THE EUROPEAN UNION AND THE WAR IN UKRAINE – IS A COMMON EUROPEAN DEFENCE SYSTEM POSSIBLE?

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Abstract:

By analysing the development of the Common European Security and Defence Policy so far and outlining the main security challenges faced by the European Union and its Member States in recent years, this publication aims to answer the question: is a common European defence system necessary and possible? It places particular emphasis on the security implications of the Russian military aggression against Ukraine. Taking into account the EU legal framework and the development of security issues in recent years, the analysis advocates the understanding that the move towards real integration in the field of defence is a vital necessity and a key prerequisite for the survival of the European project and for the security of the states that form the European Union.

Key words: EU, CFSP, common defence system, war, Ukraine

Although it has accompanied European unification since the early days of its existence, the idea of forming a common European defence policy or a common European defence system remains a distant goal on the horizon, despite the serious deepening of cooperation between EU member states on this issue. However, the events that Europe has been experiencing since the end of the years 2000, and especially the Russian military aggression against Ukraine, raise the question of the formation of a common European defence and the possibility of Europe guaranteeing its own security in a radically new way, and make it more urgent, necessary and imperative than ever to undertake real integration in the field of security and defence.

1. European Security and Defence Policy – State of Play

Seven decades ago, the founding states of the European Communities created an original model of public regulation based on the transfer of sovereign powers from the states to the institutions of European integration. At the heart of this model were several key objectives related to guaranteeing lasting peace in Europe, achieving sustainable upward socio-economic development and preserving the European democratic model[1].

From the time of its creation to the present day, the European integration system has achieved significant successes, gone through many crises, but ultimately justified its existence in terms of the fundamental objectives for which it was created. War has been eradicated as a prospect between the countries of the Community. Europe has made unprecedented economic and social progress. The European democratic model prevailed in its clash with totalitarian communism. European unification has been expanded to serious number of new countries, including the former socialist countries of Eastern Europe, and today the integration system covers almost the entirety of the Old Continent. The integration model of regulation is being successfully applied in an increasingly wide range of areas of social relations[2].

Paradoxically, although designed to guarantee lasting peace and to play a decisive role in overcoming the main security risks facing Europe, European integration has long been kept away from the realm of foreign policy and defence. Although in the early years of the development of the integration process the question of entrusting certain functions to the European Communities in the field of foreign policy and security was put on the table by the Pleven Plan and the projects for a European Political Community and a European Defence Community, the penetration of European integration into this territory, which is inherently linked to the existence and sovereign character of each state, has been slow, difficult and limited[3].

After the particular forms of European political cooperation between the member states of the European Communities, outside the integration framework, developed in the 1970s and 1980s, it was only with the Maastricht Treaty of 1992 that the EU was formally recognised as having a specific role in the field of foreign affairs and security[4].

Since the creation of the so-called Second Pillar, cooperation on this issue has developed significantly, but remains subject to unanimity, with the Council

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1 Fontaine, P. (2012), *L'Unionne européenne. Histoire, institutions, politiques,* Édition du Seuil, Paris, p. 15 et seq.

2 Ibid.

3 Schneider, C. (2019), *La PESC miracle ou mirage de la construction communautaire ?* In - Revue de l'Union européenne 1957-2017. Les 60 ans des traités fondateurs de l'Union européenne, Dalloz, Paris, p. 299 et seq.

4 Ibid.

of Ministers and the European Council retaining a central role. The Member States remain the main actors of policy-making and action, while the Union contributes to the formulation of common positions and to their implementation through its common institutional apparatus and through the means of pressure and influence within its other policies. At the same time, EU defence cooperation remains very limited to the development of common institutional arrangements, military-technological research synergies and the development of individual Member States' defence capabilities. The EU conducts a number of peacekeeping and peace-support operations with forces contributed by individual states, in which NATO logistics are used in the more serious cases.

Although the Lisbon Treaty formally abolishes the pillar structure familiar from the Treaty of Maastricht, the matters of foreign affairs and security are subject to a special regime that does not differ substantially from the pre-existing framework of the Second Pillar and should be considered as a regime of intergovernmental cooperation[5]. At the same time, in recent years the EU and its Member States have been confronted with serious security challenges that have tested the effectiveness of the existing tools at European level and have revealed doubts about the ability of Member States and the Union as a whole to deal fully with emerging crisis situations in close proximity to or on the European continent itself[6].

In the line of the evolution of the Common Foreign and Security Policy (CFSP), the creation of a common European defence system is essentially defined as an objective in the Lisbon Treaty[7]. On the other hand, art. 42(7) TEU provides that the Member States of the Union are bound to provide assistance by all means in the event of an armed attack on one of them, thus including a kind of mutual defence clause in the EU's primary legal framework[8]. In this context, there have been increasingly clear efforts in recent years to form a genuine common security and defence policy and to deepen cooperation in the defence sector.

In 2019, the new European Commission formally outlined as its policy direction the objective of building a European Defence Union by 2025[9]. A new

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[5] Schneider, C. (2009), *Brèves réflexions iconoclastes sur la „déconstitutionnalisation" de la politique étrangère, de sécurité commune et de défense.* In : E. Brosset, C. Chevallier-Govers, V. Edjaharian, C. Schneider (dir.), Bruylant, Bruxelles, p. 292 et seq.

[6] Fernandez, R., Jaeger, P., Lieberherr, J.-M., Warlouzet. *Vers une stratégie de défense européenne commune.* Le Grand continent, 10.06.2022. https://legrandcontinent.eu/fr/2022/06/10/vers-une-strategie-de-defense-europeenne-commune/.

[7] See Article 42(2) TEU.

[8] Ramopoulos, T. (2019), *Provision on the common security and defence policy.* In - M. Kellerbauer, M. Klamert, J. Tomkin (eds.), The EU treaties and the Charter of Fundamental Rights. A commentary. OUP, Oxford, p. 281.

[9] Engberg, K. (2021)., *A European Defence Union by 2025? Work in progress.* In - SIEPS, Stockholm, p.4.

Directorate-General for Defence Industry and Space (DG DEFIS) was also created under the leadership of Internal Market Commissioner Thierry Breton. The Union's multiannual financial framework for 2021-2027 included €10.014 billion to strengthen defence research, develop defence capabilities, facilitate troop deployment, improve military mobility and support military crisis management[10].

With the so-called Strategic Compass launched by the German Presidency in 2020, efforts have also been made to define common guidelines for strategic defence policy planning and to shape a strategic culture in line with the whole range of new defence challenges[11]. In March 2022, under the French EU Presidency, the Strategic Compass was formally endorsed by the Council, setting out an ambitious action plan to strengthen EU security and defence policy until 2030. The Strategic Compass provides a shared assessment of the strategic environment in which the EU operates and the threats and challenges it faces. The document makes concrete and actionable proposals with a very precise timetable for implementation to improve the EU's ability to act decisively in crisis situations and to protect its security and its citizens[12].

The Compass covers all aspects of security and defence policy and is structured around four pillars: action, investment, partnership and security. In the framework of the preparation of the Strategic Compass, for the first time in the history of the EU, a joint analysis of threats and challenges was also prepared. This analysis is the product of the work of the new European Union Intelligence and Situation Centre (EU INTCENT), which, in cooperation with national intelligence authorities, addresses a multitude of issues ranging from climate change to terrorism, bringing together the different perspectives of Member States[13].

Furthermore, a Permanent Structured Defence Cooperation (PESCO) was established in 2017, which represents a new step towards deepening defence cooperation in terms of enhancing the operational capabilities and technological capabilities of Member States[14].

It should be stressed that PESCO is a particular form of enhanced cooperation as defined in Article 42(6) TEU. This provision provides that Member States whose military capabilities meet higher criteria, and which have a more binding commitment to each other may establish permanent structured

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[10] Engberg, K. (2021)., *A European Defence Union by 2025? Work in progress.* In - SIEPS, Stockholm, p.4.

[11] Ibid., p.12-13.

[12] A Strategic Compass for Security and Defence - For a European Union that protects its citizens, values and interests and contributes to international peace and security. Brussels, 21 of March 2022. https://data.consilium.europa.eu/doc/document/ST-7371-2022-INIT/en/pdf.

[13] Engberg, K. *A European Defence Union by 2025? Work in progress.* Op.cit, p. 12.

[14] Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States, OJ L331, p. 57.

cooperation within the EU. All Member States, except Denmark and Malta, participate in this permanent structured cooperation. The specific projects for the development of operational capabilities and technological defence capability that Member States undertake are essential in PESCO, as are the binding common commitments.

A European Defence Fund was also established in 2017[15]. For the current financial period, €7.014 billion are allocated for defence research and development under the fund. The Fund should cover the tasks assigned to DG DEFIS related to promoting defence research and the development of defence capabilities, designing prototypes and supporting defence public-private partnerships. The work of the Fund should contribute to strengthening the European defence industry and the defence technology base, while favoring the strategic autonomy of the military-industrial sector.

Another component of the European Security and Defence Policy is the European Defence Agency (EDA). The EDA has been in existence since 2004 and, following the entry into force of the Lisbon Treaty, the Agency's framework has been adapted[16]. Article 45(1) TEU defines the functions of the EDA, which can be distinguished into those aimed at defining the objectives and needs of the military capabilities of the Member States and those concerning arms cooperation. In addition, in accordance with Article 3 of the PESCO Protocol, the EDA has another role, that of assessing the contribution of Member States to the objectives of permanent structured cooperation.

Despite the evolution of the Common European Security and Defence Policy and the many concrete steps of deepening defence cooperation in recent years, the EU remains very far from the stated goal of forming a common European defence system, and the various forms of cooperation still do not allow the EU to respond fully to the specific emerging security risks and threats, including on its own borders. The crises that erupted in Georgia in 2008, in Libya in 2011, Syria 2011, in Afghanistan in 2021, but most of all the crisis between Russia and Ukraine that erupted in 2014 and resulted into the first full-scale war in Europe since the Second World War, directly calling into question the security of the EU Member States and the Union as a whole, are particularly telling in this regard.

2. The CFSP in the context of the current security challenges in Europe

In the above-mentioned context, the first question that we have to answer, is to what extent the institutional mechanism applicable today in the field of EU foreign and security policy allows useful solutions to be found. Moving from a model of unanimity to a more flexible mechanism of forming common

[15] Engberg, K. *A European Defence Union by 2025? Work in progress.* Op.cit, p. 17.

[16] Ramopoulos, T. *Provision on the common security and defence policy.* Op. cit., p. 280-281.

EU positions is a delicate task, but there is ample evidence that the need to negotiate and agree in a format of 27 or more countries, to accommodate the particular interests of all, in order to respond to a severe crisis situation, such as that in Ukraine, for example, often leads to deadlock[17]. We cannot help but recognise, of course, that on one hand, it is very difficult to overcome this model of decision making in foreign and security policy, which is so linked to the sovereign nature of the state. On the other hand, however, there is the question of how we guarantee the security of the political ensemble in which we participate and how we ensure the preservation of the European model of free society if we continue to use these classical methods that have shown the limits of their potential while the world is changing and various new threats are emerging in our immediate vicinity.

Next, in the context of the new challenges that Europe is facing, we should ask ourselves whether we currently have the necessary operational tools to provide effective guarantees for our own security and to put into practice the positions that the EU establishes with regard to the various crisis situations. Already in the Libyan crisis in 2011, it was very clear that there is a serious deficit in what the European Union and the main Member States of the Union maintain in terms of defence capabilities. The two largest European armies, those of France and the United Kingdom, were able to sustain a localised military operation against a not very composed adversary for barely two months without the intervention of US military structures. And that is if we do not take into account the elements of logistical support provided from the outset by the US Army since the beginning of the intervention.

Later on, a similar picture became very clear in the Syrian crisis. It proved impossible to take any adequate action to stop the civil war and remove the regime in Damascus, both because of the divergence of political positions of certain EU Member States and because of the impossibility of putting any political position into action without the support and direct commitment of the United States.

The deficiencies of the EU member states' operational toolkit were also evident in 2021, in the context of the withdrawal of the United States and its allies from Afghanistan, in the course of which European states were faced with an extremely difficult test of how to withdraw their own citizens and the locals who worked with them in time, an operation that could not have been carried out without the assistance of US troops and equipment.

However, the existence of significant shortcomings in the present model of a common European security and defence policy, as currently established, is manifested in a particularly fractious way in the context of the Russian

[17] The difficulties in adopting new measures against Russia in the course of the war in Ukraine, despite the declared unanimity as to the unacceptable nature of the Russian invasion, are sufficiently indicative in this respect.

military aggression against Ukraine. In flagrant disregard of international law, a barbaric war of conquest is taking place on the territory of the Old Continent, in close connection with the interests of the European Union itself, in which one of the global powers is not just interfering in the internal affairs of a neighboring sovereign state, but is attempting to destroy and annex it, or to take as much of its territory as possible. Moreover, the Russian war of conquest in Ukraine is being openly linked by the regime in Moscow to aims and claims that concern the Member States of the European Union in Eastern Europe and, in fact, is increasingly being projected as an attempt to bring about the destruction of the existing international order established in the past few decades since the collapse of totalitarian communism and the dissolution of the Soviet Union. This includes causing the break-up of the European Union as well.

In spite of all the intentions declared and all positions adopted, in spite of all the waves of sanctions imposed in connection with the Ukrainian crisis, the EU finds itself in a practical impossibility to guarantee compliance with the international legal order and to defend firmly Ukraine, with which it has strategic relations. Moreover, in the context of the Ukrainian case, we can see clearly how, in reality, without the involvement of the United States in crisis situations of vital importance to the European Union itself, the European states and the community they have built are proving incapable of forming and conducting an independent adequate response to the imminent danger that exists. For years, the EU has been developing sophisticated concepts and formulas of soft power and cooperation, i.e. combining alternative measures of action in different areas in order to contain and overcome crisis situations. Without denying the importance of this cutting-edge approach, we cannot help but acknowledge that it is proving to be insufficiently effective. Reality clearly illustrates that, when faced with a classic security threat involving the use of force, it is ultimately a question of having sufficiently reliable guarantees of a classic type, in terms of a specific military capability and the ability to deploy and use it at short notice. It turns out that it is not through alternative means of action, but through the presence of sufficient effective military force that attempts to use force again to rearrange the order of international relations and redraw the map of Europe can be deterred.

In this context, one question must be clearly asked at EU level: to what extent do the Union and its Member States currently have adequate guarantees for their security and for the preservation of their model of society? Can we consider that the EU and its member states can fully respond to emerging security threats even using the structure and capacity of NATO, given that in the military structures of the North Atlantic Treaty, around three quarters of all military capacity is concentrated solely in the US armed forces? To what extent, given the episode of the Trump administration and the crisis in Euro-Atlantic relations that we have witnessed in these four years, we can continue to rely on the US commitment to defend its allies in Europe as the main guarantee of our security?

Beyond any doubt, the absolute linking of guaranteeing the security in Europe to the continued involvement of the US is a risky approach that does not correspond to the new realities. Such an approach is also not justified in the context of the new US policy, which sees what is happening in the Asia-Pacific region and, in particular, China's increasingly visible military rise, as a major security risk and problem[18]. There are no visible signs that this new American defence strategy is being questioned even after the outbreak of a full-scale war in Europe, so the question of the new solutions needed to give credible security guarantees in Europe, regardless of US commitments to the defence of European countries, remains open[19].

3. What solutions for the European Security and Defence Policy?

Given the weaknesses thus outlined in the current model of European security and defence policy, a serious analysis is undoubtedly needed of what solutions can be taken at Union level to ensure that existing and future security threats are effectively countered, what tools can ensure the successful handling of emerging crises triggered by the power-based approach of the Moscow regime or other non-democratic regimes peripheral to the EU.

In this context, however difficult such a decision may be, the possibility of extending the application of qualified majority voting in the area of foreign and security policy should first of all be put to serious debate. The Lisbon Treaty provides for such a possibility in Article 31(3) TEU. The Member States and the competent European institutions must define a broader range of hypotheses in which the Union's common positions and the measures for their implementation can be approved in the European Council or in the Council of the EU with the support of the majority of the members, despite the disagreement of individual countries. Moving towards a more flexible and rational format for building common positions on major foreign affairs and security issues will also allow the full potential of the existence of a European diplomatic service. Having clear and workable common EU positions on key foreign affairs and international security issues is a crucial prerequisite for achieving the targeted beneficial effects of consolidating the Commission's external representation with elements of the diplomatic apparatus of the Member States.

In the search for solutions to strengthen the common European security and defence policy, the issue of the need to consolidate the defence structures and capabilities of the Member States or at least of some of the EU countries cannot be avoided. There is no doubt that Article 42(2) TEU, which provides

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[18] Bergmann, M., Morcos, P., Wall, C., Monaghan, S. (2022), *Transforming European Defense*. In - CSIS Briefs, p. 2.

[19] Ibid.

a legal basis for the formation of a common European defence system, offers interesting prospects in this regard. According to this provision, the common security and defence policy involves the progressive definition of a common defence policy for the Union. It should lead to the formation of a common defence from the moment the European Council, acting unanimously, adopts such a decision. In this case, the decision of the European Council should be approved by the Member States in accordance with the requirements laid down in their constitutional arrangements.

It should also be allowed in mind that the consolidation of cooperation in the field of defence industry, research and the development of new military technologies is crucial for the formation of an effective European defence[20]. Certain steps have already been taken in this regard with the establishment of the European Defence Fund, the activities of the European Defence Agency and the development of various bilateral and multilateral cooperation projects[21]. However, resources aimed at developing new technological solutions in the field of defence remain widely dispersed, and there is an apparent lack of a real common effort among EU Member States to consolidate resources and activities to find and put into use new technological tools. It can be observed that there are various competing projects, for example for new fighter aircraft, or that a large part of defence resources is directed towards the purchase of key military technologies from suppliers outside the European Union. Thus, while spending more than a significant amount of money on defence - €198 billion in 2020 - EU Member States are not able to derive the optimum value for money from the resources they devote to defence[22].

Against the backdrop of the security crises of recent years, and especially in the context of the war in Ukraine, the need to move towards a genuine common security and defence policy and the construction of a genuine common defence system in the EU is hardly in doubt for any reasonable analyst. What exactly such a system might be and in what concrete forms it might be organised is a question that remains open. While the formation of a common European army can hardly be seen as a realistic solution, the integration of the development of new defence technologies, the creation of common defence system components such as air defence, military transport aircraft, reconnaissance aircraft and equipment, the formation of common rapid reaction battle groups or the consolidation of the supply of defence technologies and equipment can be seen as an achievable goal[23].

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[20] Csernatoni, R. (2021), *The EU's Defense Ambitions: Understanding the Emergence of a European Defense Technological and Industrial Complex.* In - Carnegie Europe Working Papers, p. 10 et seq.

[21] Engberg, K. *A European Defence Union by 2025? Work in progress.* Op.cit, p. 17-22.

[22] Defence Data 2019-2020. Key findings and analysis. European Defence Agence Report, 2021, p. 4.; Bergmann, M., Morcos, P., Wall, C., Monaghan, S. *Transforming European Defense.* Op.cit., p. 2 et seq.

[23] Bergmann, M., Morcos, P., Wall, C., Monaghan, S. *Transforming European Defense.* Op.cit., p. 2 et seq.

The development of such a common European defence system should, of course, be done in line with the commitments that almost all Member States have as part of the North Atlantic Treaty Organisation and, on the other hand, it should include an adequate formula of interaction with the United Kingdom, insofar as it maintains close defence cooperation with some EU Member States such as France and, on the other hand, there are key projects underway between the UK and some Member States to develop new defence technologies.

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The formation of a common European defence system is undoubtedly a difficult undertaking. But the needs of reality, the experience of the crises the EU has faced in recent years, and especially the existential threat to the security of the EU itself posed by Russian aggression against Ukraine, require beyond any doubt that the military capacity of the Member States and at EU level be tangibly strengthened and consolidated. There is a momentum to move to a qualitatively new phase of defence interaction in Europe that must not be missed. The change in the long-held positions of restraint and reserve in the field of defence of Germany, Denmark, Sweden or Finland shows that, however difficult it may be for Europe to move towards a genuine common security and defence policy and to integrate its defence structures, this is neither unthinkable nor impossible. Such an effort may ultimately be crucial both for the future survival of European integration and for the contribution of European states to the fulfilment of NATO's mission, to the preservation of sufficiently reliable guarantees for the security of the free world in a time of autocratic and totalitarian restoration both on the periphery of the European continent and in other parts of the world[24].

[24] Hamilton, D.S., Binnendijk, H. (eds.). *One Plus Four: Charting NATO's Future in an Age of Disruption.* NATO Task Force Report. P. 16 et seq.