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EU law and *inter se* agreements in defence matters: Mapping the interplay

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Abstract

Historically, the EU Common Security and Defence Policy (CSDP) has not been the sole framework for defence cooperation between Member States. Indeed, several *ad hoc* multilateral agreements coexist with measures adopted in the CSDP framework. The *paper* maps the relevant practice, with a focus on command and control structures, and examines the relationship between these forms of cooperation and EU law. Based on a comparison with other policy areas, the paper argues that the incorporation of EUROCORPS and other intergovernmental defence cooperation initiatives within the EU legal order would not require Treaty amendment. In this regard, it considers whether Permanent Structured Cooperation (PESCO), thanks to its modular structure, could provide an adequate frame to absorb such projects into CSDP.

Key-words

Common Security and Defence Policy, CSDP, Permanent Structured Cooperation, PESCO, EUROCORPS, *inter se* agreements



1. Introduction

Since the outbreak of hostilities in Ukraine, security and defence are among the main concerns of policymakers in EU Member States. The Strategic Compass, adopted by the Council of the EU shortly after the Russian attack on Ukraine was launched, has pledged to strengthen defence cooperation at the EU level. Admittedly, the EU legal order offers a space for pursuing closer cooperation between Member States in this area, through its Common Security and Defence Policy (CSDP), which is an integral part of the Union's Common Foreign and Security Policy (CFSP), and through industrial policy (Vellano and Miglio). Long held back by a lack of political will, the implementation of CSDP took off since 2016 under the combined pressure of Brexit and growing external threats,^{II} culminating in the launch of Permanent Structured Cooperation (PESCO) in December 2017^{III} and the establishment of the European Defence Fund (EDF) in the context of EU industrial policy in 2021.^{IV} More recently, the Commission and the High Representative for Foreign Affairs and Security Policy announced a set of further initiatives aimed at strengthening defence integration among Member States.^V

However, the EU has never been the only framework for the coordination of the security and defence policies of the Member States. Despite the emphasis put on CSDP, especially on the part of European institutions, it should be borne in mind that the EU is only one of multiple fora for cooperation available to Member States in security and defence matters. In addition to traditional international organizations involving Member States and third countries alike (NATO, OSCE), there are numerous cooperation initiatives involving groups of Member States. A common feature of those projects is that they lie outside the EU legal and institutional framework, although they sometimes have very close links with CSDP and pursue similar goals.

The article provides an overview of the relationship between such forms of intergovernmental cooperation and the EU legal framework. Against this background, it will assess whether and in which manner some of those initiatives could be integrated into the CSDP framework, possibly in the form of new PESCO projects.

At the outset, the article offers a brief presentation of PESCO, which currently represents the most significant instrument for the joint development of Member States'



defence capabilities within CSDP. By allowing for different groupings of Member States in relation to specific projects, PESCO is the most obvious point of comparison with cooperation initiatives pursued by clusters of Member States outside the EU Treaties (2). Then, the focus will shift to the analysis of examples of international cooperation between Member States in the defence sector, having regard in particular to those establishing command and control structures. For its scope and depth, the Treaty establishing EUROCORPS stands out among them (3). Subsequently, the article explores the relationship between EU law and agreements between Member States. Based on previous cases of actual or proposed incorporation of *inter se* agreements into the EU legal order, it assesses possible paths for the integration of EUROCORPS into the CSDP framework (4). The concluding paragraph summarises the main findings and identifies legal and political obstacles to the outlined perspective (5).

2. Permanent Structured Cooperation (PESCO)

The most relevant instrument under EU law for the joint development of defence capabilities is PESCO, which today consists of 60 cooperative projects in various fields. The following paragraphs will briefly outline the specific features of this legal instrument, focusing on its purpose (2.1), the legal regime on which it is based, its governance and ongoing projects (2.2).

2.1. The purpose of PESCO

PESCO is rather densely regulated by primary law. It was introduced by the Lisbon Treaty in order to allow a group of Member States to develop closer cooperation in the framework of CSDP.^{VI} Although the Treaty foreshadowed its immediate activation, PESCO was only established in December 2017. Nowadays, it involves all Member States, except for Denmark and Malta, but it has a highly modular structure at its core, as smaller and varying groups of Member States take part in individual projects (Fiott, Missiroli and Tardy 2017, Blockmans 2018, Blockmans and Crosson 2021, Martill and Gebhard 2022, Miglio 2023). It is a legal instrument that is intended to allow differentiated integration in the area of security and defence by those Member States that wish to cooperate more closely, “whose military



capabilities fulfil higher criteria” and ”which have made commitments to one another in this area (...) with a view to the most demanding missions”.^{VII}

The objectives that PESCO aims to achieve are those set out in Article 1 of Protocol no. 10 on Permanent Structured Cooperation established by Article 42 of the Treaty on European Union (TEU) and relate to the development of defence and combat capabilities. In particular, the participating Member States undertake to: (a) cooperate to achieve approved objectives concerning the level of investment expenditure on defence equipment, (b) bring their defence apparatus into line with each other as far as possible, (c) enhance the availability, interoperability, flexibility and deployability of their forces, (d) cooperate to take the necessary measures to make good the shortfalls perceived in the framework of the Capability Development Mechanism and (e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the European Defence Agency.^{VIII}

The decision establishing PESCO of December 2017 specifies the “ambitious and more binding common commitments” that the participating Member States intended to undertake within these five areas. For example, they commit to: increase defence investment and joint and collaborative strategic defence capabilities projects (sub-paragraph a); develop harmonised requirements for all capability development projects agreed, consider the joint use of existing capabilities to optimise the available resources, and increase efforts in cyber defence cooperation (sub-paragraph b); develop a solid instrument accessible to participating Member States and contributing Countries only to record available and rapidly deployable capabilities in order to facilitate and accelerate the Force Generation Process; provide substantial support to CSDP operations and missions (personnel, equipment, training, exercise support, infrastructure, etc.) and to EU Battlegroups; to develop the interoperability of the respective forces through the identification of common evaluation and validation criteria for EU Battlegroups force package and common technical and operational standards for forces, as well as through optimisation and wider participation to existing multinational structures such as EUROCORPS, EUROMARFOR, EUROGENDFOR, MCCE/ATARES/SEOS (sub-paragraph c); contribute to overcoming capability shortcomings identified under the Capability Development Plan (CDP) and the Coordinated Annual Review on Defence (CARD) (sub-paragraph d); use the European Defence Agency (EDA) as the European forum for joint capability development and consider the



Organisation Conjointe de Coopération en matière d'Armement (OCCAR) as the preferred collaborative program managing organisation (sub-paragraph e).^{IX}

Moreover, PESCO can be considered as complementary to two other important instruments already mentioned: the EDF and CARD. The former, governed by Regulation (EU) 2021/697, aims to "foster competitiveness, efficiency and innovation capacity of the European Defence Technological and Industrial Base (EDTIB) throughout the Union, which contributes to the Union strategic autonomy and its freedom of action, by supporting collaborative actions and cross-border cooperation between legal entities throughout the Union, in particular SMEs and mid-caps, as well as by strengthening and improving the agility of both defence supply and value chains, widening cross-border cooperation between legal entities and fostering the better exploitation of the industrial potential for innovation, research and technological development at each stage of the industrial life cycle of defence products and technologies".^X Actions that are eligible for funding from the EDF include those developed in the context of PESCO projects that can also benefit from increased funding rates.^{XI}

CARD, on the other hand, is an instrument that was adopted at the European Council in May 2017, whose function is to assist the efforts of Member States in identifying new areas of cooperation, especially in the framework of PESCO projects. Within CARD framework, EDA and EU Military Staff (EUMS) perform the secretariat function. The second cycle of the CARD was launched in December 2021 and saw the secretariat engaged in a series of bilateral meetings with Member States to collect relevant data for the formulation of appropriate recommendations. The final report was approved by Ministers of Defence on 15 November 2022 and it takes into account the Russia's war against Ukraine, considering it as the main challenge for EU defence.^{XII}

Coherence between these initiatives and the activities carried out under PESCO is crucial to ensure the effectiveness and efficiency of the EU defence actions. Such objective does not seem to have been achieved so far, since in 2020 only 11 per cent of Member States' investments in this area involved transnational collaborative projects.^{XIII} The percentage is slightly higher in the timeframe considered by the 2022 CARD cycle. However, it shows the tendency of Member States to implement their plans to a large extent at national level, with only 18 per cent of all investment in defence programmes conducted in cooperation.^{XIV}



2.2 PESCO: legal framework, governance and projects

PESCO is established on the ground of Article 42(6) TEU providing that “Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework”. Furthermore, Article 46 TEU specifies that States wishing to do so may participate in PESCO. In particular, they must notify their intention to the Council and to the High Representative of the Union for Foreign Affairs and Security Policy.^{xv} Within three months, the Council adopts a decision by qualified majority voting, after consulting the High Representative, establishing PESCO and indicating the list of participating Member States.^{xvi} Thereafter, States wishing to join PESCO must notify their intention to the Council and the High Representative and the former must adopt a decision by a qualified majority vote of the members representing the participating States, after consulting the High Representative.^{xvii} If a participating State no longer meets the criteria or can no longer fulfil the required commitments (Articles 1 and 2 of Protocol no. 10) its participation may be suspended by a decision of the Council^{xviii} while, in the event that a participating State wishes to withdraw from PESCO, it may notify its decision to the Council, which acknowledges it.^{xix}

Regarding the governance, the relevant provisions are Article 4 and Annex III to the Decision establishing PESCO. In particular, Article 4 of Decision 2017/2315 specifies that the governance of PESCO is structured in two levels: at Council level and within the framework of projects implemented by groups of participating Member States that have decided to carry out such projects. Concerning the first level, the Council is the political and strategic coordinating body for PESCO, responsible for ensuring that the activities conducted are coherent and in line with its objectives. Article 46(6) TEU states that it may adopt decisions and recommendations within the framework of PESCO by a unanimous vote of the representatives of the participating Member States, except when the relevant legal provisions state otherwise.^{xx} The High Representative represents the link between PESCO and CSDP and ensures their coordination. On the other hand, secretariat functions are performed jointly by the European External Action Service (EEAS), including the EUMS, and the EDA. In particular, the EDA supports the High Representative on capacity-building aspects of PESCO, while the EEAS handles operational profiles, including through the



EUMS and other CSDP structures.^{xxi} Participating States that wish to establish projects under PESCO must submit a request that, before the activation of the project, is examined by the High Representative together with the EEAS, including the EUMS, and the EDA. In addition, the list of PESCO projects, together with the list of participating States associated with each of them, must be approved by the Council by unanimous vote of the representatives of the participating Member States.

Governance over individual projects is attributed to the participating Member States of each project. They must unanimously agree on the modalities and scope of their cooperation.^{xxii} However, Annex III to the Decision establishing PESCO provides for the development of a common set of governance rules which could be adapted within individual projects in order to ensure a certain degree of homogeneity and facilitate their establishment. For each project, one or more participating States are identified to act as coordinators. In addition, participating States may decide to allow other States to join the project as active participants or as observers.

Currently, 60 projects have been developed under PESCO covering various areas: training facilities, land formations systems, intelligence, surveillance and recognition services, advanced maritime systems, remotely piloted aircraft systems (Eurodrone), strategic airlift, cyber defence, multiple joint support services and space infrastructure (Twister). The decision on an initial list of 17 projects was adopted on 6 March 2018^{xxiii} and one of them was later closed in 2020.^{xxiv} Subsequently, the Council adopted a second group of projects on 19 November 2018^{xxv} and on 12 November 2019.^{xxvi} Finally, on 16 November 2021 the Council adopted the last group of PESCO projects.^{xxvii}

3. Cooperation between Member States in defence matters

As mentioned above, CSDP is not the exclusive framework for defence cooperation between Member States. In fact, the EU initiatives in this field coexist with various forms of cooperations established between groups of Member States based on *ad hoc* agreements.

In particular, some forms of cooperation aim at creating command and control structures, which can also be used in the execution of CSDP missions and operations. Article 42(3) TEU provides that EU operational interventions may be supplemented by multinational forces established on the basis of cooperation initiatives of intergovernmental



nature between some Member States. When stating that the EU can use civilian and military capabilities made available by the Member States to contribute to the achievement of objectives defined by the Council, this article provides that “Member States which together establish multinational forces may also make them available to the common security and defence policy”. It follows that, while remaining outside the EU legal order, such multinational forces may be made available to carry out EU missions, or to meet the operational needs of other international organisations such as the UN, NATO and OSCE.

There are various agreements between Member States involving the conferral of different types of forces. The most significant in terms of States involved and the most articulated in terms of organisational structure and operational capability is EUROCORPS (3.1). Other multinational forces that are active and bring together a good number of Member States are EUROMARFOR (3.2), EUROGENDFOR (3.3) and EATC.

3.1 EUROCORPS

EUROCORPS is a permanent multinational force governed by an international agreement and headquartered in Strasbourg.^{xxviii} It is a permanent command and control structure for the operational deployment of ground forces. However, it has no permanent forces at its disposal. The deployed capabilities are therefore conferred from time to time by the participating States. To date, there are six Framework Nations (France, Germany, Spain, Belgium, Luxembourg and Poland) and five Associated Nations (Italy, Greece, Romania, Turkey and Austria) participating to EUROCORPS. The former group takes the main decisions with respect to operations in which EUROCORPS is involved and confers the majority of personnel, funds and equipment. The second group holds a limited number of positions within the corps and have no decision-making power with respect to force deployment, although they are consulted on the matter. Given the large pool of personnel and assets EUROCORPS can dispose of, it can be activated for various purposes such as defence, humanitarian missions, *peace-keeping* operations, *crisis management* and *peace-making*. In addition, it can intervene in operations that make reference to the European Union, the UN, NATO or on the basis of a decision taken jointly by the participating States.

It is a force that has its roots in the heart of European geopolitical history, namely in the strategic partnership dynamics that were established between France and Germany after the end of World War II. In particular, already the Elysée Treaty of 1963, which aimed to



institutionalise cooperation between the two States, included defence and foreign policy among the sectors that fell within its scope.^{xxix} Cooperation between France and Germany in this area gradually intensified over time, culminating in 1989 with the creation of the Franco-German brigade based in Müllheim (Germany) and, in 1992, with the creation of the EUROCORPS at the La Rochelle summit. Other Countries participating as Framework Nations joined the EUROCORPS in the following years: Belgium in 1993, Spain in 1994, Luxembourg in 1996 and Poland in 2022 (after having been Associated Nation for 10 years).^{xxx}

As mentioned, while maintaining its autonomy, EUROCORPS is a force that can be put at the disposal of the European Union. In particular, since the European Summit of Cologne (3-4 June 1999), EUROCORPS has developed increasingly close ties with European institutions, especially through the signing of a Letter of Intent with the EU Military Staff in 2016 and the participation to European Union Training Missions (EUTM) in third States. In relation to the latter, it is worth mentioning EUTM Mali^{xxxI} and EUTM RCA,^{xxxII} in which EUROCORPS provided personnel for two semesters from January and September 2021 respectively. Furthermore, with the Treaty of Strasbourg, which entered into force on 26 February 2009, progress was made with respect to the EUROCORPS status through the granting of operational autonomy and additional responsibilities to the General Commander, including in relation to equipment procurement and personnel organisation.^{xxxIII} Finally, since July 2016, EUROCORPS has been appointed with the role of Deployable Force Headquarters for two successive rounds of EU Battlegroups,^{xxxIV} (the second half of 2016 and the first half of 2017). The next round will be in 2025. The overall analysis of these elements shows that the relationship between the EU and EUROCORPS is very close and that the latter may represent a structure on which ambitions for the creation of a permanent European military force can be placed (Moro 2022/1).

As the European Union, NATO can request the intervention of EUROCORPS. In particular, the possibility to make the force available to NATO is laid down in the SACEUR Agreement concluded in 1993.^{xxxV} Furthermore, EUROCORPS is qualified as NATO High Readiness Force and NATO Response Force (NRF). The latter is a multinational force whose distinguishing feature is its ability to be operational in a very short timeframe. In general, the NRF's high reactivity, together with being equipped with technologically advanced tools and components of various types (land, air, maritime and Special Operations



Forces), allows a rapid reaction in different contexts at NATO's request. The NRF is based on the conferral of military contingents by the Allied States following a rotation system. In particular, the EUROCOPRS was involved in 2006 as NRF 7 for six months, in 2010 as NRF 15 for six months and in 2020 as NRF 20 for twelve months. In addition, EUROCORPS has been involved in many NATO missions including NATO Stabilisation Force (SFOR) in Bosnia Herzegovina (1998-2000), NATO Kosovo Force (KFOR) in Kosovo (2000 - head of mission), NATO International Security and Assistance Force (ISAF) in Afghanistan (2004-2005 - head of mission) and NATO International Security and Assistance Force (ISAF) in Afghanistan (2012 - EUROCORPS personnel seconded to different headquarters in Kabul).

In order to fully understand the functioning and organisation of the EUROCORPS, it is necessary to provide some information on its command structure. The Commanding General of Headquarters EUROCORPS COMEC (NATO 3 star) is a Lieutenant General. The post of COMEC is held on a two-year rotating basis. He is responsible to the EUROCORPS Common Committee, the decisive political-military body representing the Framework Nations. As of 2 September 2021, the acting COMEC is Lieutenant General Peter Devogelaere (Belgium). The Deputy Commander (DCOM) and the the Chief of Staff (COS) are Major Generals (NATO 2 stars). The COS is supported by three Deputy Chiefs of Staff (DCOS) for Operations (DCOS OPS), Support (DCOS SPT) and Influence & Assistance (DCOS I&A) who are Brigadier Generals (NATO 1 star) and who are members of the Command Group. The Commanding General is directly supported by a number of bodies: the legal office (LEGAD), the Public Affairs Office (PAO), a medical advisor (MEDAD), air force representation (AREC), navy representation (NAVREP) and, during operations, a political advisor (POLAD). The Command Group, advisors and staff together form the headquarters, whose main role is to plan and conduct operations. In operations, the COMEC commands major subordinate units and coordinates land operations supported by air and naval forces. EUROCORPS headquarters is supported by a multinational brigade (MNCS EDB).

From the description of the main features that characterise this corps it is clear that, at the moment, EUROCORPS cannot be considered a European Initial Entry Force. Although its close cooperation with the institutions, it is not formally integrated into the CSDP. Moreover, despite the involvement in various forms of EU Member States with more



significant military capabilities, their participation is still rather limited. The inclusion of EUROCORPS in the institutional framework of the European Union would certainly be a way forward for the creation of an EU Initial Entry Force. Indeed, this could be achieved by taking advantage of an instrument that already has its own organisational structure and that reflects the multinational nature of the corps (Miglio 2017, Perotto and Miglio 2021, Miglio and Perotto 2021, Moro 2022/1).

3.2 EUROMARFOR

EUROMARFOR is the European Maritime Force (EMF). It is a non-permanent but pre-structured multinational force created in 1995^{xxxvi} for the purpose of carrying out Petersberg missions within the Western European Union,^{xxxvii} with the involvement of four EU countries as founding members, namely France (*Marine Nationale*), Italy (*Marina Militare*), Portugal (*Marinha Portuguesa*) and Spain (*Armada Española*). To date, the members of this force continue to be the four founding States, but it is also open to other Member States. EUROMARFOR objective is to meet the EU security and defence needs in the maritime domain through different types of missions that include crisis management,^{xxxviii} cooperative security^{xxxix} and maritime security.^{xl} This force is at the disposal of the European Union but can also be deployed under a mandate from NATO, the UN or any other international organisation. Furthermore, EUROMARFOR is also intended to strengthen cooperation with other States bordering the Mediterranean such as those belonging to the “5+5 Defence Initiative”.^{xli}

A peculiar feature of EUROMARFOR, which is also its main limit, is that it has a pre-established but not permanent structure. This choice was motivated by the fact that, since it is a structure designed to take part in missions of different types, it would have been difficult to identify *ex ante* a fixed composition and the size of the contingents involved. Therefore, the actual composition is assessed according to the mission and the forces made available by the participating States. The size of this force is therefore variable according to the task assigned: in some cases, the deployment of a small Task Group will be sufficient, while in others, the involvement of a full Task Force with the deployment of various units such as, for instance, aircraft carriers, amphibious means, maritime patrol aircraft, demining units, submarines or other types of naval units will be necessary.



Since its establishment, EUROMARFOR has had to be called upon several times. More specifically, to date the activation procedure has been initiated 8 times for so-called real-world operations (RWO), the last of which concerned participation in NATO's SEA GUARDIAN operation that ended on 16 June 2020.^{XLII} Most of the RWO activations concern the EU operation EUNAVFOR Atalanta aimed at countering piracy in the Indian Ocean, especially along the coast of Somalia.^{XLIII}

The activation procedure is rapid: the force is operational on the assigned mission within five days from the receipt of the activation order. In order to proceed, the unanimous agreement of the four participating Nations is required, although, as already mentioned, the incorporation of units belonging to other States into operations is possible. The organisational structure consists of three hierarchical levels: the High Level Inter-Ministerial Committee (CIMIN), the Political-Military Working Group (POLMIL WG) and the EMF Sub-working Group (EMF SWG). The CIMIN, a body that meets at the request of one of the Member States and which has the role of political-military leadership of EUROMARFOR (for example, it sets the conditions of employment and issues directives to the Force Commander) is composed by Chiefs of Defence, Political Head Directorates of Defence, Foreign Affairs Ministers and representatives of the four Member States. The POLMIL WG, dealing mainly with the implementation of CIMIN decisions and the external relations of the force, is the executive component of EUROMARFOR and consists of representatives of the Chiefs of Defence and Ministers of Foreign Affairs of the participating Countries. For naval issues, the POLMIL WG is supported by the EMF SWG, a body formed by the representatives of the national Naval General Staffs, who can also express their views on specific issues of their competence. Moreover, at the operational level, at the head of the chain of command is the Commander of the European Maritime Force (COMEUROMARFOR) who is appointed every two years among the National Naval Authorities of the four Member States (*Commandant de la Force d'Action Navale* for France, *Comandante in Capo della Squadra Navale* for Italy, *Comandante Naval* for Portugal, *Almirante de la Flota* for Spain). The Commander's headquarters is activated in correspondence with its national one and the staff is integrated by the Permanent Force Cell (EMF PC).^{XLIV} Finally, the Task Force Commander (COMGRUEUROMARFOR), directly subordinate to the Force Commander, is in charge of the operation at a tactical level, a function that is



complementary to the tasks performed by the CIMIN (political-military level) and COMEUMARFOR (operational level).

3.3. EUROGENDFOR

EUROGENDFOR (or EGF), an acronym for European Gendarmerie Force, is a pre-organised multinational police force with military status^{XLV} that can be rapidly deployed by the European Union and other international organisations to perform all police tasks within the framework of crisis management operations. Its Member States are France (*Gendarmerie Nationale Française*), Italy (*Arma dei Carabinieri*), the Netherlands (*Koninklijke Marechaussee*), Portugal (*Guarda Nacional Republicana*), Poland (*Zandarmeria Wojskowa*), Romania (*Jandarmeria Română*) and Spain (*Guardia Civil*). In addition, Turkey (*Jandarma Genel Komutanlığı*) cooperates with observer status and Lithuania (*Viešoji Saugumo Tarnyba*) as a partner. The way in which a Country participates in EUROGENDFOR depends on its status, so it can be qualified as a member, observer or partner State. The criteria for the attribution of each status depend on technical and political requirements. In particular, membership of EUROGENDFOR is conditional on EU Member State status and the availability of a police force with military status.^{XLVI} Candidate States for accession to the European Union - or Member States of the European Union as a first step for joining EUROGENDFOR - that have a police force with military status or a force with military status and some police powers may respectively apply for observer or partner status.^{XLVII}

EUROGENDFOR was formally established by the Treaty of Velsen concluded in 2007 and entered into force in 2012. However, the intention to set up such a corps can be traced back to the initiative of five Member States (France, Italy, the Netherlands, Portugal and Spain) that, in accordance with the conclusions of the European Council of Nice (7-9 December 2000), which called for the European Union to become more operational in the field of security and defence, agreed to undertake this collaboration in order to contribute to the development of the CSDP.^{XLVIII} In particular, already at the informal meeting of the European Union Defence Ministers held in Rome on 8 October 2003, which preceded the formalisation of the Declaration of Intent, the Heads of the French and Italian ministries, who were later joined by the representatives of the other founding States, agreed on the need to set up a European Gendarmerie Force aimed at enhancing the specific capabilities that police forces with military *status*.^{XLIX}



In fact, EUROGENDFOR can be activated for: "(a) performing security and public order missions; (b) monitoring, advising, mentoring and supervising local police in their day-to-day work, including criminal investigation works; (c) conducting public surveillance, traffic regulations, border policing and general intelligence work (d) performing criminal investigation work, including detecting offences, tracing offenders and transferring them to the appropriate judicial authorities; (e) protecting people and property and keeping order in the event of public disturbances; (f) training police officers as regards international standards; (g) training instructors, particularly through cooperation programmes".^L Furthermore, EUROGENDFOR can be made available to the European Union UN, OSCE, NATO and other international organisations or specific coalitions.^{LI}

Article 3 of the Treaty of Velsen establishes the composition of EUROGENDFOR, providing for a permanent Headquarters based in Italy (Caserma "Chinotto" in Vicenza). The latter is to be distinguished from the Force Headquarters, which is activated in the operation area to support the Force Commander in exercising command and control of the mission. The nodal points of the organisational structure of the force are the High Level Interdepartmental Committee (CIMIN) and the EUROGENDFOR Commander. The former is the decision-making body that governs EUROGENDFOR and is made up of representatives of the competent ministries of the States that are part of the Force, who take turns in chairing it on an annual rotation system. The functioning and organisation of CIMIN are governed by a special regulation but, in general, the tasks entrusted to this body are those relating to the political and strategic direction and control of EUROGENDFOR, military coordination, the appointment of the Commander and other senior figures, as well as the adoption of decisions concerning missions and requests for cooperation from third States or international organisations.^{LII} The work of CIMIN is supported at the technical level by a Working Group that meets periodically. The Commander of EUROGENDFOR is the officer appointed by the CIMIN to command the Permanent HQ, who may, where applicable, also hold the position of EGF Force Commander in charge of a mission. The position is held on a two-year rotating basis among the member countries and its main function is to implement CIMIN directives.

3.4. EATC





Other defence-related cooperation agreements between Member States outside the Union's legal framework includes the European Air Transport Command (EATC), a multinational command structure in the field of military air mobility. In particular, the EATC scope of operations covers air transport, air-to-air refuelling and aeromedical evacuation. It is headquartered at the Eindhoven air base in the Netherlands and its fleet consists of more than 170 vehicles stationed at the national air bases of the Member States. The EATC air fleet is diverse, comprising 20 different types of aircraft. This allows a good degree of flexibility and optimisation of resources according to the type of mission.

The idea of creating a command structure that would enable greater cooperation in the field of strategic transport originated in 1999 by a Franco-German initiative. It evolved to involve other Member States with the creation of the European Airlift Coordination Cell (EACC) in February 2002, later transformed into the European Airlift Centre (EAC) in July 2004. The participating States of the EAC were Belgium, Denmark, France, Germany, Italy, the Netherlands, Norway, Spain and the United Kingdom. Finally, this form of cooperation arrived at its current conformation with the founding of the EATC in 2010 by France, Germany, the Netherlands and Belgium, which was joined by Luxembourg in 2012 and then Spain and Italy in 2014.

The EATC can be seen as a model of defence integration in which the decision-making authority of each participating State is retained despite an integrated command structure (Molenaar). In fact, Member States make their air capabilities available by transferring authority over them to the EATC as a unitary command but retaining the possibility of revoking this transfer. In this sense, the EATC cannot be regarded as an independent body that controls resources made available by the States, but rather as a command structure that integrates with the national ones, thus being able to manage missions from the planning and assignment of tasks to their control. Furthermore, States contribute differently with variable funding to the common budget. For example, for 2021, the largest contributors were Germany and France (25% and 23% respectively), followed by Italy (18%), Spain (14%), the Netherlands and Belgium (both 9%) and, finally, Luxembourg (1%).

The decision-making structure of the EATC is headed by the Multinational Air Transport Committee (MATraC) which is composed of the heads of the Member States' air forces, who appoint a chairman among themselves for a two-year term. Given the nature of this command structure, all decisions are taken by consensus. There is also an advisory body



and a Budget and Finance Committee, whose compositions allow for the representation of every State party to the EATC. They meet regularly and have the function of preparing MATraC meetings and supporting the work of the EATC commander.

With regard to the organisational structure, the commander (COM) and chief of staff (COS) are appointed on a three-year rotational basis between France and Germany,^{LIII} while the Deputy Commander (DCOM) rotates on a three-year basis between Italy, Belgium, Spain and the Netherlands.^{LIV} An important point of contact between the EATC and the Member States is the Senior National Representative (SNR), an individual who also acts as a superior to the national staff seconded to the EATC and who, on a rotating basis, occupies the position of head of division, deputy head of division or head of the Public Affairs and Protocol Office. The command group is supported by three divisions: the operational division, the functional division and the policy and support division. The operational division has the task of managing all processes (planning, assignment, control and reporting) related to the execution of EATC air mobility missions, both in peacetime and in crisis. The functional division, on the other hand, has the main objective of improving coordination and interoperability between the EATC participating States and it is structured into three main activity strands: deployment, training and exercises, technical and logistics. Finally, the policy and support division provides advice on the activities of the command group for political-military, legal, administrative or financial profiles.

In light of the sector in which the EATC operates, it is important to mention that all of its participating States are also parties to the multilateral agreements “Movement Coordination Centre Europe” (MCCE)^{LV} and “Air Transport & Air-to-Air Refuelling and other Exchanges of Services” (ATARES). The former consists of 28 Member States and is aimed at rationalising and coordinating military logistical resources relating to air, sea, land transport and in-flight refuelling. Cooperation between the EATC and MCCE is constantly strengthened. In fact, in addition to sharing headquarters at the Eindhoven air base, they signed a Letter of Intent in 2016 with the aim of increasing synergies and mutual collaboration. As for ATARES, it is an exchange system for air transport services to which 28 States are part and which is based on the principle of “Equivalent Flying Hour” (EFH). This agreement facilitates mutual support through the exchange of services and is the “payment instrument” used between the EATC participating States.



4. The relationship between Member States' defence cooperation and the EU legal order

As the examples provided in the previous paragraph show, Member States have often resorted to international agreements between themselves to pursue closer integration in defence matters. This is partly due to the relatively recent establishment and hitherto slow development of CSDP, which has led Member States to seek alternative venues for cooperation, and partly to a preference for instruments offering maximum flexibility in the choice of strategic partners and governance rules.

4.1. Examples from other policy areas

The conclusion of international agreements between Member States outside the EU legal order is not limited to security and defence policy, but common to several other policy areas, more or less closely related to EU competences.

Such agreements can be classified in various ways (De Witte 2001, Heesen, Pistoia, Miglio 2020). First, it is possible to distinguish between bilateral agreements and multilateral agreements, which in turn may be distinguished depending on whether only EU Member States (*inter se* agreements) or also third States are parties (agreements *cum tertiis*) (De Witte 2001).

A different taxonomy emerges if one looks at the nature and intensity of the links existing between those agreements and the EU legal order. Bilateral agreements between Member States are mostly only incidentally connected with EU law, the foremost example being the vast network of double taxation conventions aimed at coordinating tax systems in cross-border situations. Some bilateral agreements, however, are specifically designed to facilitate the implementation of EU measures in the contracting States and may even be explicitly provided for in an EU legislative measure.^{LVI} Other agreements, such as the Treaty of Aachen between France and Germany^{LVII} or the more recent Quirinal Treaty between France and Italy,^{LVIII} are more far-reaching, aiming at strengthening bilateral political relations and introducing concertation mechanisms in order to achieve closer coordination in the framework of EU decision-making procedures as well as in the implementation of EU law.^{LIX}

Multilateral agreements may similarly pursue a variety of purposes. Some of them have strong links with EU policies and may be instrumental in pursuing goals that are not only



shared by the contracting Member States, but are also objectives of European integration. In the latter case, agreements between groups of Member States constitute a tool of differentiated integration, *i.e.* a means for some Member States to pursue closer integration between themselves in a particular area, possibly as an alternative to integration within the EU framework (De Witte 2000, Rossi, Thym). The Schengen Agreements, through which a group of Member States laid the foundations for the gradual abolition of internal border controls, are a paramount example. The 1985 Schengen Agreement^{LX} and the 1990 implementing Convention^{LXI} pursued a goal proper to the process of European integration, namely the facilitation of free movement of persons within the Community. Such objective, however, could not be achieved within the framework of the EEC Treaty because of the British veto. Another example is the Treaty of Prüm, concluded by seven Member States in 2005 in order to strengthen police cooperation in the fight against terrorism, cross-border crime and illegal migration.^{LXII}

More recently, the use of intergovernmental agreements was an essential component of the response to the sovereign debt crisis that affected the European Union in the early 2010s. According to the so-called “Union method” theorised by German Chancellor Merkel in her Bruges speech on 2 November 2010,^{LXIII} the response to the crisis would have required, alongside the measures adopted by EU institutions (Community method), coordinated action by the Member States on the basis of common objectives and strategies.^{LXIV} This approach translated into the conclusion of *inter se* agreements, namely the Treaty establishing the European Stability Mechanism (ESM)^{LXV} and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (the so-called *Fiscal Compact*),^{LXVI} which complemented EU legislative instruments, respectively, in the provision of financial assistance mechanisms to Member States^{LXVII} and in the strengthening of budgetary discipline.^{LXVIII}

4.2. The competence of Member States to conclude *inter se* agreements

The power of the Member States to conclude agreements between themselves, even in areas where the Union is itself competent to act, is a corollary of the structure of the EU system of competences. The delimitation of EU competences is based on the principle of conferral (Article 5(1) TEU). The Union does not have a general competence, but can only act within the limits of the competences the Member States have conferred on it in the



founding Treaties (Article 5(2) TEU). Conversely, competences not conferred on the Union remain with the Member States (Article 4(1) TEU). Only in the areas where the EU enjoys exclusive competence (exhaustively listed in Article 3 TFEU) have the Member States entirely transferred competence to the Union. In those sectors, State action is therefore precluded, unless it is authorised by the EU or intended to implement EU law. In all other areas, the Member States remain competent to act and legislate. This also applies to areas of shared competence, in which, however, the exercise of state competence is limited to the extent that the Union has enacted exhaustive harmonization measures, precluding subsequent state action (pre-emption).^{LXIX}

The same rules apply to joint action by two or more Member States realised through the conclusion of an international agreement. Indeed, there would be no reason to treat the joint exercise of State competences differently from its unilateral exercise by means of the adoption of domestic law measures. This parallelism is confirmed by the case law of the Court of Justice, according to which Member States may conclude *inter se* agreements not only in areas in respect of which there has been no conferral of competence on the Union, but also in all of non-exclusive Union competence.^{LXX}

As far as security and defence policy is concerned, the EU has competence on CSDP. However, despite some disagreement in scholarship as to the exact categorization, CSDP competence is obviously not exclusive. Indeed, CSDP does not replace the security and defence policies of the Member States, as various provisions of primary law abundantly clarify,^{LXXI} and is therefore generally classified as a competence supporting and complementing those of the Member States. Consequently, it is undisputed the Member States retain competence to conclude international agreements between themselves on security and defence matters and can resort to them as an alternative to developing cooperation under CSDP.

4.3 The primacy of Union law over agreements between Member States

Nevertheless, it should be borne in mind that respect for the exclusive competences of the Union is not the only constraint on the Member States' ability to conclude and implement *inter se* agreements. A second, more stringent limitation stems from the primacy of Union law over the law of the Member States. As is well known, the relationship between EU law and domestic law is based on the principle, expressed by the Court of Justice since the



landmark *Costa v. ENEL* judgment (1964)^{LXXII} and recalled in a declaration annexed to the final act of the Intergovernmental Conference that adopted the Lisbon Treaty,^{LXXIII} according to which EU law prevails, in case of conflict, over the domestic law of the Member States.

This conflict rule, first expressed with regard to the relationship between EU law and rules of national law, equally applies to the relationship between provisions of EU law and provisions contained in agreements between Member States.^{LXXIV} It would be inconsistent for Member States to be bound by the primacy of EU law when acting unilaterally, but free to escape its constraints by concluding international agreements between themselves (De Witte 2000).

As a consequence, provisions conflicting with directly applicable rules of EU law - whether contained in national legal acts or in *inter se* agreements – are ineffective. Member State practice concerning the conclusion of *inter se* agreements reflects this understanding. Several agreements, especially where there are close links with the EU legal order, contain special supremacy clauses making their application conditional on compatibility with EU law.^{LXXV} However, even absent an express supremacy clause in the text of the agreement, such a rule must be regarded as implicit because it flows directly from the principle of primacy (Miglio 2020).

4.4 The integration of agreements between Member States within the EU legal order: the precedents of the Schengen and Prüm Agreements

As already mentioned (*supra* section 4.2) Member States are no longer entitled to conclude *inter se* agreements in areas of EU exclusive competences. This is, however, a shifting boundary, because Treaty revisions may affect the extent of EU competences, conferring new areas of competence to the Union or broadening existing ones.^{LXXVI} The application of the principles of *pre-emption* and primacy also means that the exercise of Union competence in areas of shared competence reduces the remaining scope for concluding new agreements and conditions the implementation of existing ones, which must comply with EU law.

This dynamic may result in the obsolescence of international cooperations established between Member States outside the EU framework. In such case, the agreement may be still in force, but display little if any effect because EU measures superseded it. The agreement



establishing the Benelux Economic Union, concluded by Belgium, the Netherlands and Luxembourg in 1958 with the aim of completing economic integration between the three signatory States, is a case in point. In the decades that followed its conclusion, the objective envisaged by the agreement was attained within the broader framework of the European Communities, and the Benelux Union became utterly marginal. The fate of the Fiscal Compact appears similar today. It reproduced commitments that were already enshrined in EU secondary law measures and its underlying philosophy was ultimately superseded by subsequent developments in European economic governance (Contaldi, De Witte 2021).

One possibility for coordinating external agreements between the Member States with the development of EU law is to incorporate those agreements into the EU legal order. Obviously, this option presupposes that the Union is competent to adopt measures similar in content to the agreement in question. Interestingly, EU competence might have already existed at the time the agreement was concluded, since, as noted above, the Member States are free to conclude agreements between themselves in areas of shared competence. Alternatively, EU competence may have expanded as a result of Treaty change.

Historically, several attempts were made to bring agreements between groupings of Member States within the Union legal framework, although they did not always succeed. Probably the best-known case is the incorporation into EU law of the Schengen *acquis*, comprising the 1985 Schengen Agreement, the 1990 Schengen Implementation Convention, and the measures adopted on their basis. On that occasion, the absorption of a body of law developed in an intergovernmental frame was achieved by means of amending EU primary law. The Intergovernmental Conference that adopted the Treaty of Amsterdam negotiated a special protocol to that end.^{LXXVII} The protocol mandated the Council to identify, for each of the provisions or measures forming part of the Schengen *acquis*, a legal basis in the EU Treaty or in the EC Treaty.^{LXXVIII} This technique was chosen in order to allow for a differentiation in the way some Member States (United Kingdom, Ireland and Denmark) would participate in the Schengen *acquis*.^{LXXIX} Only primary law could exempt those Member States from taking part in full in the Schengen *acquis* integrated into EU law.

In other instances, the absorption of intergovernmental agreements between Member States took place or was proposed without amending primary law. For instance, the incorporation of large parts of the Prüm Treaty followed was achieved by means of a Council decision, *i.e.* a measure of secondary law.^{LXXX} Since the agreement related to areas of shared



competence, there was no need to amend provisions of primary law in order to extend the competences of the Union and authorise the institutions to adopt legislation.

More recently, a similar scheme was proposed, albeit unsuccessfully, to bring the two major intergovernmental agreements concluded during the sovereign debt crisis back into the EU legal framework. In December 2017, the Commission adopted the Communication “Further Steps Towards the Completion of Europe’s Economic and Monetary Union: Roadmap”.^{LXXXI} Two legislative proposals accompanied the Communication, seeking to incorporate the ESM Treaty - which was to be transformed into a European Monetary Fund^{LXXXII} - and the *Fiscal Compact*, respectively, into the EU legal framework.^{LXXXIII} In both cases, the attempt was abandoned for political reasons, as a result of the decision by the Member States, particularly France and Germany, to preserve the intergovernmental character of the two agreements.^{LXXXIV}

4.5 The possible integration of existing cooperation between Member States within the framework of PESCO

Having mapped the relationship between EU law and agreements between Member States in general terms and having briefly recalled the instances of incorporation of *inter se* agreements into the EU framework, the analysis will now turn to the assessment of the legal feasibility of integration into CSDP of experiments of closer defence integration established by groups of Member States outside the EU Treaties. We will be looking, in particular, at instruments establishing military command and control structures.

In that respect, it must first be assessed whether the Union is competent to establish similar bodies and structures. The answer is certainly positive, since the EU Treaty defines CFSP in very broad terms, stating that it “covers all areas of foreign policy and all questions relating to the security of the Union, including the progressive framing of a common defence policy which may lead to a common defence”.^{LXXXV} Moreover, there are several measures that, in the exercise of Union competences in the CFSP/CSDP area, have established military bodies with advisory tasks, or even entrusted with strategic planning and oversight of the conduct of missions and operations in third countries - the European Union Military Committee (EUMC),^{LXXXVI} the European Union Military Staff (EUMS)^{LXXXVII} and the Military Planning and Conduct Capability (MPCC)^{LXXXVIII} It follows that command and



control structures such as EUROCORPS, EUROMARFOR or EUROGENDFOR could be absorbed into the EU legal framework without the need for Treaty amendment.

PESCO could provide a framework for integrating such forms of cooperation into CSDP. Due to its highly modular character, PESCO would indeed seem the framework of choice for any CSDP initiatives in which not all Member States participate. The advantage of integrating existing command and control structures within the PESCO framework is that this would make possible to reproduce the “variable geometry” of cooperation established on the basis of *ad hoc* arrangements between a restricted group of States, while at the same time keeping the project open to other Member States that are interested in participating and are ready to make the necessary commitments. As to their possible content, PESCO projects can arguably include the establishment of military command and control structures. According to Article 2(d) of Protocol no. 10, PESCO may include the enactment of “concrete measures to enhance the availability, interoperability, flexibility and deployability” of the forces of the participating Member States. Command and control structures such as those analysed in section 3 would contribute to that task. It is also worth noting that there are already PESCO projects aimed at the creation of planning, command and coordination tools.^{LXXXIX}

Finally, the possibility of associating third States could also be a factor in choosing PESCO as the most suitable frame for absorbing cooperations established outside the EU framework. One distinct feature of PESCO, as provided for in Decision (CFSP) 2020/1639, is the possibility of inviting third countries to join specific projects, albeit only “exceptionally”^{XCI} The Decision makes the participation of a third country conditional on the cumulative presence of eight requirements, aimed at preserving the Union's decision-making and operational autonomy and the effectiveness of PESCO,^{XCI} and on the consent of all States participating in the project concerned.^{XCI} Provided that the substantive and procedural conditions are met, the involvement of third States in the framework of an intergovernmental agreement could be reproduced if the latter were to be integrated into CFSP in the form of a PESCO project. This would allow a third country to retain its status as associate State or observer, as is currently the case with Turkey in the framework of EUROCORPS and EUROGENDFOR respectively. That could be hard to achieve politically, but would not be legally impossible.



Evidently, the reframing of instances of defence cooperation established outside the EU Treaties as PESCO projects would require, in addition to a Council decision approving the new PESCO project, the assent of all the States parties to the satellite treaty, including those that are not EU Member States. Conversely, it would not be strictly necessary, although desirable for reasons of legal certainty, that the agreement be terminated, since EU measures would in any event take precedence over it.

5. Conclusions

Our research has shown that there is room within the CSDP not only for new actions on joint defence capability development, but also for the incorporation of existing cooperation instruments that groups of Member States have put in place outside the EU legal and institutional framework. Indeed, the material scope of CSDP is broadly defined and may include not only the development of equipment and other defence capabilities, but also the establishment of military structures.

Because of the flexibility it offers in terms of modulating participation in specific projects and the possibility of associating third states, PESCO might be an appropriate venue to anchor within the EU legal order instances of cooperation established through satellite treaties.

However, the path is fraught with obstacles, more of a political than of a legal nature. As far as the possible involvement of third states is concerned, for instance, the hypothesis of Turkey's participation in PESCO projects would likely meet with resistance.

In addition, the absorption of “satellite” agreements into the EU framework presupposes that Member States regard the EU as the main forum for defence cooperation apart from NATO, and not merely as one of several alternative venues for it. In the intricate landscape of international cooperation, several factors are likely to influence the choice (De Witte 2014). One factor is the possible synergy between CSDP and other Union policies, especially industrial policy. Only time will tell whether this incentive, which is - stronger for capability development projects than for the establishment of command and control structures, is sufficient to counterbalance the flexibility offered by the coexistence of multiple parallel fora and to .



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^{II} In the Strategic Compass, Russian aggression towards Ukraine is described as 'a direct and long-term threat to European security' (A Strategic Compass for a stronger EU security and defence in the next decade, 7).

^{III} Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States.

^{IV} Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021, establishing the European Defence Fund and repealing Regulation (EU) 2018/1092.

^V Joint Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the Defence Investment Gaps Analysis and Way Forward, JOIN(2022) 24 final. See Moro 2022/2.

^{VI} See Articles 42(6) and 46 TEU, as well as Protocol (no. 10) on Permanent Structured Cooperation established by Article 42 of the Treaty on European Union, annexed to the EU Treaties.

^{VII} Article 46(2) TEU and Annex 1 – Principles of PESCO to Decision 2017/2315.

^{VIII} Article 2 of Protocol (no. 10) on Permanent Structured Cooperation.

^{IX} *Ibid.*, Annex II - List of ambitious and more binding common commitments undertaken by participating Member States in the five areas set out by Article 2 of Protocol no. 10.

^X Regulation (EU) 2021/697 Article 3.

^{XI} *Ibid.*, recital 32 and Article 13(3)(a).

^{XII} The final report is available on the [EDA website](#).

^{XIII} Joint Communication JOIN(2022) 24 final, p. 5.

^{XIV} 2022 CARD Report, p. 6.

^{XV} Article 46(1) TEU.

^{XVI} Article 46(2) TEU.

^{XVII} Article 46(3) TEU.

^{XVIII} Article 46(4) TEU.

^{XIX} Article 46(5) TEU.

^{XX} Article 46(2) and (5) TEU.

^{XXI} Article 7 of Decision (CFSP) 2017/2315.

^{XXII} Annex III to the Decision (CFSP) 2017/2315.

^{XXIII} European Training Certification Centre for European Armies - Italy, Greece; Deployable Military Disaster Relief Capability Package (DMDRCP) - Italy, Greece, Spain, Croatia, Austria; Armoured Infantry Fighting Vehicle / Amphibious Assault Vehicle / Light Armoured Vehicle - Italy, Greece, Slovak Republic; Indirect Fire Support (EuroArtillery) - Slovak Republic, Italy, Hungary; EUFOR Crisis Response Operation Core (EUFOR CROC) - Germany, Greece, Spain, France, Italy, Cyprus, Austria; Maritime (semi-) Autonomous Systems for Mine Countermeasures (MAS MCM) - Belgium, Greece, France, Latvia, Netherlands, Poland, Portugal, Romania; Harbour & Maritime Surveillance and Protection (HARMSPRO) - Italy, Greece, Poland, Portugal; Upgrade of Maritime Surveillance (UMS) - Greece, Bulgaria, Ireland, Spain, France, Croatia, Italy, Cyprus; European Secure Software defined Radio (ESSOR) - France, Belgium, Germany, Spain, Italy, the Netherlands, Poland, Portugal, Finland; Cyber Threats and Incident Response Information Sharing Platform (CTISP) - Greece, Italy, Cyprus, Hungary, Portugal; Cyber Rapid Response Teams and Mutual Assistance in Cyber Security (CRRIT) - Lithuania, Estonia, Croatia, Netherlands, Poland, Romania; Strategic Command and Control (C2) System for CSDP Missions and Operations (EUMILCOM) - Spain, Germany, France, Italy, Luxembourg, Portugal; European Medical Command (EMC) - Germany, Belgium, Czech Republic, Estonia, Spain, France, Italy, Luxembourg, Hungary, Netherlands, Poland, Romania, Slovak Republic, Sweden; Network of logistic Hubs in Europe and support to Operations - Germany, Belgium, Bulgaria, Greece, Spain, France, Croatia, Italy, Cyprus, Lithuania, Hungary, Netherlands, Poland, Slovenia, Slovak Republic; Military Mobility - Netherlands, Belgium, Bulgaria, Czech Republic, Germany, Estonia, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Austria, Poland, Portugal, Romania, Slovenia, Slovak Republic, Finland, Sweden; Energy Operational Function (EOF) - France, Belgium, Spain, Italy, Slovenia.

^{XXIV} European Union Training Mission Competence Centre (EU TMCC) - Germany, Spain, France, Ireland,



Italy, Netherlands, Sweden, Austria, Czech Republic, Luxembourg, Romania.

^{xxv} Helicopter Hot and High Training (H3 Training) - Greece, Italy, Romania; Joint EU Intelligence School (JEIS) - Greece, Cyprus; EU Test and Evaluation Centres - France, Sweden, Slovak Republic; Integrated Unmanned Ground System (iUGS) - Estonia, Belgium, Czech Republic, Germany, Spain, France, Latvia, Hungary, Netherlands, Poland, Finland; EU Beyond Line Of Sight (BLOS) Land Battlefield Missile Systems - France, Belgium, Cyprus; Deployable Modular Underwater Intervention Capability Package (DIVEPACK) - Bulgaria, Greece, France, Romania; European Medium Altitude Long Endurance Remotely Piloted Aircraft Systems - MALE RPAS (Eurodrone) - Germany, Czech Republic, Spain, France, Italy; European Attack Helicopters TIGER Mark III - France, Germany, Spain; Counter Unmanned Aerial System (C-UAS) - Italy, Czech Republic; European High Atmosphere Airship Platform (EHAAP) - Persistent Intelligence, Surveillance and Reconnaissance (ISR) Capability - Italy, France; One Deployable Special Operations Forces (SOF) Tactical Command and Control (C2) Command Post (CP) for Small Joint Operations (SJO) - (SOCC) for SJO - Greece, Cyprus; Electronic Warfare Capability and Interoperability Programme for Future Joint Intelligence, Surveillance and Reconnaissance (JISR) - Czech Republic, Germany; Chemical, Biological, Radiological and Nuclear (CBRN) Surveillance as a Service (CBRN SaaS) - Austria, France, Croatia, Hungary, Slovenia; Co-basing - France, Belgium, Czech Republic, Germany, Spain, Netherlands; Geospatial, Meteorological and Oceanographic (GeoMETOC) Support Coordination Element (GMSCE) - Germany, Belgium, Greece, France, Luxembourg, Austria, Portugal, Romania; EU Radio Navigation Solution (EURAS) - France, Belgium, Germany, Spain, Italy, Poland; European Military Space Surveillance Awareness Network (EU-SSA-N) - Italy, Germany, France, Netherlands.

^{xxvi} Integrated European Joint Training and Simulation Centre (EUROSIM) - Hungary, Germany, France, Poland, Slovenia; EU Cyber Academia and Innovation Hub (EU CAIH) - Portugal, Spain; Special Operations Forces Medical Training Centre (SMTC) - Poland, Hungary; CBRN Defence Training Range (CBRNDTR) - Romania, France, Italy; European Union Network of Diving Centres (EUNDC) - Romania, Bulgaria, France; Maritime Unmanned Anti-Submarine System (MUSAS) - Portugal, Spain, France, Sweden; European Patrol Corvette (EPC) - Italy, Greece, Spain, France; Airborne Electronic Attack (AEA) - Spain, France, Sweden; Cyber and Information Domain

Coordination Centre (CIDCC) - Germany, France, Hungary, Netherlands; Timely Warning and Interception with Space-based Theater surveillance (TWISTER) - France, Germany, Spain, Italy, Netherlands, Finland; Materials and components for technological EU competitiveness (MAC-EU) - France, Germany, Spain, Portugal, Romania; EU Collaborative Warfare Capabilities (ECoWAR) - France, Belgium, Spain, Hungary, Poland, Romania, Sweden; European Global RPAS Insertion Architecture System (GLORIA) - Italy, France, Romania.

^{xxvii} Main Battle Tank Simulation and Testing Center (MBT-SIMTEC) - Greece, France, Cyprus; EU Military Partnership (EU MilPart) - France, Estonia, Italy, Austria; Essential Elements of European Escort (4E) - Spain, Italy, Portugal; Medium size Semi-Autonomous Surface Vehicle (M-SASV) - Estonia, France, Latvia, Romania; Strategic Air Transport for Outsized Cargo (SATOC) - Germany, Czech Republic, France, Netherlands, Slovenia; Next Generation Small RPAS (NGSR) - Spain, Germany, Portugal, Romania, Slovenia; Rotorcraft Docking Station for Drones - Italy, France; Small Scalable Weapons (SSW) - Italy, France; Air Power - France, Greece, Croatia; Future Medium-size Tactical Cargo (FMTC) - France, Germany, Sweden; Cyber Ranges Federations (CRF) - Estonia, Bulgaria, Finland, France, Italy, Latvia, Luxembourg; Automated Modelling, Identification and Damage Assessment of Urban Terrain (AMIDA-UT) - Portugal, Spain, France; Common Hub for Governmental Imagery (CoHGI) - Germany, Spain, France, Lithuania, Luxembourg, Netherlands, Austria, Romania; Defence of Space Assets (DoSA) - France, Germany, Italy, Austria, Poland, Portugal, Romania.

^{xxviii} Treaty relating to EUROCORPS and the status of its headquarters between the French Republic, the Federal Republic of Germany, the Kingdom of Belgium, the Kingdom of Spain and the Grand Duchy of Luxembourg, Brussels, 22 November 2004. Poland became Framework on 23 January 2022 with the signature of the 'Note of Accession'.

^{xxix} Elysée Treaty (also called 'Friendship Pact' or 'Franco-German Treaty'), signed by France and Germany on 22 February 1963 (see Finizio). As pointed out by Finizio, France's interest in engaging in such cooperation with Germany stems from the failure of the European Defence Community (EDC) project in 1954 and the subsequent start of rearmament and West Germany's entry into NATO, as well as the growing tension between France and the United States caused by the former's fear of the latter's political and technological dominance together with the United Kingdom.

^{xxx} On the establishment of EUROCORPS, see 'Eurocorps', available on the website of the Centre Virtuel de la Connaissance sur l'Europe (CVCE) (www.cvce.eu).



XXXI The personnel consists of the Mission Force Commander and about 70 soldiers who will be stationed at headquarters, an advisory group or the Training Task Force. The composition is multinational, but Spain took command for the first rotation and Germany for the second. Previous participation in the same mission: second half of 2015 (50 soldiers including the mission commander).

XXXII EUROCORPS provides personnel for two semesters starting in September 2021, i.e. for about one year (50 soldiers). The composition is multinational, but France took the lead for the first rotation and Belgium for the second. Previous participation in the same mission: second half of 2016 (60 soldiers including the mission commander); first and second half of 2017 (60 soldiers including the mission commander).

XXXIII Treaty signed by the Framework Nations on 22 November 2004 and entered into force after ratifications in 2009. See the European Parliament Resolution of 10 March 2010 on the implementation of the European Security Strategy and the Common Security and Defence Policy, para. 73, where the Parliament welcomes the signature on 26 February 2009 of the Treaty of Strasbourg granting EUROCORPS legal personality and calls on the EU to make use of this multinational force if necessary.

XXXIV Concerning the functioning of EU Battlegroups, see Perotto.

XXXV Cooperation agreement between EUROCORPS and NATO (Brussels, 21 January 1993).

XXXVI Treaty between France, Italy, Portugal and Spain, Lisbon, 15 May 1995.

XXXVII Western European Union (WEU) Ministerial Council, Petersberg Declaration, June 1992. EUROMARFOR (and EUROFOR) was declared a 'Force answerable to the Western European Union' (FAWEU).

XXXVIII These are missions aimed at conflict prevention, crisis response and post-conflict stabilisation, as well as peace support operations, such as *peace-keeping*, *peace-making*, *peace-building* and *peace-enforcement* missions.

XXXIX Operations that help prevent conflicts and develop regional security and stability through dialogue, confidence building and increased transparency.

XL Operations to help maintain a safe and secure maritime environment such as maritime interdiction missions, protection of freedom of navigation, protection of critical energy infrastructure and maritime communication lines.

XLI It is an informal forum for cooperation between Western Mediterranean countries. Its members are France, Italy, Portugal, Spain, Malta, Algeria, Libya, Morocco, Mauritania and Tunisia. For an in-depth discussion, see Re.

XLII Reference is made to 'real-world operations' to distinguish them from exercises. Also in this case, EUROMARFOR activation procedure must be initiated. RWOs for which the EUROMARFOR activation procedure has been initiated are the following: Operation "COHERENT BEHAVIOUR" (Eastern Mediterranean) in support of Operation "ACTIVE ENDEAVOUR" (1 October 2002-30 November 2002); Operation "RESOLUTE BEHAVIOUR" (Indian Ocean) in the context of the International Coalition to Counter Terrorism of Operation "ENDURING FREEDOM" (14 January 2003-12 December 2005); Operation "IMPARTIAL BEHAVIOUR" (Eastern Mediterranean - Coast of Lebanon) under UN in support of the UNIFIL operation (29 February 2008-28 February 2009); From the fourth to the seventh activation of EUROMARFOR are RWO concerning the participation in the counter-piracy operation "ATALANTA" in the Indian Ocean (6 December 2011-23 March 2016); Royal operation under the OPCON of COM MARCOM in support of the NATO operation "SEA GUARDIAN" (27 May 2020-16 June 2020).

XLIII European Union Naval Force Somalia (EU NAVFOR) - Operation ATALANTA and its sister missions EUCAP Somalia and EUTM Somalia.

XLIV The Permanent Cell is composed of a Director (with the rank of Captain), of the same nationality as the CEMF, and four Senior Officers as National Representatives for France, Italy, Portugal and Spain.

XLV 'Police force with military status' means: 'a force with an all encompassing jurisdiction in its homeland and towards its community, tasked with judicial and administrative policing and crime prevention, and whose members possess policing and basic military skills' ('The status of EGF MEMBER, EGF OBSERVER and EGF PARTNER Amsterdam', 15 November 2007, available at eurogendfor.org).

XLVI Article 42 of the Treaty between the Kingdom of Spain, the French Republic, the Italian Republic, the Kingdom of the Netherlands and the Portuguese Republic on the establishment of the European Gendarmerie Force, EUROGENDFOR, signed in Velsen on 18 October 2007 and entered into force on 1 June 2012 ('Treaty of Velsen').

XLVII On the prerogatives of each State according to its status, see 'The status of EGF MEMBER, EGF OBSERVER and EGF PARTNER Amsterdam', 15 November 2007, available at eurogendfor.org.

XLVIII Declaration of Intent between the Defence Ministers of France, Italy, the Netherlands, Portugal and Spain concerning the creation of a European Gendarmerie Force, signed in Noordwijk on 17 September 2004.

XLIX Camera dei deputati, XVI Legislature, Doc. no. 3083, 'Disegno di legge' presented by the Minister of



Foreign Affairs (FRATTINI) and the Minister of Defence (LA RUSSA) in agreement with the Minister of the Interior (MARONI) with the Minister of Justice (ALFANO) with the Minister of Economy and Finance (TREMONTI) and with the Minister of Labour, Health and Social Policies (SACCONI), Ratifica ed esecuzione della Dichiarazione di intenti tra i Ministri della difesa di Francia, Italia, Olanda, Portogallo e Spagna relativa alla creazione di una Forza di gendarmeria europea, con Allegati, firmata a Noordwijk il 17 settembre 2004, e del Trattato tra il Regno di Spagna, la Repubblica francese, la Repubblica italiana, il Regno dei Paesi Bassi e la Repubblica portoghese per l'istituzione della Forza di gendarmeria europea, EUROGENDFOR, firmato a Velsen il 18 ottobre 2007^L, presented on 28 December 2009.

^L Article 4(3) of the Treaty of Velsen.

^{LI} Article 4(3) of the Treaty of Velsen.

^{LII} Article 4(3) of the Treaty of Velsen.

^{LIII} Since 24 September 2020, the commander has been German Major General (OF-7) Andreas Schick. The chief of staff is French Brigadier General (OF-6) Stéphane Gourg.

^{LIV} On 9 January 2023, Belgian Brigadier General (OF-6) Patrick Mollet was appointed DCOM.

^{LV} www.mcce-mil.org.

^{LVI} See, for example, Articles 84 and 86 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems; Article 19 of Regulation (EU) No 1052/2013 of 22 October 2013 establishing the European Border Surveillance System (Eurosur).

^{LVII} *Traité entre la République française et la République fédérale d'Allemagne sur la coopération et l'intégration franco-allemande*, 22 January 2019, www.diplomatie.gouv.fr.

^{LVIII} *Trattato tra la Repubblica Italiana e la Repubblica Francese per una cooperazione bilaterale rafforzata*, 26 November 2021, www.governo.it.

^{LIX} On the relations between these agreements and the EU legal order and their significance for European integration, see Porchia.

^{LX} Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

^{LXI} Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

^{LXII} Treaty concluded on 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration.

^{LXIII} Rede von Bundeskanzlerin Merkel anlässlich der Eröffnung des 61. akademischen Jahres des Europakollegs Brügge, www2.coleurope.eu.

^{LXIV} 'Wir müssen das Lagerdenken angesichts dieser neu verteilten Zuständigkeit überwinden, wir müssen uns gemeinsame Ziele setzen und gemeinsame Strategien festlegen. Vielleicht können wir das ja dann gemeinsam so beschreiben: Abgestimmtes solidarisches Handeln - jeder in seiner Zuständigkeit, alle für das gleiche Ziel. Das ist für mich die neue 'Unionsmethode'.

^{LXV} Treaty establishing the European Stability Mechanism between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland, www.esm.europa.eu.

^{LXVI} Treaty on Stability, Coordination and Governance in the Economic and Monetary Union between the Kingdom of Belgium, the Republic of Bulgaria, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden, eur-lex.europa.eu.

^{LXVII} One of the first measures in response to the financial and sovereign debt crisis was the adoption of Regulation (EU) 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism. The Regulation, which had a limited temporal scope and mobilised limited resources, was based on Article 122(1) TFEU.

^{LXVIII} The so-called 'Six-Pack' comprised five regulations and a directive: Council Regulation (EU) 1177/2011



of 8 November 2011 amending Regulation (EC) 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure; Regulation (EU) 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area; Regulation (EU) 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area; Regulation (EU) 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies; Regulation (EU) 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances; Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States. The 'Six-Pack' was supplemented by two further Regulations (the 'Two-Pack') in 2013: Regulation (EU) 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability; Regulation (EU) 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficits in the Member States in the euro area.

LXIX On the subject, especially on the difficulties involved in defining the operational scope of *pre-emption*, see Arena.

LXX Court of Justice, Judgment of 30 June 1993, Joined Cases C-181/91 and C-248/91, *Parliament v. Council and Commission*, ECLI:EU:C:1993:271, para. 16; Judgment of 2 March 1994, Case C-316/91, *Parliament v. Council*, ECLI:EU:C:1994:76, para. 26; Judgment of 27 November 2012, Case C-370/12, *Pringle*, ECLI:EU:C:2012:756, para. 68.

LXXI Article 29 TEU, which refers to the 'national policies' of the Member States, and Article 24(2) TEU, states that CFSP is 'based [...] on the identification of questions of general interest and on the achievement of an ever-increasing degree of convergence of the actions of the Member States'. With reference to defence policy proper, Article 42(2) TEU provides that common defence policy should be framed progressively and specifies that CSDP 'shall not prejudice the specific character of the security and defence policy of certain Member States'.

LXXII Court of Justice, Judgment of 15 July 1964, Case 6/64, *Flaminio Costa v. E.N.E.L.*, ECLI:EU:C:1964:66.

LXXIII Declaration no. 17 on primacy, in which "[t]he Conference recalls that, according to the settled case law of the Court of Justice of the European Union, the Treaties and the law adopted by the European Union on the basis of the Treaties prevail over the law of the Member States under the conditions laid down in the aforementioned case law.

LXXIV Court of Justice, Judgment of 28 January 1986, Case 270/83, *Commission v. France*, ECLI:EU:C:1986:37, para. 26; Judgment of 27 September 1988, Case 235/87, *Matteucci*, ECLI:EU:C:1988:460, para. 14; Judgment of 10 November 1992, Case C-3/91, *Exportur v. LOR and Confiserie du Tech*, ECLI:EU:C:1992:420, para. 8; Judgment 15 January 2002, Case C-55/00, *Gottardo*, ECLI:EU:C:2002:16; Judgment 6 March 2018, Case C-184/16, *Achmea*, ECLI:EU:C:2018:158, paras 56-58.

LXXV Article 134 of the Convention Implementing the Schengen Agreement; Article 47(1) of the Prüm Treaty; Article 13(3) of the ESM Treaty; Article 2(2) of the Fiscal Compact; Article 2 of the Agreement on the Transfer and Pooling of Contributions to the Single Resolution Fund, concluded within the framework of the Banking Union; Article 20 of the Agreement on a Unified Patent Court.

LXXVI For instance, monetary policy became an exclusive (Community, then) Union competence after the Maastricht Treaty, albeit only in relation to the Member States whose currency is the euro. The scope of common commercial policy, long an area of EU exclusive competence, was considerably broadened by the Lisbon Treaty.

LXXVII Protocol integrating the Schengen acquis into the framework of the European Union. It was replaced by Protocol (no. 19) on the Schengen acquis integrated into the framework of the European Union.

LXXVIII Article 2(1), second subparagraph, of the Protocol. The Council implemented this provision by adopting two decisions: Council Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis; Council Decision 1999/436/EC of 20 May 1999 determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen acquis.

LXXIX The United Kingdom and Ireland were granted the right to selectively participate in portions of the *acquis* and in the measures constituting its development. This arrangement, amended by the Lisbon Treaty and now contained in Articles 4 and 5 of Protocol no. 19, continues to apply to Ireland alone as a result of the United



Kingdom's withdrawal. Denmark, which unlike the United Kingdom and Ireland was a party to the Schengen Agreements, continues to be bound by the *acquis* and the measures developing it as a matter of international law, as provided for in the Protocol (no. 22) on the position of Denmark.

LXXX Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

LXXXI COM(2017) 821 final.

LXXXII Proposal for a Council Regulation on the establishment of the European Monetary Fund, COM(2017) 827 final.

LXXXIII Proposal for a Council Directive laying down provisions for strengthening fiscal responsibility and medium-term budgetary guidance in the Member States, COM(2017) 824 final.

LXXXIV See the joint Franco-German Meseberg Declaration of 18 June 2018, www.elysee.fr.

LXXXV Article 24(1) TEU. Article 42(2) TEU recalls this definition, stating that CSDP includes 'the progressive framing of a common defence policy of the Union'.

LXXXVI Council Decision 2001/79/CFSP of 22 January 2001 setting up the Military Committee of the European Union.

LXXXVII Council Decision 2001/80/CFSP of 22 January 2001 on the establishment of the Military Staff of the European Union.

LXXXVIII Council Decision (EU) 2017/971 of 8 June 2017 laying down planning and conduct arrangements regarding EU non-executive military missions in the field of CSDP and amending Decision 2010/96/CFSP on a European Union military mission to contribute to the training of Somali security forces, Decision 2013/34/CFSP on a European Union military mission to contribute to the training of the Malian armed forces (EUTM Mali) and Decision (CFSP) 2016/610 on a European Union military training mission under CSDP in the Central African Republic (EUTM CAR). To date, the Military Planning and Conduct Capability (MPCC) is only responsible for non-executive military missions, i.e. those missions whose execution does not involve substitution activities for the territorial state and the possible use of force. The Strategic Compass foreshadows an expansion of the MPCC's competences, which should be placed in a position to also plan, coordinate and command executive operations and actual exercises and 'should be considered the command and control structure of preference'.

LXXXIX The European Medical Command (EMC), the Geo-meteorological and Oceanographic (GeoMETOC) Support Coordination Element (GMSCE) and the Network of Logistic Hubs in Europe and Support to Operations (NetLogHubs) projects.

^{XC} Council Decision (CFSP) 2020/1639 of 5 November 2020 laying down general conditions under which third States may exceptionally be invited to participate in individual PESCO projects.

^{XCI} Article 3 of Decision 2020/1639: 'A third State may exceptionally be invited to participate in a PESCO project, and may continue to participate, if it meets all the following general conditions:

(a) it shares the values on which the Union is founded, as laid down in Article 2 TEU, the principles set out in Article 21(1) TEU, as well as the objectives of the CFSP as set out in Article 21(2)(a), (b), (c) and (h) TEU. It must not run counter to the security and defence interests of the Union and its Member States, including respect for the principle of good-neighbourly relations with the Member States, and it must maintain a political dialogue with the Union, which should also cover security and defence aspects when participating in a PESCO project;

(b) provide substantial added value to the project and contribute to the achievement of its objectives. In line with the priority of a European collaborative approach, and in accordance with Article 4(5) of Decision (CFSP) 2018/909, the means it brings to the project shall be complementary to those offered by the Member States participating in PESCO, for example by providing technical expertise or additional capabilities, including operational or financial support, so as to contribute to the successful outcome of the project and, consequently, to the progress of PESCO;

(c) its participation contributes to strengthening the Common Security and Defence Policy (CSDP) and the Union's level of ambition as defined in the Council conclusions of 14 November 2016, including in support of CSDP missions and operations;

(d) its participation must not lead to dependence on that third State, or to restrictions imposed by it on any Member State of the Union, with regard to arms procurement, research and capability development, or the use and export of arms or capabilities and technologies, which hamper progress or prevent the joint or several use, export or operational deployment of the capability developed under the PESCO project. It has to develop an agreement at an appropriate level on the conditions for further sharing, outside PESCO and on a case-by-case basis, of capabilities and technologies to be developed in the framework of this project, in order to avoid these capabilities being used against the Union and its Member States;

(e) its participation shall be consistent with the more binding PESCO commitments set out in the Annex to



Council Decision (CFSP) 2017/2315, in particular the commitments that the PESCO project in question contributes to achieve, depending on the specificities of the project. For capability-oriented projects, its participation should also contribute to the realisation of the priorities stemming from the Capability Development Plan and the Coordinated Annual Defence Review (CARD), as well as having a positive impact on the European Defence Technological and Industrial Base (EDTIB) and making the European defence industry more competitive. In particular, the participation of a third state in a project should primarily contribute to the readiness, deployment and interoperability of forces;

(f) has an agreement in force with the Union on the security of information;

(g) concluded, where applicable, in accordance with Council Decision (CFSP) 2015/1835, an administrative arrangement which has taken effect with the European Defence Agency (EDA), where the project is implemented with the support of the EDA, taking into account the relevant EDA position paper (7); and

(h) has made a commitment, in its request for participation referred to in Article 2(1) of this Decision, to ensure compliance with the provisions of Decisions (CFSP) 2017/2315 and (CFSP) 2018/909'.

^{XCVII} The opening of a specific project to the participation of a third State presupposes that the members of the project unanimously agree 'a) that they wish to invite the requesting third State to participate in the project, b) on the scope, form and, where appropriate, the relevant stages of that third State's participation, and c) that the third State fulfils the general conditions set out in Article 3' (Article 2(3) of Decision 2020/1639).

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