

55. Frankfurter Newsletter zum Recht der Europäischen Union

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The EU Treaties: Defence Ready, Are They?

A Chapbook of Quotes

1. Where we Stood and Where we Might Stand

There isn't exactly a sparsity of papers and speeches issued by prominent members of the European Commission and also by the Council highlighting the need to now – finally – move together and join up for an integrated defence cooperation strategy, including a coordinated industrial policy on armaments production and procurement.

A Narrative which Sounds Familiar

This couldn't have been expressed more clearly than in the following report:

“By virtue of the Atlantic Alliance we in Europe enjoy a measure of security and stability which has enabled us to undertake the construction of Europe. Since our States recognize the existence of a common destiny, the security of one member necessarily affects the security of others. [...] Security cannot therefore be left outside the scope of the European Union. [...] European Union will not be complete until it has drawn up a common defense policy.

Meanwhile, I note that our States are not really at present in a position to determine the general policy guidelines without which no common defence policy is possible, and are unlikely to be able to do so in the near future. This does not mean that nothing should be done, and *I therefore propose that we should decide:*

- *regularly to hold exchanges of views on our specific problems in defence matters and on European aspects of multilateral negotiations on security. [...]*
- *to cooperate in the manufacture of armaments with a view to reducing defence costs, and increasing European independence and the competitiveness of its industry. The efforts undertaken at present to provide the European countries of the Alliance with an organization for the standardization of armaments, on the basis of joint programmes, will have important consequences for the industrial production. This strengthens the need to initiate a common industrial policy on the manufacture of armaments within the framework of the European Union. Setting up an European armaments agency for that purpose must be given consideration.”*

Except perhaps for the reference in the present tense to the virtues of the Atlantic Alliance at the outset of the quote, you may have surmised that the above quote *mut-mut* could be attributed to Secretary General *Mark Rutte*, President *Ursula von der Leyen* or EU High Representative for Foreign Affairs and Security Policy *Kaja Kallas*, where in fact this is a direct quote from the report on the “European (not only Defence) Union” (wishful thinking at the time) by *Leo Tindemans*, back then the Prime Minister of Belgium, presented to the European Council on 29 December 1975.¹

Leo Tindemans submitted a follow-up report, more than twenty years later, to the Committee on Foreign Affairs, Security and Defence Policy of the European Parliament, titled “On the gradual establishment of a common defence policy for the European Union”. This report was delivered on 30 April 1998.² *Tindemans’* second report takes stock of the newly emerged world order after the dissolution of the Warsaw Pact, labeled by some as the “the end of history”. NATO, of course, was still there unchallenged, and so was the somewhat dormant Western European Union (WEU). The key test for the (still desirable) common defense policy of the European Union was expressed by *Tindemans* with the following spin:

“With a view to establishing a common defence policy to be used in support of a common foreign policy, the Member States must first identify their common interests. To this end, they will require a common view of situations arising around the world. The decision to set up a policy planning and early-warning unit should therefore be welcomed, since there can be no common foreign policy without a common analysis structure. At the same time, however, there can be no common foreign policy unless the necessary common will is shown.”³

En Route to a Defence Union

If you were to take a look at the current communications from or about the European Union, notably the “Versailles Declaration” of 11 March 2022, the “White Paper for European Defence and the ReArm Europe⁴ Plan/Readiness 2030” of 12 March 2025 as well as the even more recent “Defense Readiness Omnibus” of 17 June 2025 you are likely to find a significant overlap with the ideas expressed by Prime Minister *Tindemans* in earlier days, combined with a sorrowful recognition of the need to – now – reduce complexity and a slightly elevated sense of urgency which is communicated not only between the lines.

But progress remains slow: Back in 2017, President *Jean-Claude Juncker* was already calling for the establishment of a European Security and Defence Union while casting a downhearted look back to European history:

“As early as 1950, French Prime Minister René Plevén proposed a plan for far-reaching defence integration, including the setting up of a European Army and the appointment of a European Minister of Defence. Alas, it was not to be. After two years of negotiations, all six members of the European Coal and Steel Community signed the “Treaty establishing the European Defence Community”. But after ratification by the Benelux countries and Germany, the project encountered a political impasse in France, when it was voted down by the *Assemblée nationale*. This put an end to the idea of a common European defence for the next half a century.

The failure of 1954 left a scar. Subsequent attempts were less bold. We advanced slowly, incrementally, timidly.”⁵

Sure, the tenacity of holding on to long term projects, and at times a propensity to reinvent the wheel – knowingly or not – have always been strong points of the European Union. Yet, given the current picture of heightened activity in Brussels while – sadly – recognising the faltering relevance of the EU in diplomacy matters at international level, it might make sense to take stock of what we already had. And of what we currently still have and what we might still develop. The stakes and the challenges are equally high. The EU needs to be nimble to operate in a very

¹ Bulletin of the European Communities, Supplement 1/76, Report on European Union, p. 17/18; Commented upon by *Antonio Tizzano*, The Tindemans Report, in the Italian Yearbook of International Law of 1976, page 130: “Yet few diplomatic documents seem to have been so rapidly relegated to remote shelves, surrounded by general indifference.”

² European Parliament, Document PE 224.862/fin.

³ Para 18 of the Explanatory Statement, section B of the report.

⁴ *Paul Dermine*, Funding Europe’s Defence, A First Take on the Commission’s ReArm Europe Plan, *Verfassungsblog* of 5 March 2025.

⁵ SPEECH/17/1581 of 9 June 2017. In the State of the Union Address of 13 September 2017 Juncker said: “By 2025 we need a fully-fledged **European Defence Union**. We need it. And NATO wants it.” (SPEECH/17/3165).

complex environment where many boards and bodies act upon a murky delineation of competences and where the – now geopolitical⁶ – European Commission, in particular, needs to show an ability to bring about:

- An efficient industrial policy to support the procurement side of the intended Defence Union despite a recent lack of success in other areas of EU industrial competitiveness efforts⁷;
- A build-up of expertise in arms procurement to the benefit of coordinated action among EU Member States which themselves are deeply engaged in modernizing their own procurement processes;
- A meaningful showcase of precedents demonstrating the value added through EU involvement to streamline the purchase of defence equipment (in addition to the joint purchase of vaccines and critical raw materials).

Clearly, a lot is happening in this space in and outside of Brussels. Not everything “European” is also genuinely a product of the European Union, let alone the European Commission. The somewhat despondent compilation in this Newsletter is meant to take stock of what has been achieved and what can realistically be expected from a political Union with a developed culture of opinion pluralism which in this area relies on unanimity.

2. The EU Member States: Thrifty with the Transfer of Powers

While the communication emanating from Brussels emphasises the role of the European Commission in the fields of the Common Foreign and Security Policy (CFSP) and the Common Defence and Security Policy (CDSP), the Treaties are rather clear about the paramount role of the Council and national sovereignty within these ambits of policy making. This has created a complicated system of multiple competencies. Articles 42 seqq of the TEU talk a lot about the Council, and very little about the Commission. Under Article 42 (4) sentence 1 TEU, the Member States, uncharacteristically for the system of EU integration, retain a right of initiative – along with the High Representative for CFSP Decisions to be adopted by the Council – unanimously. Under Article 42 (4) sentence 2 TEU, the European Commission becomes involved “where appropriate”. And pursuant to Article 45 (2) sentence 5 TEU, the European Defence Agency “shall carry out its tasks in liaison with the Commission where necessary”. Protocol No. 10 on the Permanent Structured Cooperation under Articles 42 (6) and 46 TEU echoes the cautious language of the Treaty, the European Commission is not even mentioned.

When Advocate General *Niilo Jääskinen*, ten years ago, looked at the EU’s CFSP and how it has been embedded in Articles 42 seqq. TEU, he referred to it as “a common policy of the European Union rooted in intergovernmental cooperation, [which] was the result of a compromise”. In a concrete case of judicial review he used the following label:

“Therefore, the CFSP involves a close and complex interaction between civilian and military aspects. The present case [scilicet a CFSP mission helping the “Rule of Law in Kosovo”] illustrates, however, the extent to which the **European Union’s external action is fragmented, lacks transparency and makes it difficult to determine the legal liability of its various actors.**”⁸ (emphasis added)

The TFEU does not talk a lot about security and defence. In the context of the Solidarity Clause under Article 222 (3) sentences 2 and 3 it refers to the decision making of the Council under Article 31 (1) TEU which encapsulates the principle of unanimity alleviated by a mechanisms of “constructive abstention”, a kind of escape clause added in Article 31 (1) subpara 2 TEU. Article 222 (3) TFEU sentence 2 on European Solidarity reads as follows:

“The Council shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has **defence implications. The European Parliament shall be informed.**” (emphasis added).

In conclusion, the Member States in drafting these provisions harboured significant scepticism towards the European Commission, the European Parliament, majority voting beyond Article 215 TFEU (sanctions) and even

⁶ SPEECH/19/6408 by President elect *Ursula von der Leyen* before the European Parliament of 27 November 2019: “This is the geopolitical Commission that I have in mind, and that Europe urgently needs.”

⁷ European Court of Auditors, Special Report 12/2025: The EU’s Strategy for Microchips – reasonable progress in its implementation but the Chips Act is very unlikely to be sufficient to reach the overly ambitious Digital Decade target, Luxembourg, 28 April 2025.

⁸ Opinion of AG *Jääskinen* of 21 May 2015, Case C-439/13 P, *Elititaliana/Eulex Kosovo*, ECLI:EU:C:2015:341, paras 16-19.

the European Court of Justice which enjoys very limited oversight in CFSP matters under Article 24 (1) subpara 2 sentence 6 TEU.

3. A Sobering View from Luxembourg

The language used in the exercise of budgetary control is rarely inspirational or upbeat. In the political debate and in the mirror of the media, unfortunately little attention is paid to the assessment of Europe's activities and ambition in the defence sector published by the European Court of Auditors (ECA, based in Luxembourg). In 2019, the ECA published a general assessment of the EU Global Strategy and the European Defence Action Plan as well as the EU Member States' defence capabilities and industries in its so-called Review No. 09 ("European Defence"). This was two years after President *Juncker* tabled his plan for the foundation of a European Defence Union. Here are three telling quotes from the Executive Summary:

"The EU defence-related initiatives represent attempts in an area where the EU has had little experience in the past. As of today, there is a risk that adequate goals may not have been set and proper systems may not be in place to accommodate such an increase in EU spending and the new level of ambition set in the EU Global Strategy.

There are clear strategic differences between EU Member States. In particular, they do not share a common perception of threats nor a common vision of the EU's role. They have different rules of engagement and a wide range of views on the use of military force. In such a context, some concepts, such as "strategic autonomy" or "a European army", are broad and vague. [...]

In particular, the EU institutions' role in the CSDP differs from other EU policies being implemented within the institutional framework of the TFEU. The Commission has no right of initiative and the European Parliament has no legislative power. In addition, with limited exceptions, the Court of Justice of the European Union has no jurisdiction over the CSDP."⁹

Then there is the issue of the EU budget and the financing of investment. In 2023, the ECA commented on the Preparatory Action on Defence Research (another Special Report), not without a critical undertone. Perhaps even with a shade of *schadenfreude*, the Financial Times reported the gist of this report as saying: "Not enough people, not enough expertise and no long-term plan".¹⁰ Here again, in the Executive Summary of the report, the ECA highlights one of the key challenges:

"The Treaty on European Union restricts the use of the EU budget for defence. EU action in the field of defence is limited to the common security and defence policy that is an external crisis management tool and not intended to be a collective European defence policy, encompassing for example a common definition of the threats. This constraint complicates the EU long-term planning for EU spending in the defence area."¹¹

The most recent ECA Report, published in 2025, focuses on "Military Mobility" within the EU, a target of EU Action Plans since 2018. Pivotal to the mobility of troops and equipment (which already exists) are the availability of (dual-use) transport infrastructure and the streamlining of administrative and procedural rules on relocation permits. Again, the verdict of the ECA is not exactly comforting:

"The objective of military mobility in the EU is to ensure swift and seamless movement of military personnel, materiel, and assets within and beyond the EU. Legally, territorial defence is a competence of the 27 EU member states, 23 of which are also members of NATO. The EU is a relatively new stakeholder in this area. [...]

We found that governance arrangements for military mobility in the EU are complex. There is no single point of contact for military mobility measures. This makes it difficult for stakeholders, such as ministries

⁹European Court of Auditors, Review No. 09, European Defence, Luxembourg 2019, Executive Summary, pages 4/5, Section V, VI, pages 9/10, para 11.

¹⁰Financial Times, The (significant) holes in the EU's Defence Investment Plans, of 27 April 2023.

¹¹European Court of Auditors, Special Report No. 10/2023, p. 5, Section V, of 26 April 2023.

of defence, to know who does what in relation to military mobility. The European Parliament has partial oversight of military mobility in the EU.”¹²

The European Court of Auditors has undertaken significant efforts for quite some time to increase its profile on the auditing of security and defence policies. In 2019, the European Court of Audit has partnered with the International Board of Auditors for NATO (IBAN) in a joint workshop on “Auditing Security and Defence Policies” in Luxembourg.¹³ Very recently, the ECA hosted a “Conference on Defence” in Luxembourg with key speakers from NATO, the European Commission and from the wider security community.¹⁴

4. A lot is happening ... in Europe (and with the UK)

4.1 ...But Often *Praeter Unionem*

Similarly to the field of industrial policies under the botched competency architecture of Article 173 TFEU (with EU, national and regional industrial policies confusingly co-existing without much co-ordination), in the field of defense, there seem to be even more bodies and boards involved, distributed between good old-fashioned inter-governmental collaboration, the EU Commission, other centralized EU institutions, the Council – and of course NATO. The European Commission alone has three Members, two of whom Vice-Presidents, who – portfolio wise have a leadership role in security and defence: Executive Vice President *Henna Virkkunen*, in charge of Tech Sovereignty, Security and Democracy, High Representative *Kaja Kallas*, and *Andrius Kubilius*, Commissioner for Defence and Space. Commissioner *Kubilius* seems to have a pragmatic, not to say resigned view on what the institutional leadership of the European Commission can achieve in earnest. In a recent speech on the project of Pax Europea before the Tocqueville Foundation he concluded as follows:

“And here I see the most important question. Similar to Kissinger's question: whom to call in Europe? A modified question: at this “Europe's moment” who is going to lead Europe into Pax Europaea?

It's time for Ursula von der Leyen, Friedrich Merz, Emmanuel Macron, Keir Starmer, Georgia Meloni, Donald Tusk to show a real collective leadership.

For Independence of Europe and for Pax Europaea. This is really “Europe's moment”!¹⁵

So, this is the new EU Commissioner for Defence calling for the “collective leadership” by his institution’s President (but not his fellow VP Commissioners), Member States’ Heads of State and Government, but only a small number of them (recalling earlier integration concepts such as *Kerneuropa*, *l’Europe à deux vitesses* or the *Inner Six*), and the Prime Minister of the United Kingdom as if Article 50 TEU had never been triggered.

Another example: The European Sky Shield Initiative (ESSI) was proposed by Germany in 2022¹⁶ on an intergovernmental basis and has been signed by more than 20 States to date, including both the UK and Türkiye, as well as neutral Austria and neutral Switzerland¹⁷, but not France¹⁸, not Italy and not Spain. The purpose is the joint procurement European anti-missile defence systems. Two things have become clear: The EU may – somehow¹⁹ – be involved in this but is not a signatory, and intergovernmental cooperation may be achieved in

¹² European Court of Auditors, Special Report No 04/2025, EU Military Mobility, Executive Summary, p. 4, Sections I, IV, of 5 February 2025.

¹³ NATO Press Release of 14/15 May 2019: Joint Workshop on Auditing Security and Defence Policies with European Court of Auditors.

¹⁴ European Court of Auditors Conference on the Defence, publication of 30 June 2025.

¹⁵ Speech (SPEECH/25/1661) by Commissioner *Kubilius* at the Tocqueville Conversations: “The Future of Europe: From Pax Americana to Pax Europaea”, Brussels, 28 June 2025.

¹⁶ Press release of the German Federal Ministry of Defence, European Sky Shield – die Initiative im Überblick; *Hannes Fritz/Leonard Kleiber*, European Sky Shield – Renaissance der europäischen Flugabwehr, die reserve, 6 January 2025.

¹⁷ Press release of the Swiss Federal Department of Defence, Civil Protection and Sports of 7 July 2023, page 2: “It is possible for neutral states to participate in many areas. Switzerland and Austria have set out their terms regarding neutrality in an additional declaration, stating, for example, that they will not participate or become involved in international military conflicts.” Press release of German Federal Ministry of Defence, Österreich und die Schweiz beteiligen sich an European Sky Shield Initiative, of 11 July 2023; The Federal Assembly – The Swiss Parliament, Adhésion à European Sky Shield Initiative, Motion 24.3474 of 28 July 2024; Declaration of the Austrian Federal Ministry of Defence of 19 January 2024 in reply to questions from the Austrian National Parliament, File No 16380/AB, explaining the position of Austria with regard to neutrality, page 2.

¹⁸ Le Monde of 20 June 2023, Pour Emmanuel Macron, le projet de bouclier antimissile européen «prépare les problèmes de demain».

¹⁹ Answer given by High Representative/Vice-President *Borrell i Fontelles* to questions from the EP on ESSI, European Parliament File No E-001198/2024 of 7 June 2024.

Europe but without key Member States of the EU. While Germany may be proud to have initiated such a broadly supported project, is it really useful to venture that far *praeter* or even *extra Unionem*?

4.2 ... Or may Need to Become Rebuilt

The Western European Union and its Legacy

Obviously, there is no point in arguing over spilt milk. In any event, in the collective European memory, the Western European Union (WEU, in existence from 1954 to 2011 to then be converted into the EU CSDP) probably never made it to universal top of mind awareness and not many people on the omnibuses to Clapham, Bad Godesberg or St.-Germain-en-Laye would know what the WEU was all about and when it finally ceased to exist. Nonetheless, it would seem worthwhile to recall that the Brussels Treaty (which in its early version predated NATO and was later called the Modified Brussels Treaty) establishing the Western European Union in 1954, was at least meant to create a fully-fledged defence organisation and its Article V enshrined a rather unconditional mutual obligation to afford other “high contracting parties all the military and other aid and assistance in their power”, should such party “be the object of an armed attack in Europe”.²⁰

Compared to this Article, while the successor provision in the European Unions’ Lisbon Treaty, Article 42 (7) TEU, obviously, has the same spin, it is somewhat more caveated, with references to the commitments of Member States under the NATO Agreement.²¹ The WEU also had its own Parliamentary Assembly, established and gathering in Paris, which would be the “only European parliamentary institution that allow[ed] national parliamentarians to monitor security and defence issues”.²² While, as an organisation, the WEU must have existed very much in the shadow of NATO and reportedly “went to sleep until the mid-1980’s” only to then “reemerge [...] as a European talking shop”²³, it clearly was not just a paper tiger. This would transpire from many documents, e.g. from the following quote by British Prime Minister *John Major* in his speech to the WEU Assembly, held in London on 23 February 1996:

“The WEU has gained useful experience in its operations so far: from mine-sweeping in the Gulf, to sanctions enforcement around the former Yugoslavia. But more work is needed before it can take on more significant tasks.

The British Presidency’s objective is for the WEU to become fully operationally capable as soon as possible. At Petersberg in Germany in 1992, Ministers agreed that the WEU should prepare to undertake peacekeeping, humanitarian and crisis management tasks. Our objective is that, by the end of the year, the WEU should be ready to perform a good number of these.”²⁴

While dismantling the WEU in the wake of re-ignited enthusiasm for (and to the benefit of) the European Union and its CSDP post-Lisbon may have seemed the right thing to do at the time, it would still seem surprising that this organisation which, after all, was resuscitated after years of dormancy in 1984²⁵ was abandoned altogether while other longstanding companions of the (former) European Economic Community such as EFTA, EURATOM or even the Council of Europe continue to exist and thrive.

Work with What we Have

In the paramount Report of *Sauli Niinistö*, former President of the Republic of Finland, on the “Strengthening [of] Europe’s Civilian and Military Preparedness and Readiness” published on 30 October 2024²⁶, the WEU legacy is

²⁰ Modified Brussels Treaty establishing the Western European Union, signed at Paris on 23 October 1954.

²¹ *Alyson JK Bailes/Graham Messervy-Whiting*, Death of an Institution, The end for Western European Union, a future for European Defence? Egmont Paper 46, Brussels, May 2011, page 4.

²² Publication of the Assembly of the WEU, the Interparliamentary European Security and Defence Assembly: 1955-2005, Half a century of parliamentary debate on European security and defence.

²³ “... useful to start building common European positions at a time of change and US/European tensions.” *Alyson JK Bailes/Graham Messervy-Whiting*, The Demise of the Western European Union: Lessons for European Defence, publication of the Chatham House, 10 May 2011, p. 3.

²⁴ Publication of the Archive of the Rt. Hon. *Sir John Major* KG CH, Mr. Major’s speech to the WEU Assembly – 23 February 1996.

²⁵ Rome Declaration of 27 October 1984.

²⁶ *Sauli Niinistö*, Report: Safer together – strengthening Europe’s civilian and military preparedness and readiness, drawn up by Sauli Niinistö “in this capacity as Special Advisor for the President of the European Commission”.

not even mentioned, while the report, of course, highlights the need for institutional efficiency and leadership. What is more, the Commissions' White Paper for European Defence-Readiness 2030", published in March 2025, does not envision institutional or – perish the thought – Treaty reform but accepts that "Member States will always retain responsibility for their own troops, from doctrine to deployment, and for the definition needs of their armed forces". When addressing the goal of "European readiness" in terms of the contribution which the European Union can bring to the table, the key buzzwords used in the White Paper are that the EU can "support and coordinate Member States' efforts to strengthen the defence industrial base and the EU's overall defence readiness" by which the "EU complements and multiplies Member States' individual efforts".²⁷

5. A Smorgasbord of Acronyms

Before or after reading this article, how *defence-readiness* literate, i.e. acronym savvy were you? Here is a little test sample from a much longer list of frequently used abbreviations:

ASAP: Act in Support of Ammunition Production, established by Regulation (EU) 2023/1525 of the European Parliament and of the Council of 20 July 2023 on supporting ammunition production (ASAP), expired on 30 June 2025, possible successor: EDIP

CARD: Coordinated Annual Review on Defence, undertaken by the EDA in a "two-year cycle synchronised with the Permanent Structured Cooperation (PESCO) and with the NATO Defence Planning Process (NDPP)". Latest CARD 2024 Report published in November 2024.

CDP: Capability Development Plan, published since 2008 by the EDA, last version released on 14 November 2023 as 2023 EU Capability Development Priorities, intended "as a baseline for EU-wide defence planning, and all EU defence-related initiatives".

EDA: European Defence Agency, created in 2004 under Articles 42 (3) and 45 TEU.

EDF: European Defence Fund, established by Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021, defined by the Commission as its "instrument to support Research and Development in defence."

EDIDP: European Defence Industrial Development Programme, established by Regulation (EU) 2018/1092 of the European Parliament and of the Council of 18 July 2018, no longer in existence, precursor of the EDF.²⁸

EDIP: European Defence Industry Programme, proposed under draft Regulation of the European Parliament and of the Council establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products ('EDIP') of 5 March 2024.²⁹

EDIS: European Defence Industrial Strategy, presented by the Commission and the High Representative for CFSP on 5 March 2024.³⁰

EDTIB: European Defence Technological and Industrial Base, a concept developed by the EDA in 2007 and endorsed by the European Council in its Conclusions of 19/20 December 2013.³¹

²⁷ European Commission, White Paper for European defence-readiness 2030, p. 6, 19 March 2025.

²⁸ Interesting comment provided by *Jesse Peters*, Convenient, but controversial: Why the European Defence Fund should not be expanded as the Commission becomes geopolitical, European Law Blog, 5 July 2022.

²⁹ Document COM(2024) 150 final, 2024/0061(COD).

³⁰ A new European Defence Industrial Strategy: Achieving EU readiness through a responsive and resilient European Defence Industry, Document JOIN(2024) 10 final.

³¹ European Defence Agency, A Strategy for the European Defence Technological and Industrial Base (then also called DTIB) of 14 May 2007, European Council, Document EUCO 217/13 of 20 December 2013; In Depth Analysis presented by the Think Tank of the European Parliament, Document PE 603.483 of January 2020; *Raluca Csernaton*, The EU's Defense Ambitions: Understanding the Emergence of a European Defense Technological and Industrial Complex, Carnegie Europe Working Paper of December 2021, page 12.

PESCO: Permanent Structured Cooperation, provided for in Articles 42 (6) and 46 TEU as well as in Protocol No 10 to the Lisbon Treaty, established by Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States.³²

6. In Brussels: Who is Calling the Shots?

Quite tellingly, it was Commissioner *Kubilius* who quoted Secretary of State *Henry Kissinger* apocryphal remark about “who do I call if I want to speak to Europe”, a quip allegedly made in 1973 but which apparently was never made by Secretary *Kissinger* and only attributed to him.³³ In any event, many people seemed to have believed he might have actually coined the famous wisecrack. As mentioned at the outset of the article, in the European Commission there are three members (two of which are Vice Presidents) in charge of security matters. The most frequently used acronyms CSDP (Common Security and Defence Policy) and CFSP (Common Foreign and Security Policy) overlap when it comes to security. The hierarchy – at least as a matter of the Treaty is quite clear – given that under Article 42 (1) TEU the CSDP is an “integral part” of the CFSP. Yet, who reports to whom can be difficult to determine, especially in an organization which encourages team work³⁴ as much as the European Commission does. In an organigram published by *Politico*, the Executive Vice President for Tech Sovereignty, Security and Democracy is also in oversight of the portfolio for Defence and Space, whereas several other Commissioners and Directorate Generals report to the High Representative for Foreign Affairs and Security Policy.³⁵

Overlap of responsibilities and discussions about budgets and numbers of staff dedicated to individual Directorate Generals are well known bones of contention in Brussels. Their impact will very much depend on the spirit of teamwork activated under the leadership of the Commission President. But, the external relationship of the European Commission and its Members in charge of Security and Defence matters to the Foreign (and Defence Ministers) of EU Member States may remain more of a challenge. Such observation, equally, is not a new phenomenon, but it is still quite revealing which words the Foreign Minister of Poland *Radosław Sikorski*, reportedly, used when he was asked whether he might consider assuming the role of EU Defence Commissioner in 2024. *Politico* cites the Minister (and former Member of the European Parliament) as saying: “Such a position does not exist in the EU, and even if it did exist and was offered to me, I do not aspire to it and I am not going anywhere”.³⁶

7. How it Works

With all the challenges and difficulties explained above, it would be clearly wrong to assume that the EU CSDP is still in its infancy. Quite to the contrary, and as shown in EU presentation on “Missions and Operations” published by the External Action Unit of the European Commission, the EU “takes a leading role in peace keeping, operations, conflict prevention and the strengthening of international security” through “military and civilian missions”.³⁷ In May 2025, the European Union announced the operational readiness of the EU Rapid Deployment Capacity which is meant to provide “a robust, flexible and scalable military instrument of up to 5,000 troops that can be deployed in a swift manner [...] to different crisis scenarios”.³⁸

The first mission under the CSDP was already launched in 2003, since then “the EU had undertaken over 40 overseas operations [...] in Europe, Africa and Asia”. As the EU further reports, “currently, some 3,500 military personnel and 1,300 civilian personnel are deployed around the world”.³⁹ In 2009, the German Institute for

³² OJ No L 331/57 of 14 December 2017.

³³ *Gidon Rachman*, Kissinger never wanted to dial Europe, Financial Times of 22 July 2009.

³⁴ Remarks by EVP *Virkkunen* and Commissioners *Dombrovskis* and *Kubilius* on the Defence Omnibus, SPEECH/25/1532 of 17 June 2025.

³⁵ *Politico*, Who works for whom in the new EU power structure, published 17 September 2024.

³⁶ *Politico*, Poland’s *Sikorski* says no thanks to EU defence commissioner job, published on 17 June 2024.

³⁷ European Union, External Action (The Diplomatic Service of the European Union), Presentation of Missions and Operations, 30 January 2025.

³⁸ European Union, External Action (The Diplomatic Service of the European Union), Common Security and Defence Policy: EU Rapid Deployment Capacity becomes operational, 20 May 2025.

³⁹ European Union, External Action, Missions and Operations, 30 January 2025.

International and Security Matters published a thorough survey of CSDP missions and operations along with individual case studies, analyses and recommendations.⁴⁰

You might say, in terms of “boots on the ground” this sounds like *multa, non multum*, but then define *multum*. The broader relevance of the various missions undertaken since 2003 – beyond their merits in the individual matters – is to establish a common tradition (even legacy) of having worked together successfully within the CSDP architecture of the European Union, the establishment of best practices in the complex interfaces between EU and intergovernmental action. In other words, experienced officials, a good sense of what works and what doesn’t and a track record to produce in case new missions or greater scale are needed. This could then also encourage a shift in mental defence preparedness with the Member States’ populations – a gap which NATO in some (old) Member States might find more difficult to fill.

If you were to take a look at the multitude and impact of restrictive measures (sanctions), adopted under Article 29 TEU and on the basis of Article 215 TFEU which works on the basis of a qualified majority voting within the Council and does not require unanimity, you can clearly see the potential for more should – de jure or de facto – the ambit or scale of CFSP become broadened in the future.

8. A role for the Union Courts

Under Article 24 (1) subpara 2 last sentence TEU and Article 275 (1) TFEU, the “Court of Justice of the European Union shall not have jurisdiction with respect to these provisions” meaning the Common Foreign and Security Policy, with the exception of “its jurisdiction to monitor compliance with Article 40 TEU” and – more importantly – the huge forum of litigation practice for the hearing of Annulment Actions in the realm of “restrictive measures” (sanctions) under Article 215 TFEU. While there is not much point in arguing with the broad immunity of CFSP from judicial review under Article 24 except for “aspects of day-to-day and administrative management”⁴¹, more recently there have been some cases around CFSP, regarding the award of contracts⁴², staff and language matters⁴³ and human rights issues more recently⁴⁴.

While such cases remain marginal, clearly, the “readiness” of the Union Courts to hear cases relevant to foreign policy and security matters pertaining to territories outside the European Union is demonstrated by the Courts’ case load in the realm of sanctions under Article 215 TFEU and Article 275 (2) TFEU. Here, in 2024, the General Court received a total of 63 new cases with 88 judgements and orders finalized in the same year.⁴⁵ In terms of the substantive analysis is fair to say that while there is of course a certain recognition of the need for judicial self-restraint in pure matters of foreign policy, the depth of legal review with respect to Article 47 of the EU Charter of Fundamental Rights and errors of assessment – perhaps sometimes to the *chagrin* of the Council – is impressive.⁴⁶

Hence, should the limitation under Article 24 (1) subpara 2 last sentence TEU become lifted at some point in time, the Union Courts can build on a very significant body of case law from hearing annulment actions within the ambit of sanctions.

9. Commissioner Kubilius is Right

You might say that this contribution depicts a bleak picture of what has been achieved in terms of the CSDP. But what we’ve got – and what we haven’t got – is exactly what the Member States of the European Union were prepared to transfer the EU in terms of sovereignty and to create as a transnational superstructure. Some projects

⁴⁰ Muriel Asseburg/Ronja Kempin (Eds.), *The EU as a Strategic Actor in the Realm of Security and Defence?*, SWP Research Paper, RP 14, Berlin, December 2009.

⁴¹ ECJ, Judgement of 10 September 2024, Joined Cases C-29/22 P and C-44/22 P, KS and KD v Council and Others, ECLI:EU:C:2024:725, paras 127, 131.

⁴² ECJ, Judgement of 12 November 2015, Case C-439/13 P, Elitaliana/Eulex Kosovo, ECLI:EU:C:2015:753.

⁴³ General Court, Judgement of 8 May 2024, Case T-555/22, France/Commission, ECLI:EU:T:2024:297.

⁴⁴ ECJ, Judgement of 10 September 2024, Joined Cases C-29/22 P and C-44/22 P, KS and KD v Council and Others, ECLI:EU:C:2024:725, paras 127, 131.

⁴⁵ General Court, Annual Report 2024, Statistics concerning the judicial activity of the General Court, pages 7, 11.

⁴⁶ ECJ, Yearly Selection of Major Judgments, 2023, pages 214, 252, 307 seqq.; Selection for 2024, pages 204, 260 seqq.

of European integration took a long time to mature, such as the introduction of the Euro, some projects such as the European Banking Union, born out of a severe crisis, came about quicker. It is good and great that many stakeholders contribute to the discussion about further CSDP integration and the speech by Commissioner *Kubilius* quoted above on page 5 is a great testimony to political realism. You can only work with what you have in terms of legal and constitutional instruments. If that means going beyond (even *praeter*) the existing mechanisms and competencies of the European Union, that may well be called for.

To close with a quote by *Alexis de Tocqueville*⁴⁷:

“So the great privilege of the Americans is not only to be more enlightened than others, but also to have the ability to make mistakes that can be corrected.”⁴⁸

This was said at a time when a (the) European Union was still inconceivable and the legacy of the Holy Roman Empire which had recently ceased to exist can't have been much of an inspiration to the author. After decades of slow but steady growth and progress, the last part of quote might very well also be applicable to the European Union.

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⁴⁷ Commissioner *Kubilius* held his speech, quoted above, before the eponymous Foundation in Paris earlier this year.

⁴⁸ *Alexis de Tocqueville*, *Democracy in America* (edited by *Eduardo Nolla*, translated by *James T. Schleifer*, Part II, Chapter 5, page 365, Indianapolis 2012; In the French Original: « Le grand privilège des Américains n'est donc pas seulement d'être plus éclairés que d'autres, mais d'avoir la faculté de faire des fautes réparables. » *De la Démocratie en Amérique*, Tome Deuxième, Chapitre V, page 185, Brussels 1840.