment of German armed forces. The proposals and recommendations made by the Commission below are aimed at safeguarding the rights of the Bundestag in its oversight of military integration and, at the same time, enhancing Germany’s ability to honour its obligations within the Alliance.

Reports on multilateral composite military capabilities

The Commission proposes that each year the German Federal Government submit a report to the Bundestag on multilateral composite military capabilities whose availability is to be ensured politically. Furthermore, the German Federal Government should inform the Bundestag at an early stage when new multilateral composite capabilities are formed in order to ensure attention is targeted on the implications of the progress in the integration process they represent. The aim of these reports would be to foster political trust in the German contributions to these capabilities. Regarding multilateral composite military capabilities, the constitutive approval of the Bundestag would remain the precondition for their deployment as part of an armed operation, not least so that the rationale for such deployments would be communicated to the public.

The Commission uses the term ‘multilateral composite military capabilities’ (German: *multilaterale militärische Verbundfähigkeiten*, French: *capacités militaires multilatérales composites*) to refer to military capabilities formed within the framework of progressive Alliance integration, which require particular political trust on account of the dependencies with which they are associated.

A ‘composite formation’ is a structure based on a division of labour in which the individual elements cannot be separated from one another without damaging the whole and its constituent parts. In its entirety, therefore, a composite formation generates added value compared to the sum of its parts. At the same time, it is clear from the term ‘composite capability’ that the national contributions to a composite formation remain identifiable as such. Composite capabilities are multilateral because they are based on a multilateral division of labour in the context of NATO or the EU. In consequence, they not only include multinationally manned and operated structures, but also national specialised capabilities. Such national capabilities can also be of critical significance for the functioning of the Alliance and therefore part of the division of labour in a multilateral composite formation.

AWACS, the future Alliance Ground Surveillance system, the EU Battlegroups and NATO’s integrated command structure are all examples of multilateral composite capabilities. Another example is NATO’s Very High Readiness Joint Task Force (VJTF), the functionality of which depends on the Member States actually being able to deliver the contributions they have pledged when a deployment is conducted. There may also be mutual dependencies where national capabilities are pooled under a joint command, as for example at the European Air Transport Command (EATC).

The Commission is of the opinion that the continuing progressive integration of the Alliance’s military capabilities will, among other things, depend decisively on the confidence Germany’s partners have that capabilities organised on the basis of a division of labour will definitely and reliably be available if a mission is decided on at the international level with German approval. As a means of strengthening its Alliance partners’ confidence in Germany’s reliability, there will be a need for a political process that makes the political actors conscious of the dependencies linked with

multilateral composite capabilities. The reports on multilateral composite military capabilities proposed by the Commission are to serve this purpose.

The German Federal Government would use the submission of these annual reports to explain the concrete responsibility for multilateral composite military capabilities consequent upon its solidarity with the other members of the Alliance. In this respect, the reports are to give an up-to-date general overview of the political commitments entered into by Germany under the auspices of Alliance integration and the dependencies with which they are associated. The expectation is that this would build confidence among Germany's partners in two ways. Firstly, the German Federal Government would bind itself to these concrete forms of Alliance solidarity. Secondly, not least as a result of their regularity, the reports and the debates that would be held on them would encourage a heightened awareness of our partners' concerns in the Bundestag. To this end, the reports would contribute to the preparation and facilitation of political decision-making when the German Federal Government asked the Bundestag to approve the deployment of such capabilities.

The reports on the establishment of new multilateral military composite capabilities should make it possible for timely, focussed deliberations to be held on the specific questions raised by the new capabilities in question.

Incorporation of provisions on staff units and headquarters into the Parliamentary Participation Act

In order to take account of the special significance of military staff units and headquarters, the Commission proposes a greater degree of legal certainty be created with the addition of express provisions to the Act governing Parliamentary Participation in Decisions on the Deployment of Armed Forces Abroad (Parliamentary Participation Act – *Parlamentsbeteiligungsgesetz*, ParlBG).

Under the new provisions, work done by Bundeswehr servicewomen and men in staff units and headquarters of NATO, the EU or other organisations of mutual collective security would not be subject to approval by the Bundestag. Different rules would be followed if German servicewomen or men found themselves in an area of armed conflict while engaged in these activities. The background to this is that such situations typically expose the servicewomen and men in question to increased military dangers. In consequence, the deployment of mobile elements of a permanent staff unit to an area of armed conflict also require parliamentary approval. The same applies if servicewomen and men personally operate weapons that are deployed there.

Clarification of the term 'deployment'

In view of the questions of definition encountered during its deliberations, the Commission recommends a legislative clarification of the term 'deployment' that makes it clear which practically relevant types of deployment are not typically anticipated to result in involvement in an armed operation and so do not require the approval of the Bundestag. In particular, the Commission sees a need for clarification about specific types of deployment on which servicewomen and men are either unarmed or merely carry arms for the purposes of self-defence. These include the provision of logistical services and medical care, as well as the deployment of training and observer missions. The Commission therefore proposes the adoption of a statutory presumption concerning the circumstances under which involvement in an armed operation is not anticipated on these types of mission.

Recommendation concerning the formulation of mandates

The Commission recommends that the German Federal Government make greater use of the scope it already enjoys when formulating requests for the approval of armed deployments so that it is able to respond with greater flexibility to certain developments during the term of a mandate. This relates, in particular, to the maximum number of servicewomen and men to be deployed, the determination of the deployment area and the specification of the capabilities of the armed forces to be deployed.

It would be consonant with the constitutional division of responsibilities between parliament and the government for mandates to be worded in ways that give the German Federal Government leeway when implementing a mission's strategic goals.

Specific kinds of flexibility may be required when German participation in United Nations peace missions is mandated. The Commission recommends that the needs of the United Nations in this regard be taken into consideration.

Simplified procedure

The Commission views the simplified procedure (Section 4 ParlBG) as an appropriate and differentiated mechanism under which the Bundestag can approve armed forces deployments of minor scope and intensity. It makes it possible to set appropriate priorities in the parliamentary procedure without calling into question the Bundestag's continued role bearing joint responsibility for these mandates. This is true, in particular, for the extension of mandates that have not been amended (Section 7(1) ParlBG).

No requests forwarded by the German Federal Government have been given approval using the simplified procedure since 2006. From the Commission's perspective, one factor in this is that, according to the provisions in the legislation, silence is interpreted as implicit approval. One reason for demanding a request be debated by the Bundestag is therefore that this offers an opportunity to express a dissenting view of the matter.

In order to improve the acceptance of the simplified procedure in future, the Commission recommends that recourse be had to the parliamentary convention that a parliamentary group can declare it agrees to a request being dealt with using the simplified procedure, but not give its approval to the substance of the request. If such a declaration is delivered, it should be published in the record of proceedings when it is announced that approval has been granted using the simplified procedure. The same procedure should be followed when such declarations are delivered by individual parliamentarians, irrespective whether they reach the quorum of five per cent of the Members of the German Bundestag required to demand that parliament debates a deployment.

Regular stocktake assessment and interdepartmental evaluation

The Commission proposes that obligations to regularly take stock of what has been achieved and to present an evaluation report following the conclusion of each deployment be incorporated into the provisions on obligations to furnish information (Section 6 ParlBG). Both obligations to furnish information are already foreseen in the explanatory memorandum to the Draft Parliamentary Participation Act.

The function of the stocktake assessment in the justification of requests for the extension of mandates would be to offer an assessment of a mission's effectiveness on the basis of structured key information. The evaluation report should be based on a comprehensive debriefing exercise on the deployment and, in particular, set out in a differentiated fashion the extent to which the goals pursued with the mission have been attained. This would mean asking what lessons could be drawn for future missions. The balancing assessments and evaluations should not be limited to the military aspects of crisis response missions, but take an interdepartmental approach.

Secret operations of the special forces

The Commission proposes, firstly, that the practice followed to date when information is furnished about secret special forces missions be incorporated into the Parliamentary Participation Act. Secondly, to complement this, the Committee on Foreign Affairs and the Defence Committee of the German Bundestag are to be informed orally about a deployment's essential goals and results following its conclusion.

Operative details of a mission such as the number of servicewomen and men deployed, and the ways in which the mission has been prepared and conducted would be expressly excepted from the information to be provided to the committees. Nor would information that permits inferences to be

drawn concerning the special forces' capabilities and could therefore threaten the conduct of future missions be covered by the obligation to furnish information. Furthermore, the proposal expressly provides for our Alliance partners' interests in the security of classified material to be protected. German special forces' ability to cooperate with forces from other countries must not be impaired by the information provided to the Bundestag.

Consideration of non-military components of multidimensional crisis response missions

Initially, the constitutive requirement of parliamentary approval shifts the focus of parliamentary and public attention onto the military dimension of the international response to a crisis. A substantive, responsible political debate about the meaning and purpose of such an armed mission must, however, discuss it in the light of the general political concept in which it is embedded. In this respect, there is a need to look, in particular, at the civilian components without which sustainable crisis management is not possible. They include, among other things, the provision of humanitarian aid, measures to build functioning state structures and improve the human rights situation, and the deployment of police officers. Consideration is also to be given to the interfaces integral to civilian-military cooperation. Against this background, it is precisely the configuration of non-military elements, for example their capabilities and equipment, that is of significance for the effectiveness of a military deployment, which always has to be embedded in a general conception.

The Commission therefore recommends that the civilian tasks and components of more extensive, multidimensional crisis response missions be accorded greater attention in the parliamentary deliberations on deployments of the armed forces. The parliamentary deliberations and any decisions about aspects of non-military components to which they led would not have the purpose of extending the constitutive requirement of parliamentary approval to civilian and/or police deployments abroad. The subject of the mandates for which parliament would bear joint responsibility would remain solely the deployment of the armed forces.

Strategic debate about greater commitment to United Nations peace missions

In the estimation of the Commission, the United Nations' need for high-value military capabilities for peacekeeping operations will tend to rise further. If Germany wishes to take on more responsibility in this field, in particular in cooperation with its European partners, a series of strategic decisions will have to be taken about how this goal is to be achieved. In particular, it will be necessary to address questions about the capabilities with which Germany wishes to commit itself, which partners it wishes to collaborate with, and in which regions and under which crisis scenarios it wishes to take action. The Commission recommends that the Bundestag participate in this strategic discussion in a suitable form.

Contact with parliamentarians in other Alliance countries

Even if confidence between Alliance partners is fostered first and foremost by cooperation within the Alliance and at the government level, contributions can be made at the parliamentary level that complement this process. This reflects the fact that the governments of Germany's Alliance partners also have to explain, not least to their own parliaments, how the availability of newly established multilateral composite capabilities will be ensured politically. This is why the Commission recommends that contacts with parliamentarians from Germany's Alliance partners and Members of the European Parliament be exploited to strengthen mutual understanding on security and strategic issues.

Further recommendations

The Commission recommends that the Bundestag use a suitable procedure to deliberate on a possible reform of the constitutional framework for Bundeswehr missions abroad because it would exceed the Commission's mandate to carry out a more in-depth analysis of the current political and constitutional discussion.

Furthermore, the Commission is putting forward recommendations on flanking organisational measures within the administration and a parliament-friendly approach to the provision of information to the Bundestag about the EU's Common Security and Defence Policy.