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The Common Security and Defence Policy today
Assessment through historical, legal and empirical analysis

LLM Paper
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Abstract

The introduction of military and defence policies in the European Union framework gives rise to several interrogations. How and why did it happen? What is the Common Security and Defence Policy? What does it do? Does it contribute to address Union current challenges?

To understand what the CSDP should, can and does achieve, this paper proposes to recall the development of the European defence project, to analyse the current CSDP legal and institutional features, as well as its practical functioning.
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## Abbreviations and acronyms

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<th>Full Form</th>
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<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>Benelux</td>
<td>Belgium, Netherlands, Luxembourg</td>
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<td>CAR</td>
<td>Central African Republic</td>
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<td>CMO</td>
<td>Crisis Management Operation(s)</td>
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<td>CFSFP</td>
<td>Common Foreign and Security Policy</td>
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<td>CivCom</td>
<td>Committee for Civilian Aspects of Crisis Management</td>
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<td>CJEU</td>
<td>Court of Justice of the European Union</td>
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<td>CJTF</td>
<td>Combat Joint Task Force</td>
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<td>COREPER</td>
<td>Committee of Permanent Representatives</td>
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<td>CSCE</td>
<td>Conference on Security and Cooperation in Europe</td>
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<td>CSDP</td>
<td>Common Security and Defence Policy</td>
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<td>EDA</td>
<td>European Defence Agency</td>
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<td>EDC</td>
<td>European Defence Community</td>
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<td>EEAS</td>
<td>European External Action Service</td>
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<td>EDC</td>
<td>European Defence Community</td>
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<td>EC</td>
<td>European Community/communities</td>
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<td>ECSC</td>
<td>European Coal and Steel Community</td>
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<td>EEC</td>
<td>European Economic Community</td>
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<td>EP</td>
<td>European Parliament</td>
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<td>EPC</td>
<td>European Political Cooperation</td>
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<td>ESDI</td>
<td>European Security and Defence Identity</td>
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<td>ESDP</td>
<td>European Security and Defence Policy</td>
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<td>ESS</td>
<td>European Security Strategy</td>
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<td>EU</td>
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<td>EUMC</td>
<td>European Union Military Committee</td>
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<td>EUMS</td>
<td>European Union Military Staff</td>
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<td>FAC</td>
<td>Foreign Affairs Council</td>
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<td>FRG</td>
<td>Federal Republic of Germany</td>
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<td>HR/SG</td>
<td>High Representative/Secretary General</td>
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<td>HR/VP</td>
<td>High Representative/Vice-President</td>
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<td>NATO</td>
<td>North Atlantic Treaty Organisation</td>
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<td>OHQ</td>
<td>Operation Headquarters</td>
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<td>OPCEN</td>
<td>Operation Centre</td>
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<td>PESCO</td>
<td>Permanent Structured Cooperation</td>
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<td>PSC</td>
<td>Political and Security Committee</td>
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<td>SatCen</td>
<td>European Union Satellite Centre</td>
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<td>SHAPE</td>
<td>Supreme Headquarters Allied Powers Europe</td>
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<td>TEC</td>
<td>Treaty establishing the European Community</td>
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<td>TEU</td>
<td>Treaty on European Union</td>
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<td>TFUE</td>
<td>Treaty on the Functioning of the European Union</td>
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<td>UK</td>
<td>United Kingdom</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNSC</td>
<td>United Nations Security Council</td>
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<td>US</td>
<td>United States of America</td>
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<td>USSR</td>
<td>Union of Soviet Socialist Republics</td>
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<td>WEU</td>
<td>Western European Union</td>
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<td>WU</td>
<td>Western Union</td>
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Introduction

Recently, the question of European autonomous defence capacities has regained ground in European and transatlantic debates, whether in reaction to new security threats in the Union environment (Russia’s revisionism, instability in Middle East and Africa, terrorism, US President’s threats) or as a way to revive European integration after the United Kingdom’s decision to leave the European Union (EU) and as response to the resurgent nationalism in Europe (White Paper on the Future of Europe\(^1\)). Of course, the idea of Member States to merge defence policies and military assets is far from new and since the earliest steps of European integration, defence has been subject to intense debate.

However, the use in the news, literature and debates of expressions such as ‘EU army\(^{234}\), ‘European alliance’\(^5\), ‘EU autonomous capacity’\(^6\), ‘EU independence from NATO’\(^7\), ‘European security’\(^8\), ‘European defence’\(^9\), ‘defence of Europe’\(^10\), ‘EU military union’\(^11\), ‘EU military integration’\(^12\) and even ‘EU hard power’\(^13\) reveals a deep confusion and disagreement about what the European Union is or is not, and should or should not be.

Today, defence-related EU projects and policies are addressed within the specific framework of the Common Security and Defence Policy (CSDP) and ruled by title V, chapter 2, section 2 of the Treaty on European Union\(^14\). What does it entail? How did we get here? What should

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the EU do, what can it do and what does it do within the CSDP framework? These are the questions this paper will address in order to have a comprehensive understanding of the CSDP and to distinguish what is factual or potential from what is myth. This paper should also enable to assess to which extent is the actual CSDP consistent with what it should and could achieve. To that end, this paper will proceed in three steps.

The first part will focus on the origins and evolution of the CSDP to understand what was the initial purpose of a European military project and how it was developed, adapted and progressively introduced within the European Union to take the shape it has today. This review should answer the questions of ‘how we did get here’ and ‘what it should do’.

The second part will consist of an in-depth analysis of the relevant provisions in the Treaty on European Union. By scrutinising what the Member States have committed to do and achieve, it will be possible to answer the question of ‘what the CSDP can do’ and to correct some wrong beliefs about the creation of a European army or the attempt to replace the North Atlantic Alliance.

Finally, the paper will focus on the CSDP concrete manifestations, namely the civilian and military missions and operations of the European Union. Through one in particular – the European Union military operation in the Central African Republic (EUFOR RCA) – it will be possible to observe closer how the EU materially reacts to crises, how its bodies interact as well as how the CSDP can serve the Union external action as a whole. This should answer the question of ‘what the EU concretely does through the CSDP’.

The three-step approach of this paper will seek to understand what the CSDP was created for, what can be legitimately expected from it and what it achieves in practice. Addressed in this order, these questions should enable to assess whether the CSDP in its actual shape matches its objectives and fulfils its role, and if not, why.
Part I. Origins and evolution of the CSDP: From the Western Union to the Treaty of Lisbon in four phases

Just like the whole EU system, the CSDP is a *sui generis*, tailor-made construction and the result of an incremental process over almost sixty years of compromises, achievements or reversals. It is thus important to understand its evolution from the earliest stages of the European integration until today.

1. The post-war decade, the roots of European defence

The immediate post-war decade was unquestionably the richest in terms European defence achievements. Indeed, the fear of a resurgence of German militarism, quickly overshadowed by the threat of Soviet expansionism constituted significant pressure for the construction of an effective collective defence system.

In 1947, France and the United Kingdom signed in Dunkirk a Treaty of Alliance and Mutual Assistance. The particularity of this pact is that it could exclusively be triggered against Germany, either to forestall or in response to aggression.

In 1948, the two partners decided to extend their alliance to new countries (Belgium, the Netherlands and Luxembourg), new fields of cooperation (economic, social and cultural ones) and new threats (not only against potential aggression from Germany). This Treaty on Economic, Social and Cultural Collaboration and Collective Self-Defence – most commonly referred to as the Brussels Treaty – and its only organ, the Consultative Council, constituted the Western Union. The particularities of this treaty are its inclusiveness and its expiry period of fifty years reflecting the sovereignty reflex of the contracting parties not to permanently give up a regalian prerogative.

Although the Western Union can be considered as a significant step of European political integration, in practice, however, its functions were carried out by other institutions and the organisation lapsed for the rest of the century: human standards have been safeguarded through the Council of Europe, economic development has been boosted by the Organisation for European Economic Cooperation (and the European Recovery Programme) – known today as the OECD – while the security of western Europe has been mostly ensured by the transatlantic alliance.

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17 Idem, art. IX.
18 Idem, art. X.
Indeed, it was obvious that even united, the western allies could not cope with the military power of the USSR. However, with the participation of the United States within a transatlantic framework, the Western block would gain credibility. By the Vandenberg Resolution\(^\text{19}\) of June 1948, the US Senate consented to the accession of the United States to a regional mutual defence agreement. In July 1948, the negotiations began between the United States, the members of the Brussels Treaty and other voluntary northern Atlantic states. In April 1949, twelve States signed the **North Atlantic Treaty** (NAT)\(^\text{20}\), namely the five members of the Western Union, the United States, Canada, Norway, Denmark, Iceland, Portugal and Italy.

Although the inclusion of the Federal Republic of Germany (FRG) was supported by the United States and FRG itself, European chancelleries were still reluctant to consider German rearmament. Under US pressure, the French government, led by René Pleven, took the initiative of a conciliatory option: just like the common monitoring and management of the coal and steel industries – two war-related resources – within the higher supranational framework of the ECSC, the rearmament of Germany might take place "under a single political and military European authority"\(^\text{21}\). The so-called 'Pleven Plan' was very ambitious in nature: every Member State would place its troops in Europe under a unified European command. In substance, though, some safeguards would temper the federal character of this European army. First, the army would ultimately be under the authority of an intergovernmental body, the Council, composed of ministers of foreign affairs. Second, the fact that troops deployed in overseas territories would remain under national responsibility was providing some leeway to colonial powers, such as France. This Pleven Plan was materialised by the treaty establishing the **European Defence Community** (EDC)\(^\text{22}\), signed in 1952, which took into account this compromise between on the one hand the impossibility for Germany to control its troops on its own and on the other hand a remaining governmental veto.

It is interesting to sketch here the main features of this Community. First, the EDC was a duplication of the ECSC regarding its institutions (Commissariat, Council, Assembly and Court) and its membership (France, FRG, Italy, Belgium, the Netherlands and Luxembourg). It was "supranational in character, consisting of common institutions, common armed forces and a common budget"\(^\text{23}\). The objectives of the Community were to be exclusively defensive\(^\text{24}\); the efficient integration of national contingents in European Defence Forces under a single unified command (wearing a common uniform). These forces would have been

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\(^{23}\) Idem, art. 1.

\(^{24}\) Idem, art. 2.
exclusively limited to the defence of the contracting parties, but would have been at the
disposal and under the responsibility of the Supreme Commander responsible to the North
Atlantic Treaty Organisation (NATO). This means that the EDC would have been tied to act
consistently with NATO objectives, and that the US and other States would have had a say in
European defence matters. Two out of its four institutions would have been common with the
ECSC – the Assembly and the Court – but both would only have fulfilled minor control and
supervisory functions. The Commissariat would have been the executive arm of the EDC with
large delegated powers while the Council, composed of representatives of the Member States,
would have been the supreme decision-making body. It would have unanimously issued
directives to the Commissariat. The EDC was to exist for 50 years from its entry into force
and would have been open to other European states.

The treaty establishing the European Defence Community was signed in May 1952 in Paris. It
was quickly ratified in FRG, Belgium, Netherlands and Luxembourg, but gave rise to an
intense political debate in France. For critics of the EDC, the rearmament of Germany, even
in a common framework, was not desirable. Moreover, the project was more ambitious
(amongst other the number of troops) than the Pleven Plan, too supranational and detrimental
to French sovereignty. The role of non-EDC members (United States) in the decision process
was judged too important (through NATO) since the organisation and deployment of
European Defence Forces could be decided by the Supreme Commander of NATO (a US
General). Finally, as France's most powerful ally, the UK should not be left aside from this
European project. The international context was also evolving: the death of Stalin and the
Armistice in Korea in 1953 were perceived as a potential détente. Besides, France was maybe
more preoccupied by Indochinese and Algerian uprisings than by the USSR. The
parliamentary vote was then delayed until August 1954 when the French National Assembly
voted to postpone the discussion on the EDC. De facto, it resulted in the rejection of the EDC.
The failure of the supranational project is significant in the sense that it definitively closed a
window of opportunity for supranational European defence integration. Nothing in the future
would be as ambitious as the EDC.

However, the issue of German rearmament was still pending. As a major economic player
with a population of more than 50 million inhabitants and in front line of the West-East
divide, it became clear that the FRG could no more benefit from western security without
contributing to it. As a result of a conference held in London in October and November 1954
between the 'Nine [western] Powers', namely the US, France, the UK, the FRG, Italy, Canada
and the three Benelux countries, it was decided to restore the full sovereignty of FRG by
putting an end to the occupation of its territory and by authorising it to rearm and to
contribute to western Europe's collective defence (Bonn-Paris Conventions). It was also
decided to modify the Brussels Treaty and the Western Union to include the FRG and Italy
(Protocol Modifying and Completing the Brussels Treaty). Finally, it was decided that the
FRG would also join NATO.

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25 Treaty constituting the European Defence Community, signed in Paris on 27 May 1952, art. 18.
The Protocol Modifying and Completing the Brussels Treaty signed in October 1954 transformed the Western Union in Western European Union (WEU), erased references to Germany military revival, strengthened the role of the Council, detailed its relation with NATO (close cooperation and use by the WEU of NATO "appropriate military authorities") and added some protocols on the maximum number of troops to be recruited, a ban on the development of nuclear and biological weapons by the FRG, on the categories of weapons to be controlled and on the Agency carrying out this control.

With the accession of the FRG to the WEU and to NATO, the incentives for a European army had definitively vanished.

2. From 1955 to 1992, the slumber

After the rejection of the European Defence Community by France, it has become clear that sovereign reflex would jeopardise any new attempt of political integration. Although it constituted disillusionment for the federalist project of the Founding Fathers, the Six, urged by Monnet and Spaak, decided in Messina to push forward economic integration. Beside the ECSC, the Member States founded a European Economic Community (EEC) which aimed to reduce custom tariffs and eventually establish a common market and a European Atomic Energy Community.

The result of this was a complete distinct treatment of economic and security issues, the former handled in the framework of the European communities (EC) while the latter discussed in the framework of the WEU, NATO and, later, the Conference on Security and Cooperation in Europe (CSCE). However, in the seventies, the WEU partly lost its relevance and visibility for three reasons. First, the introduction in 1970 of the European Political Cooperation (EPC) – a system of regular meetings of the Foreign ministers to “harmonise their views in the field of international politics” provided a new political forum for the members of the European communities. Second, with the accession of the UK to the EC in 1973, the WEU lost its liaison function. Third, all the members of the WEU (including the FRG) were also part of NATO, which, as a stronger alliance, overshadowed the WEU and was undoubtedly a more effective deterrent against aggression.

The European Political Cooperation was only codified in the Single European Act signed in 1986, and its provisions opened the door to cooperation on security issues as well. The article 30.6 provides as follow:

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27 Belgium, France, Luxembourg, the Netherlands and the United Kingdom, Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence, signed in Brussels on 17 March 1948, UNTS, Vol. 19, No. 304, pp. 51-64, art. VII.
“(a) The High Contracting Parties consider that closer co-operation on questions of European security would contribute in an essential way to the development of a European identity in external policy matters. They are ready to co-ordinate their positions more closely on the political and economic aspects of security.

(b) The High Contracting Parties are determined to maintain the technological and industrial conditions necessary for their security. They shall work to that end both at national level and, where appropriate, within the framework of the competent institutions and bodies.”

With a European Union in view, the Member States were considering integration – or at least a closer cooperation – in political, security and even defence matters in a broader European framework. In 1987, the members of WEU declared through The Hague Platform that "the construction of an integrated Europe will remain incomplete as long as it does not include security and defence".

3. From Maastricht to Lisbon, the Western European Union revival

With the Treaty on the European Union (TEU), signed in Maastricht on February 1992, European security and defence came back on the agenda. It established a European Common Foreign and Security Policy (CFSP) "including the eventual framing of a common defence policy which might in time lead to a common defence". That is not to say, however, that the Western European Union – which included two more members since 1990, Spain and Portugal – was abandoned. On the contrary, the WEU was reinvigorated and entrusted with the elaboration and implementation of "decisions and actions of the Union which have defence implications". This institutional trick was certainly motivated by the compromise between members of the WEU and those members which, because of their neutrality (Republic of Ireland) or their national preferences (Denmark), were reluctant to take part directly in a European defence policy. In a declaration annexed to the Maastricht Treaty, WEU members expressed their enthusiasm: the WEU had become “an integral part of the Union” and the “defence component of the Union”. They also stated the immediate goals of the organisation: to develop a close working relationship with the Union institutions, to guarantee the consistency of WEU with NATO and to strengthen the operational capacities of the WEU.

With the end of the Cold War, the European security paradigm has shifted from the territorial defence towards neighbourhood stabilisation. Indeed, as José Cutileiro – then Secretary General of the Western European Union – stated, “In the 1990s, a series of institutional

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33 Idem, art. J. 4, §1.
34 Idem, art. J. 4, § 2.
35 Declaration by Belgium, Germany, Spain, France, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom of Great Britain and Northern Ireland which are members of the Western European Union, In: Treaty on European Union, Official Journal of the European Communities C191, 29 July 1992, p. 107.
arrangements allowed the Europeans to adapt to this changed strategic environment in Europe. The threat of a massive attack on Western Europe vanished along with the need to prepare for it. Crisis management skills on the other hand were now much more in demand.\textsuperscript{36}

This extension of the security concept was materialised by the \textbf{Petersberg declaration}. In 1992 in Petersberg, near Bonn, the nine WEU members issued a declaration to implement the new functions of the organisation. Most significantly, they decided that "\textit{apart from contributing to the common defence in accordance with the Article 5 of the Washington Treaty and Article 5 of the modified Brussels Treaty respectively, military units of WEU Member States, acting under the authority of WEU, could be employed for:}
- \textit{Humanitarian and rescue tasks;}
- \textit{Peace-keeping tasks;}
- \textit{Tasks of combat forces in crisis management, including peace-making.}  \textsuperscript{37}

Other decisions were taken to implement the Article J.4 provisions of the Maastricht Treaty. Amongst others, the seat of the organisation was displaced from London to Brussels to facilitate interactions between the WEU, the EU and NATO; a Satellite Centre (SatCen) was established in Torrejón (Spain); a WEU Institute for Security Studies (ISS) was established in Paris; a WEU European Armament Organisation (WEAO) was to take over and extend the tasks of the Independent European Program Group (IEPG) and of the Western European Armament Group (WEAG) on questions relating to the development of the armament industry and a Planning Cell was established with the task to issue recommendations and contingency plans for the WEU Council on missions ongoing or to be carried out.

The sudden revival of the WEU urged NATO to adapt to the new European security environment. The will of European countries to take a more active part in transatlantic security was welcomed and encouraged by non-EU members (including the United States). During the Brussels Summit in 1994 and the Berlin Summit in 1996, the North Atlantic Council took several practical measures to empower the European pillar of the Alliance, under the term of \textbf{European Security and Defence Identity (ESDI)}. Amongst other matters, the Allies accepted the need to extend NATO missions to "\textit{non-Article 5 operations}"\textsuperscript{38} (crisis management). Therefore, they created a new tool, the Combined Joint Task Force (CJTF), a multinational coalition able to react efficiently and effectively to case-by-case situations. Another measure was to establish a permanent dialogue between WEU and NATO to share the tasks to be carried out and the responsibility. Finally, it was decided to “\textit{identify, within the Alliance, the types of separable but not separated capabilities (...) to prepare WEU-led operations}”\textsuperscript{39}. The rationale lying here is to avoid the duplication of military assets for

\textsuperscript{38} North Atlantic Council, Final Communiqué, Berlin, 3 June 1996, § 7.
\textsuperscript{39} Ibid.
European countries which are members of both NATO and WEU. The Petersberg tasks – that is to say humanitarian, peace-keeping and crisis management tasks – would then be carried out with troops and material support usually attached to NATO capabilities.

These new features were officialised in the **Amsterdam Treaty**\(^{40}\) which was signed in October 1997. Regarding security and defence provisions, five main amendments have to be highlighted. First, reference to the CFSP is made in the recitals of the Treaty on the European Union as a necessary step “reinforcing the European identity and (…) independence in order to promote peace, security and progress in Europe and in the world”. Second, along with systematic cooperation, common positions and joint actions already foreseen in the Maastricht Treaty, the Amsterdam Treaty also provides for common strategies\(^{41}\) which are long term guidelines defined by the European Council. Third, a new position has been created: the Secretary-General of the Council and High Representative for the common foreign and security policy, whose task is to assist and to represent the Council in CFSP matters\(^{42}\). Fourth, the role of the Western European Union in the Union’s institutional framework is detailed: it is an integral part of the Union; it provides the Union with operational capability; it helps the Union in framing the CFSP; it might eventually be integrated to the Union – “should the European Council so decide”\(^{43}\); it implements the decisions and actions of the Union that have defence implications; it will be inclusive and open to the participation of EU Member States which are not members of the WEU and it will be compatible with the CSCE, NATO or any other type of closer multilateral or bilateral cooperation. Finally, the so-called 'Petersberg tasks' are included in the CFSP field.

1998 marked the 50\(^{\text{th}}\) anniversary of the WEU and constituted, as provided by Article X of the Brussels Treaty, the opportunity for Member States to denounce and withdraw from the organisation. However, this latter had just found a new raison d’être and the Ministers of Foreign Affairs and Defence stated in the Erfurt Declaration that “although political circumstances have dramatically changed since the signature of the modified Treaty, ministers agreed that it continues to form a valuable part of the European security architecture”\(^{44}\).

Four significant observations can be drawn from this decade. First, the international context – and most particularly the conflicts in Former Yugoslavia – might have accelerated the development of the CFSP and its operational component, carried out by the WEU. This latter has for instance been active in embargo monitoring and coastline surveillance in the Adriatic from 1993 to 1996 (Operation Sharp Guard)\(^{45}\). Second, Title V of the Treaty on European Union makes the distinction between the operational actions of the Union requiring military

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\(^{41}\) Idem, art. J.3, § 2.

\(^{42}\) Idem, art. J. 16.

\(^{43}\) Idem, art. J.7 § 1.

\(^{44}\) WEU Council of Ministers, Erfurt Declaration, Erfurt, 18 November 1997, part X, § 52.

means (Petersberg tasks) and the development of a EU common defence, which is a long-term hypothetical goal. Third, the Western European Union can be perceived as a field of enhanced cooperation in which several Union Member States decided to deepen their integration in military matters while allowing any other members to observe, associate or participate. Indeed, since “the Union shall accordingly foster closer institutional relations with the WEU with a view to the possibility of the integration of the WEU into the Union”\textsuperscript{46}, there was a prospect that any State would eventually contribute to the military and operational cooperation. Finally, the purpose of the common defence policy as stated in the Treaties and in WEU declarations was clear: to reinforce the European contribution to the Atlantic Alliance. This means European common defence policy and the European Security and Defence Identity were envisaged within NATO.

4. The defence within the European Union

The British-French summit of December 1998 in St. Malo represented a radical shift for the European defence policy. By their joint declaration, the two Heads of State expressed their will to provide the Union with “the capacity for autonomous action, backed up with credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises”\textsuperscript{47}. This unexpected British “sea change” (from the Atlantic relationship to a more continental vision of security) can be explained by the outbreak of war in Kosovo during which the European Union was unable to exert sufficient pressure on Milosevic without the intervention of NATO. This failure exposed the lack of credibility of the European Union in foreign affairs, even on its continent.

The proposition exposed in the declaration differs from the existing situation. Until now, the North Atlantic Council had its word to say in WEU-led operations and could veto the deployment of European troops attached to NATO. From now on, the Union would decide and act independently using its own institutional framework (even if both the UK and France insisted on the intergovernmental nature of the common defence policy) and neither the WEU nor NATO could prevent the EU from doing so. To achieve this goal, the EU would have to develop its own structures of decision, command and intelligence gathering (or absorb those of WEU), as well as guarantee sufficient deployable military means (“European capabilities within NATO’s European pillar or European means outside the NATO framework”\textsuperscript{48}). This way, there would not necessarily be duplication.

Even if the St. Malo Declaration as such had no binding nature, its impact was significant. The United Kingdom – known for being the most reluctant European member to transfer sovereignty to Brussels – had finally recognised the necessity to develop European autonomous military capacities and eventually to integrate the WEU tasks in the Union.

\textsuperscript{46} Treaty of Amsterdam (…), art. J.7.
\textsuperscript{48} Ibid.
framework. Once the UK was convinced, the other Member States would easily follow (except Denmark).

This project was received with enthusiasm, though tinged with some apprehension. Non-European Allies welcomed the fact that the Union was ready to contribute more actively to its security and strengthen its military capabilities. However, the United States put a limit on the concept of autonomy and wanted to avoid the decoupling of the EU from NATO, the duplication of military assets and the discrimination toward non-EU members (the three Ds). As the US Secretary of State Madeleine Albright put it in a speech a few days after the St. Malo summit, “European decision-making is not unhooked from broader alliance decision-making”\textsuperscript{49}. The US idea was straightforward: NATO remained the essential security provider as well as the main political forum for defence-related matters, and any European security or defence policy was subordinated to it\textsuperscript{50}.

All these elements were taken into account in the final communiqué of the North Atlantic Summit in Washington in April 1999. First, Ministers decided to redefine the Strategic Concept of 1991 to encompass crisis management operations (CMO) and regional conflicts prevention. Second, they decided to develop the decisions taken in Berlin in 1996 “for ready access by the European Union to the collective assets and capabilities of the Alliance, for operations in which the Alliance as a whole is not engaged militarily as an Alliance”\textsuperscript{51}. To this end, NATO would have to identify which assets would be presumed available for EU-led operations. Third, NATO insisted on the fact that non-EU NATO members should have the possibility to take part to EU-led operations. Finally, there should be permanent consultation, cooperation and transparency between the EU and NATO.

In substance, the Washington Summit mainly transferred and adapted to the EU what had already been granted to the WEU during the Berlin Summit. The set of practical arrangements implementing these decisions is known today as the ‘Berlin Plus’ arrangements.

During its summit in Cologne in June 1999, the European Council adopted the Franco-British proposition, taking into account the requests of NATO. The objective of the common European policy on security and defence would be “to assure that the European Union has at its disposal the necessary capabilities (including military capabilities) and appropriate structures for effective EU decision-making in crisis management within the scope of the Petersberg tasks”\textsuperscript{52}. In its final report, the European Council repeated that “the Atlantic Alliance remains the foundation of the collective defence of its Members” and that the policy of the Union shall not prejudice NATO activities or its role.

The report foresaw the establishment of new decision-making bodies:

\textsuperscript{50} North Atlantic Council, The Alliance’s Strategic Concept, Washington 24 April 1999, § 25.
\textsuperscript{51} North Atlantic Council, Washington Summit Communiqué: An Alliance for the 21\textsuperscript{st} Century, 24 April 1999, § 10.
\textsuperscript{52} European Council Declaration on Strengthening of the common European policy on security and defence, \textit{In:} European Council, Conclusions of the Presidency, Cologne, 3-4 June 1999, Annex III.
- A permanent Political and Security Committee (PSC) composed of representatives with military and political expertise and ensuring the “political control and strategic management of CMO”\(^{53}\);
- A EU Military Committee (EUMC) composed of military representatives making recommendations to the PSC;
- A EU Military Staff (EUMS) entrusted with situation assessment and strategic planning.

Moreover, essential tools for the functioning of the new tasks of the EU – such as a Satellite Centre, a Situation Centre and an Institute for Security Studies – would be integrated in the European framework.

It was also recalled that decisions relating to this common European policy on security and defence would be subject to specific procedures. Decision-making would remain intergovernmental in nature, so that the decision to engage national troops for a mission is left to Member States’ discretion. Under NATO pressure, the European Council also decided to let the possibility to any non-EU NATO member to take part to EU-led CMOs.

Finally, the Heads of State repeated their will to “strengthen Europe’s industrial and technological defence base”. Although duplication of military assets should be avoided, the European Council expressed the possibility to launch operations even without NATO assets.

The six-month period between the Cologne summit and the Helsinki summit was prolific in proposals and advances. Amongst things that were discussed, there were the inclusion of the WEU as a whole into the EU, the appointment of the High Representative and Secretary General of the Council (Javier Solana) at the head of the WEU, the transformation of the WEAG in a European Armament Agency or the use of NATO criteria developed by the Defence Capabilities Initiative (availability, deployability, mobility, interoperability, sustainability and operational effectiveness)\(^{54}\) to EU military capabilities.

By the Helsinki European Council held on 10 and 11 December 1999, the Heads of State recalled their “determination to develop an autonomous capacity to take decisions and, where NATO as a whole is not engaged, to launch and conduct EU-led military operations in response to international crises. This process [would] avoid unnecessary duplication and [would] not imply the creation of a European army”\(^{55}\). These last words are meaningful: the appearance of such a safeguard translates the existence of a certain level of apprehension or reluctance amongst Member States. Another safeguard appears further in the text: “NATO remains the foundation of the collective defence of its members, and will continue to have an important role in crisis management. The development of the common European policy on security and defence will take place without prejudice to the commitments under Article 5 of the Washington Treaty and Article V of the Brussels Treaty”.


In practice, the European Council entrusted the Council with the implementation of the following decisions:

- The “Headline Goal”: Being able, by 2003, to deploy within 60 days and sustain for at least 1 year military forces of up to 50,000-60,000 capable for the full range of Petersberg tasks (the so-called rapid reaction forces);
- New political and military bodies and structures will be established within the Council to enable the Union to ensure the necessary political guidance and strategic direction to such operations, while respecting the single institutional framework (PSC, EUMC, EUMS);
- Non-EU European NATO members and other interested States will be allowed to contribute to EU military crisis management;
- Non-military crisis management mechanisms (Committee for Civilian Aspects of Crisis Management, or CivCom) will be established to address civilian aspects of crises (police, rule of law, civilian administration, relief operations, support to justice and so forth).

The European Council closed its report on the common European security and defence policy (CESDP or ESDP) by warning that the decisions taken might require Treaty amendments and that the Portuguese presidency would assess this necessity.

In November 2000, the WEU Ministerial Council decided[^56] to cease some of its activities which would now be carried out by the European Union, such as the Petersberg tasks, the ISS, the Satellite Centre or the Transatlantic Forum. However, Ministers reaffirmed their commitments concerning the residual functions of the WEU (for instance, Article 5 on mutual self-defence or their armament cooperation through the WEAG).

During the Capabilities Commitment Conference (CCC) on Armament held in Brussels in November 2000[^57], the Ministers of Defence of the EU Member States decided to set a more ambitious goal, based on the assessment of the EUMS and compatible with the headline goal: the availability of 100,000 men, 400 combat aircraft and 100 warships for any kind of EU-led Petersberg operation. In parallel, Member States also committed to “provide 5,000 police officers [for civilian aspects of crisis management], 1,000 of whom could be deployed within less than 30 days”[^58]. Of course, just like the headline goal, these commitments were voluntary and not binding.

The European Council noted and adopted all the appropriate proposals to “make the EU quickly operational”[^59]: the establishment of the relevant bodies (PSC, EUMS, EUMC) and agencies (SatCen, ISS), the tasks of each of them and the tasks of Foreign Affairs Council, High Representative and Defence Ministers concerning the relations with NATO, third countries, the headline goals and the consistency of EU action.

[^56]: WEU Council of Ministers, Marseille Declaration, Marseille, 13 November 2000.
[^57]: Council, Military Capabilities Commitment Declaration 13799/00, Brussels, November 2000, § 4 (a).
The Treaty of Nice amending the Treaty on European Union signed in February 2001 added a few elements to the provisions on the CFSP and the ESDP. First, Article 17 deleted all references to WEU. From now on, the EPSD would be developed within the framework of the Union. Second, the Political and Security Committee was established, replacing and extending the role of the ‘Political Committee’. Third, Article 27 provides conditions for enhanced cooperation in the field of the CFSP: it must be compatible with CFSP principles and objectives and consistent with all the other dimensions of the Union. Curiously enough, its paragraph B states that “enhanced cooperation shall not relate to matters having military or defence implications”. This reflects an inconsistency, if not a hypocrisy: while Member States agreed that their common defence policy “might lead to a common defence”, they still refuse a fast-going military or defence integration. It becomes even more confused when one realises the absence in the Treaty of the reference that “common defence will not lead to a European army”, like in the previous declarations and reports. Was it forgotten on purpose or by mistake? Finally, concerning the cooperation on armament, the commitment is rather vague and there is neither reference to WEAG nor to an eventual European Armament Agency: “the progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments”.

The Nice Treaty only entered into force in February 2003, because of its rejection by Ireland after a first referendum. Some guarantees concerning the traditional neutrality of Ireland or the necessity for unanimity to move to a common defence were taken to reassure the Irish population about the Nice Treaty.

In 2001, after the 9/11 terrorist attacks in America and the White Paper on Governance, the European Council gathered in Laeken decided to deeply reform the European Union to prepare it for the future eastern enlargement, to make it more democratic, more simple and more efficient and to reinforce its role on the international stage. An Intergovernmental Convention – chaired by former French President Valéry Giscard d’Estaing – was entrusted with the preparation of a conference on the future of Europe, which would lead in 2004 to the drafting and the signature of a Treaty establishing a Constitution for Europe.

In December 2002, the NATO-EU Declaration on ESDP officialised what had already been agreed concerning EU-NATO relationships. Hence, in March 2003, NATO and the EU adopted the “Berlin Plus” framework agreement, which still constitutes today the basis for all the technical arrangements about NATO’s assets availability, participation on non-EU

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61 Treaty of Maastricht, art. J.15.
62 Treaty of Nice, art. 1, § 6.
63 Idem, art. 1, § 2.
64 Treaty of Nice, art. 1, § 2.
65 National Declaration by Ireland, In: European Council, Presidency Conclusions 13463/02, Seville, 24 October 2002, Annex III.
European Allies, return and recall of NATO capabilities, exchange of confidential information, and so forth.

On 1st January 2003, the European Union launched its first ESDP mission in Bosnia and Herzegovina. The **EU Police Mission in Bosnia and Herzegovina (EUPM)** was civilian in nature – hence, did not require NATO assets, and was extended a few times until its end in 2012. Its task was to strengthen Bosnian rule of law and law enforcement, particularly against organised criminality and corruption. Almost 500 police officers and 60 civilians were mobilised for this mission. In March of the same year, NATO entrusted the EU with the stabilisation phase of its operation ‘Allied Harmony’ in the Former Yugoslav Republic of Macedonia. Hence, the **Concordia-FYROM mission** became the first EU-led mission employing NATO assets. Since then, about thirty operations have been launched by the European Union. There were two times more civilian operations than military ones, covering a wide range of tasks, such as training of personnel, advisory, post-conflict agreement monitoring, police strengthening or training, elections supervision or border management assistance. This observation emphasises the fact that CSDP is not only about military.

During the European Council of December 2003, the Member States adopted the **European Security Strategy** (ESS), a document drawn up by the High Representative for the CFSP, Javier Solana. This document identified the key threats in the European environment at that time (terrorism, proliferation of weapons of mass destruction, failed states, regional conflicts, organised crime) and provided for some guidelines to cope with them. The main idea can be found in this extract: "Our traditional concept of self-defence – up to and including the Cold War – was based on the threat of invasion. With the new threats, the first line of defence will often be abroad. (...) In contrast to the massive visible threat in the Cold War, none of the new threats is purely military; nor can any be tackled by purely military means. Each requires a mixture of instruments". In particular, the ESS insisted on the importance of the civilian component of crisis management and of the irreplaceable aspect of the transatlantic relationship.

Based on the first series of Headline Goals agreed in Helsinki in 1999 and on the recommendations of the ESS, the Member States decided in June 2004 to set new more ambitious objectives: the ‘**Headline Goals 2010**’. What was at stake was mostly responsiveness (reducing the delay between a situation, a decision, the orders and their implementation), deployability (ensuring that items such as an aircraft carrier, airlift, debarkation assets and Rapid Response battlegroups can be quickly and safely deployed) and interoperability (training European troops and decision/command bodies to accomplish a wide range of missions, sometimes simultaneously). However, one of the goals was “the...
establishment of an Agency in the field of defence capability development, research, acquisition and armaments (European Defence Agency) in the course of 2004".71.

The recent impetus for cooperation in military and matters, supported by a strong lobbying from military industry72, finally convinced the Member States to establish a European Defence Agency (EDA) which “aims at developing defence capabilities in the field of crisis management, promoting and enhancing European armaments cooperation, strengthening the European defence industrial and technological base and creating a competitive European defence equipment market, as well as promoting, in liaison with the Community’s research activities where appropriate, research aimed at leadership in strategic technologies for future defence and security capabilities, thereby strengthening Europe’s industrial potential in this domain”73. Now, it is easier to understand the initial reluctance of some Member States regarding the EDA. By opening the armament market to competition, the Agency aims at liberalising a highly protected sector.

In October 2004, the then 25 Heads of State signed in Rome the Treaty establishing a Constitution for Europe. Unfortunately, the ambitious text was rejected by the Dutch and French populations during their 2005 respective referenda. After a ‘period of reflection’, a new intergovernmental conference was launched in 2007 during which it was decided to abandon the constitutional references about Europe, to amend the Treaty on the European Union (TEU) and the Treaty establishing the European Community (TEC) and to add to these existing treaties the Charter of Fundamental Rights of the European Union. Even if, in its form, it is less far-reaching that the Constitutional Treaty, the Treaty of Lisbon brought significant changes, particularly regarding the Common Security and Defence Policy, the new name for the military component of the CFSP. Amongst the novelties introduced by the Treaty, four have substantially modified the nature of the of the CSDP: the mutual aid and assistance clause established by Article 42.7 of the TEU74, the extension of the CSDP tasks to non-Petersberg operations75, the creation of a new institution in the field of CFSP – the European External Action Service (EEAS)76 – and the possibility for Member States to commit more deeply in European military tasks through the permanent structured cooperation77.

These key features will be more deeply analysed and discussed in the next part. However, before to go on, one might already list a series of observations concerning the development of the EU security and defence policy.

74 Consolidated version of the TEU, art. 42, § 7.
75 Idem, art. 43.
76 Idem, art. 27.
77 Idem, art. 42, § 6.
5. In summary

It is impossible to cover in a few pages sixty years of meetings, conferences, reflection, declarations, decisions, agreements and all other events that played a role in today’s CSDP. Nevertheless, this not-so-brief historical review has outlined the major steps of the process and provides a basis for some remarks.

First, the development of a common European security and defence policy has been uneven, and there have been periods of inactivity followed by sporadic effervescence, usually when the international political context was providing sufficient pressure.

Second, the transformation of the European defence policy has gone hand in hand with the evolution of the Atlantic Alliance. For instance, crisis management has been included in NATO’s tasks in 1991 by the Strategic Concept and in WEU’s missions after the 1992 Petersberg Council. In the same way, the Defence Capabilities Initiative launched by NATO in 1999 certainly inspired EU Member States to set their headline goals. It is also interesting to note that NATO’s enlargement often preceded EU’s enlargement.

Third, EU Member States do not envisage the ESDP/CSDP as the exclusive security provider in Europe. Instead, the CSDP constitutes a single piece of a larger security framework. The CSDP has been developed in relation with other collective security or defence organisations:
- under the international regime of the United Nations (UN) and the continental-wide regime of the Organisation for Security and Cooperation in Europe (OSCE);
- within the Transatlantic Alliance (NATO);
- in parallel with the EEC/EC before 1992 (WEU), then through the European Union.

Concerning NATO, several arrangements attest of some kind of ‘vassalage’. NATO welcomed the establishment of a European security and defence identity (ESDI) to the extent that it would strengthen the Alliance as a whole, but there is implicit control on EU activities: The ESDP/CSDP cannot prejudice NATO activities, non-EU Allies can be involved, the North Atlantic Council is informed of CSDP developments, the EU had to negotiate the availability of NATO assets, NATO has a ‘right of first refusal’ and there is a mechanism for return of NATO assets in case of aggression.

Fifth, it is obvious that the process of defence policies’ convergence happens at a pace slower than for economic and trade integration. Indeed, defence is a competence at the core of sovereignty and States are cautious – though not completely opposed – regarding military cooperation. Concessions, safeguards and exceptions – such as unanimity for CSDP decisions, respect of the neutrality of several members, opt-out of Denmark and primacy of NATO – may be seen as sovereign reflexes against military integration. However, they should also be considered as the practical tricks to have everyone on board. So yes, decision-making.
is more difficult in CFSP/CSDP fields than in Community fields, but at least the process is legitimate and not obstructed by NATO, neutral Member States (Austria, Finland, Ireland, Malta and Sweden) or any other reluctant member (Denmark).

The last observation for this first part concerns the obvious link between the European political environment and the way western Europeans considered their security. From 1948 to 1954, the main concern for France, the United Kingdom and the Benelux countries was Germany’s military resurgence. After that, the USSR became the number one threat and the whole security paradigm was about preventing and resisting a potential territorial invasion. In the early nineties, after the dissolution of the Soviet bloc, the European Union identified new threats to tackle beyond their territorial borders. Since then, security consists in preventing and solving instability in the (enlarged) neighbourhood of Europe.
Part II. The CSDP in the Treaty of Lisbon

This second part aims at discussing the current state of the Common Security and Defence Policy. Here, the institutional changes introduced by the Treaty of Lisbon will be explained analysed and commented.

Today, the Common Security and Defence Policy is governed by the provisions provided by Articles 42 to 46 of the consolidated version of the Treaty on the European Union. Article 42 draws up a big picture of the CSDP by briefly explaining its status, its role, its intergovernmental nature, its decision-makers, its rules and procedures and its means and methods. Its last paragraphs introduce the permanent structured cooperation and the mutual aid and assistance clause. Articles 43 to 46 develop the features cited in Article 42: the kind of operations the Union may conduct, the chain of command, the method of delegation, the role of the European Defence Agency (EDA) and the functioning of the permanent structured cooperation. Each of these elements is developed hereinafter.

1. Institutional status

As previously mentioned, “the common security and defence policy shall be an integral part of the common foreign and security policy”. In the Treaty of Lisbon, the CSDP constitutes the second section of chapter 2 on the CFSP, after the common provisions. Hence, the CSDP only constitutes the operational component of the CFSP, which is itself a specific field of Union’s external action, along with other EU policies having an international dimension, such as trade, neighbourhood, development and humanitarian aid policies. It means that CFSP provisions apply ipso facto to the CSDP, except when the Treaties provide otherwise. For instance, the principles of “loyalty, mutual solidarity (…) and the achievement of ever-increasing degree of convergence” guiding the actions of Member States in the framework of the CFSP also rule the conduct of CSDP activities.

Regarding its position in the Union institutional framework, it is worth noting that the CSDP is not a ‘normal’ European policy. As Article 24 provides, “the common foreign and security policy is subject to specific rules and procedures” for which the “adoption of legislative acts is excluded”. This means that the European Commission, the European Parliament and the Court of Justice of the European Union have only limited roles. So, even if the Treaty of Lisbon has abolished the three-pillar structure established by the Treaty of Maastricht, the CFSP is still ruled de facto by intergovernmental methods.

Hence, although the CFSP and CSDP are two fields that are treated differently, they still form part of the EU acquis. It means that, unlike fields of enhanced cooperation – which

83 Consolidated version of the TEU, art. 42, § 1.
84 Idem, art. 24, § 2.
85 Idem, art. 24, § 1.
be regarded as part of the acquis”\textsuperscript{86}, new applicant countries are required to “align with EU statements, political declarations, actions and agreements”\textsuperscript{87}. So far, Denmark is the only Member States that negotiated its opt-out from the CSDP (not the CFSP). Article 5 of the Protocol No 22 on the position of Denmark\textsuperscript{88} states that “with regard to measures adopted by the Council pursuant to Article 26(1), Article 42 and Articles 43 to 46 of the Treaty on European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications. Therefore Denmark shall not participate in their adoption. Denmark will not prevent the other Member States from further developing their cooperation in this area. Denmark shall not be obliged to contribute to the financing of operational expenditure arising from such measures, nor to make military capabilities available to the Union”.

2. Role

Article 42.2 provides that the CSDP “shall provide the Union with an operational capacity drawing on civilian and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter”\textsuperscript{89}. The exhaustive list of CSDP tasks can be found in Article 43: “joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation (...) supporting third countries in combating terrorism in their territories”\textsuperscript{90}. So the main function of the CSDP is to give effect to CFSP decisions (and particularly joint actions).

It is interesting to note that the scope of actions contemplated by the Union exceeds today the three original Petersberg tasks.

The missions envisaged would take place outside of the Union. The CSDP is an outward-oriented policy: it does not amount to common defence (yet), which might be achieved one day if – and when – the European Council unanimously so decides\textsuperscript{91}. Until then, defence remains a national competence, and collective defence the responsibility of NATO for almost all Member States, with the exception of Austria, Cyprus, Ireland and Sweden for neutrality or political reasons.

\textsuperscript{86} Idem, art. 20, § 4.
\textsuperscript{88} Protocol (No 22) on the position of Denmark, In: Consolidated version of the TEU and TFEU, Title II, art. 5.
\textsuperscript{89} Consolidated version of the TEU, art. 42, § 2.
\textsuperscript{90} Idem, art. 43.
\textsuperscript{91} Idem, art. 42, § 2.
3. Intergovernmental nature

It was previously said that the CSDP was an intergovernmental policy. Even if this assertion is not textually expressed anywhere in the treaties, the institutions involved in the policy, the decision-making rules and all the safeguards show the distinct treatment of the field.

First, there is no transfer of sovereignty from the Member States to supranational institutions. The CFSP – and more particularly the CSDP – is all about cooperation\(^2\), solidarity and convergence\(^3\) rather than integration.

Second, the decisions taken in the field of the CFSP and CSDP are subject to the rule of **unanimity**\(^4\), meaning that each of the 27 Member States can veto a proposal.

Third, the States also remain in control of the decisions because they are the only decision-makers. Article 24 provides that “the [CFSP] shall be defined and implemented by the European Council and the Council acting unanimously (...)” and that “the specific role of the European Parliament and of the Commission in this area shall be defined by this Treaty”\(^5\).

- The role of the **European Parliament** (EP) is clarified in Article 36: it will be regularly informed of the evolution of the CFSP and consulted by the High Representative. It does not seem much, but “[the HR] shall ensure that the views of the European Parliament are duly taken into consideration”. Moreover, “the European Parliament may address questions or make recommendations to the Council or the High Representative”\(^6\). To that end, an interinstitutional agreement allows the access by the EP to sensitive information of the Council in the field of security and defence policy\(^7\). Finally, one implicit though significant power of the European Parliament on the High Representative is provided by Article 17 paragraphs 7 and 8 of the TEU: “The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament” and “the European Parliament may vote on a motion of censure of the Commission. If such a motion is carried, the members of the Commission shall resign as a body and the High Representative of the Union for Foreign Affairs and Security Policy shall resign from the duties that he carries out in the Commission”. This provides pressure for the High Representative to commit to take the European Parliament’s recommendations into consideration while elaborating and implementing the CFSP. For instance, during the EP hearing for the position of High Representative in October 2014\(^8\), the Committee

\(^2\) Consolidated version of the TEU, art. 25.
\(^3\) Idem, art. 24.
\(^4\) Ibid.
\(^5\) Ibid.
\(^6\) Consolidated version of the TEU, art. 36.
on Foreign Affairs asked Federica Mogherini to orally commit to consult and to take into consideration the views of the EP.

- Regarding the role of the **European Commission**, the provisions are more confused. Article 30 provides that it can support HR initiatives and proposals. Since the HR is also the Vice-President of the Commission, since the Commission is supposed to act “as a collegiate body” and since the High Representative must “ensure the consistency of the Union’s external action”, the Commission has de facto a foot in the CFSP through its influence on the HR. Of course, this influence largely relies on subjective factors, like the interpersonal relationship between the President of the Commission and the High Representative.

- “**The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions**.” There is no judicial review of the CFSP acts, meaning that Member States have a certain leeway in CFSP matters. The only exception lays down in Article 40: “the implementation of the [CFSP] shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties” in which case the Court of Justice (CJEU) would be competent. This has a major legal implication: the CJEU has no jurisdiction over the conduct of CSDP operations.

In practice, the intergovernmental nature of the CFSP field can also be deducted from all the safeguards present in the Treaty. For instance, the civilian and military capabilities are national, meaning that they remain under the authority of the Member States. Obviously, any Member State is free not to take part to a particular operation, as long as it does not interfere with the conduct of the operation.

4. Actors and decision-makers

The **Council** is, as aforesaid, the only decision-maker in the framework of the CFSP and CSDP. However, other actors intervene in the preparation or the implementation of the European security and defence policies: the European Council and its President, the High Representative of the Union for Foreign Affairs and Security Policy (the HR), the Member States, the European Parliament, the European Commission, the Political and Security Committee and the European External Action Service (EEAS).

Article 26 provides for the separation of the tasks between the European and the Council.

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99 Consolidated version of the TEU, art. 30, § 1.
100 Idem, art. 17, § 6 (b).
101 Idem, art. 18, § 4.
102 Consolidated version of the TFEU, art. 275, § 1.
103 Consolidated version of the TEU, art. 40, § 2.
104 Idem, art. 43.
The **European Council** “shall identify the Union’s strategic interests, determine the objectives of and define general guidelines for the common foreign and security policy, including for matters with defence implications. It shall adopt the necessary decisions.”\(^{105}\)

The **President of the European Council** “shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy”\(^ {106}\). As the representative of the European Heads of State, he represents the Union at the level of the Heads of States, while the High Representative is to represent the Union at the diplomatic level.

Since he also chairs the European Council, he is expected to “convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union’s policy if international developments so require”\(^ {107}\).

The **Council** (in its Foreign Affairs configuration) “shall frame the common foreign and security policy and take the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council”\(^ {108}\).

It is responsible, along with the HR, for the consistency and the effectiveness of Union’s action.

“Where the international situation requires operational action by the Union, the Council shall adopt the necessary decisions. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation. If there is a change in circumstances having a substantial effect on a question subject to such a decision, the Council shall review the principles and objectives of that decision and take the necessary decisions”\(^ {109}\).

It is important to distinguish the tasks of the European Council and of the Council of Foreign Affairs (which can also bring together the Ministers of Defence, Development or Trade, if the questions raised require it\(^ {110}\)). The European Council meets twice a year in summit. It defines the orientations of the Union in matter of foreign affairs. For instance, the European Council decides of the attitude to adopt toward Russia or Turkey. The Council meets once a month and is the highest authority in the day-to-day functioning of the CFSP. It is entrusted with making a reality of the strategies defined by the European Council. Save in the case of exceptional events, the Council can react independently to situations requiring Union’s declarations, positions or actions. Regarding the latter, the Council establishes by a decision what has to be done and entrusts the HR with the execution of its decision.

\(^{105}\) Consolidated version of the TEU, art. 26.

\(^{106}\) Idem, art. 15, § 5.

\(^{107}\) Idem, art. 26, § 1.

\(^{108}\) Idem, art. 26, § 2.

\(^{109}\) Idem, art. 28.

The **High Representative of the Union for Foreign Affairs and Security Policy** (HR) is the new title for the ‘High Representative for the CFSP’. The tasks and responsibilities of this new position have been extended. First, the HR is no more the Secretary-General of the Council, but chairs the Foreign Affairs Council (FAC). Second, he/she is a member of the European Commission, as Vice-President. Third, he/she takes part to the work of the European Council by which he/she is appointed. This inter-institutional position has a practical goal: by having a foot in the European Council, the Council and the Commission, the HR can more easily “ensure the consistency of the Union’s external action”, which is one of its main – numerous – functions, along with the representation of the Union and the implementation of the CFSP.

In addition, the HR is the Head of the European External Action Service (EEAS), the European Union’s diplomatic service whose task is to assist the HR in the conduct of the CFSP – including the CSDP. Its role and features will be further discussed. The HR also is the Head of the European Defence Agency (EDA).

As may be seen, the High Representative intervenes in every phase of the CFSP: he/she “contributes by his/her proposals to the development of that policy, which he/she shall carry out as mandated by the Council. The same shall apply to the CSDP”.

The **Political and Security Committee** (PSC) is also a significant player in the field of the CSDP. It was established by the Treaty of Maastricht and the Treaty of Lisbon has extended its tasks. Article 38 provides that the PSC “contributes to the definition of policies by delivering opinions to the Council”; “monitor the implementation of agreed policies” and may “exercise (...) the political control and strategic direction of the crisis management operations” for which it may be authorised by the Council to “take the relevant decisions concerning the political control and strategic direction of the operation”.

Hence, like the HR, the PSC is a body that intervenes both upstream and downstream in the decision-making.

It is also stipulated in Article 38 that the PSC could not prejudice the role of the Committee of Permanent Representatives (‘COREPER’ from the French acronym). What then does differentiate the PSC from the COREPER II in charge of Foreign Affairs? Both are composed of national ambassadors and assist the Council in its daily tasks. However, they do not have the same role. On the one hand, the COREPER is “responsible for preparing the work of the Council”. Its role is to oversee the work of the multitude of working parties and to present the relevant information to the Council. COREPER II, which is in charge of General Affairs, External Relations, Economic and Financial Affairs as well as of Justice and Home Affairs, prepares the agenda of the concerned Council. When dealing with CFSP matters, the chairman of the PSC and a representative from the EEAS take part to its meetings. Hence, the

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111 Consolidated version of the TEU, art. 17, § 4.
112 Idem, art. 15, § 2.
113 Idem, art. 17, § 1.
114 Idem, art. 18, § 4.
115 Idem, art. 18, § 2.
117 Consolidated version of the TEU, art. 38.
118 Consolidated version of the TFEU, art. 240.
function of the COREPER is to facilitate the decision-making of the Council by compiling and summarising the information. “In principle, COREPER II does not change positions adopted by the PSC on security and defence policy”\(^{119}\). On the other hand, the PSC is only focused on CFSP and CSDP matters and analyses the international situation with the assistance of the Commission, the EEAS, the ESS, the EUMC and the CivCom\(^{120}\), whose representatives take part to the PSC meetings (twice a week). Its limited field of action and its network of specific bodies (EEAS, EUMC, CivCom, ESS) ensure its expertise. Although they seem to have distinct tasks, Mahncke, Ambos and Reynolds explain that “both committees compete for influence”\(^{121}\).

Specifically for the CSDP, three bodies are worth mentioning:

- The **European Union Military Staff** (EUMS) is the department (Directorate-General) within the EEAS (hence, under the authority of the High Representative) in charge of the military expertise on behalf of the Union. It provides intelligence, situation assessment, operation planning (elaboration of scenarios and options for the decision-makers), training and education\(^{122}\).

- It is under the direction of the **European Union Military Committee** (EUMC) which brings together the Chiefs of Defence of the Member States. It does not do much *per se* but monitors the work of the EUMS: “it evaluates the strategic military options developed by the EUMS and forwards them to the PSC together with its evaluation and military advice”\(^{123}\). It constitutes an intergovernmental filter of the EUMS – a Union body – proposals.

- In parallel, the expertise for the civilian component is provided by the **Committee for Civilian Aspect of Crisis Management** (CivCom) that makes recommendations to the PSC.

Many other Union bodies and agencies contribute by their expertise to the elaboration or the implementation of the CSDP, such as the Politico-Military Group (PMG), the Crisis Management and Planning Directorate (CMPD), the Civilian Planning and Conduct Capability (CPCC), the European Defence Agency (EDA) – which will be discussed further, the European Security and Defence College (ESDC), the EU Institute for Security Studies (ESS), the EU Satellite Centre (SatCen) and the EU Operations Centre (OpsCen)\(^{124}\).

Outside the Union’s framework, other actors are closely connected to the CSDP, either because they influence the Union’s strategies or because they are affected by the CSDP developments:


\(^{120}\) Idem, p. 70.


- The United Nations (UN) is an important partner for the European Union. Besides the fact that Member States committed themselves to respect and promote the principles of the United Nations Charter\textsuperscript{125}, the CSDP seeks to serve the UN in peace-keeping and crisis management. The Lisbon Treaty emphasises that “the [CSDP] (...) shall provide the Union with an operational capacity drawing on civilian and military assets [that] the Union may use (...) for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter,”\textsuperscript{126} and joint declarations in 2003\textsuperscript{127} and 2007\textsuperscript{128} on cooperation in crisis management have developed this relationship. Conversely, the EU also seeks to take advantage of the United Nations to promote its own interests. Indeed, Article 34 provides that “Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union” and “When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be invited to present the Union’s position”\textsuperscript{129}.

- As demonstrated in the first part of this paper, the North Atlantic Treaty Organisation also has a privileged relationship with the European Union. By supporting the CSDP, NATO ensures the strengthening of the Alliance’s European pillar. Conversely, the ‘Berlin Plus’ Agreement allows the EU to use NATO assets for CSDP operations.

5. Decision-making

Section 3 has already underlined that the CFSP is an intergovernmental field which is not ruled by the ordinary legislative procedure. Indeed, the intergovernmental institutions – namely the European Council and the Council – take their decision by unanimity and these decisions, though not considered as legislative acts, are binding.

Art. 42.4 provides that “decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy or an initiative from a Member State”\textsuperscript{130}. This unanimity rule can be seen as a brake to efficiency, since any of the 28 Member States can veto a decision, leading to a stalemate. For this reason, the treaties provide some institutional tricks enabling to overcome the sticky rule of unanimity.

\textsuperscript{125} Consolidated version of the TEU, art. 3, § 5.
\textsuperscript{126} Idem, art. 42, § 1.
\textsuperscript{127} The European Union and United Nations, Joint Declaration on EU-UN cooperation in crisis management 12510/03, 19 September 2003.
\textsuperscript{128} The European Union and United Nations, Joint Statement on EU-UN cooperation in crisis management 10310/07, Brussels, 7 June 2007.
\textsuperscript{129} Consolidated version of the TEU, art. 34, § 2.
\textsuperscript{130} Idem, art. 42, § 2.
First, it is stipulated in Article 235 for the European Council and in Article 238 for the Council that “abstentions by members present in person or represented shall not prevent the adoption by the European Council of acts which require unanimity”\textsuperscript{131}. It means that abstentions correspond to silent consent and that a State has to express its disagreement and vote ‘against’ an act to veto it.

Second, for the specific case of CFSP decisions, there exists an alternative option for States that do not want to take part to specific decisions. Paragraph 1 of Article 31 introduces the concept of ‘constructive abstention’: “When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position”\textsuperscript{132}. The mere existence of this clause provides a significant incentive for States not to block Union action. Indeed, a State consciously vetoing a decision will be simply asked to step aside while the others act. Another benefit of the constructive abstention is to prevent a State to block a decision when it lacks information and “does not know”. Finally, Laurent Bouton, Aniol Llorente-Saguer and Frédéric Malherbe recognise in a commentary on constructive abstention that it introduced a new subtlety in the Council: “agents can ‘communicate’ their information through the voting system in a finer way than without constructive abstention”\textsuperscript{133}.

Third, paragraphs 2 and 3 of Article 31 provide the conditions under which the Council can vote by qualified majority\textsuperscript{134}:

- For decisions defining the Union’s action and positions on the basis of a decision of the European Council;
- For decisions on proposals of the HR expressly required by the European Council;
- For decisions implementing previous decisions defining Union action or position;
- For decisions appointing a special representative.
- When the European Council unanimously so decides.

However, three safeguards temper these exceptions.

First, constructive abstention cannot be invoked by more than one third of the Member States representing together at least one third of the European population. If this was the case, the decision would be deemed rejected\textsuperscript{135}.

\textsuperscript{131} Consolidated version of the TFEU, art. 235, § 1 and art. 238, § 4.
\textsuperscript{132} Consolidated version of the TEU, art. 31, § 1.
\textsuperscript{134} Under Article 16, § 4 of the Consolidated version of the TEU, a qualified majority is defined as at least 55% of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union.
\textsuperscript{135} Consolidated version of the TEU, art. 31, § 1.
Second, the qualified majority voting (QMV) rule “does not apply to decisions having military or defence implications”\(^{136}\), meaning that CSDP decisions are hardly taken by unanimity.

Third, “if a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. If he does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity”\(^{137}\). This specific provision is inspired by the Luxembourg compromise demanded by France to the Council in 1966. The slight difference with the 1966 version is that this safeguard implies that a State considering that its vital national interest is at stake should provide evidence of the risk associated with the challenged decision. In that case, the HR would act as a broker to find an acceptable solution.

Besides all these exceptions and counter-exceptions, paragraph 5 of the same article provides that procedural questions have to be settled through simple majority\(^{138}\).

6. Means (including EDA)

The Union has no capabilities _per se_. It has to rely on Member States’ contributions. Article 42.3 states that “Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy”\(^{139}\).

Member States are also requested to “improve their military capabilities”\(^{140}\).

Thanks to the ‘Berlin Plus’ Arrangements, the EU could dispose of NATO’s – planning, command and military – assets for EU-led operations. However, this option is subject to NATO’s right of first refusal, meaning that EU can only intervene somewhere with NATO’s assets if NATO refuse to engage in this particular region\(^{141}\).

This follows from the principle of non-duplication agreed in Helsinki in 1999. As aforesaid, non-duplication was supported by the US (Secretary of State Albright) in reaction to the St. Malo proposal of an autonomous capacity for the EU. At that time, as it is still the case today, the US welcomed the improvement of EU’s military capacities if it could benefit the whole Alliance. The European states were – and are still – contributing too little to the Alliance

\(^{136}\) Consolidated version of the TEU, art. 31, § 4.
\(^{137}\) Idem, art. 31, § 2.
\(^{138}\) Idem, art. 31, § 5.
\(^{139}\) Idem, art. 42, § 3.
\(^{140}\) Ibid.
capacity (average of 1.43% of the GDP\textsuperscript{142}, though Allies agreed in 2014 to maintain their defence expenditures above 2% of their national GDP\textsuperscript{143}) and the US refused that “autonomous capacities of the EU”\textsuperscript{144} decrease EU Member States’ contribution to NATO even more.

In practice, this means that the EU does not have to establish an autonomous operations headquarter (OHQ) since it can use NATO’s, the Supreme Headquarters Allied Powers Europe (SHAPE) in Mons (Belgium) or one of the five national ones made available by France, the UK, Italy, Germany and Greece. In parallel for the deployable assets (troops, vehicles, weapons and equipment), the EU can negotiate with NATO on a case-by-case basis which ones should be made available for EU-led CMOs.

However, there is obvious pressure towards independent planning and command structures as well as non-NATO civilian and military assets. For instance, one could mention the establishment of the European Operation Centre (EU OPCEN) in 2007 (and activated for the first time in March 2012\textsuperscript{145}). Even if its declared purpose is to serve as last resort OHQ when SHAPE and every ‘parent HQ’ are unavailable for operations requiring both civilian and military instruments and activated for one-off uses, it might be considered as a duplication, since its creation has a cost which could better serve Alliance’s interests. Therefore, the UK – considered as the main supporter of Atlanticism in Europe\textsuperscript{146} – strongly opposes the creation of a permanent EU OHQ. In 2011, the UK blocked then-HR Catherine Ashton’s proposal to make OPCEN permanent. British Foreign Secretary William Hague expressed his position: “I have made very clear that the United Kingdom will not agree to such a permanent OHQ. We will not agree to it now, we will not agree to it in the future. That is a red line for us (...). We are opposed to this idea because we think it duplicates NATO structures and permanently disassociates EU planning from NATO planning”\textsuperscript{147}. A second example of this potential duplication could be found in the 2003 and 2010 Headline Goals establishing respectively rapid response elements and EU battlegroups (EUBG) for quick reaction to distant crises. This kind of ambitious project could be perceived by non-EU Allies as diverting military efforts away from NATO.

In order to boost the military capabilities within the EU, the Member States have established the European Defence Agency (EDA), which “shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological

\textsuperscript{142} NATO, The Secretary General’s Annual Report, 2015, p. 106.
\textsuperscript{144} France and the United Kingdom, Joint declaration, St. Malo Summit, 4 December 1998.
\textsuperscript{146} VOSKOPOULOS G., Transatlantic Relations and European Integration, Realities and Dilemmas, ICFAI University Press, India, 2006, p. 111.
base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.” In other words, the EDA’s tasks are to identify the flaws and needs in the field of CSDP, to encourage States to address these shortfalls cooperatively so as to optimise the use of resources and to realise economies of scale.

These tasks are essential for the efficiency of the CSDP. The fact that, even with almost two million men and women in uniform, the Union was unable to reach the Helsinki Headline Goal in time reveals how unsuitable European armies are for CMOs. Nick Witney explains this discrepancy: “For more than forty years, European armed forces were geared towards fighting an all-out war in central Europe and the North Atlantic. Defence spending focussed on heavy metal and high explosive – lots of tanks and combat aircraft, lots of frigates and destroyers. The forces lacked mobility but this hardly mattered – they were based where they would fight. National armies did not need to know how to work or even communicate very much with each other. Provided each held its assigned front sector, the job would be done. In the envisaged Armageddon, avoiding casualties, military or civilian, was not a big priority.” Actually, as showed in Appendix 3, among the total number of available troops, only 30% of them are deployable, and only 5% of them are sustainable. A huge defence transformation has to be done to make the CSDP and EU military power effective.

Other EDA’s tasks include training, stimulating defence research and development (R&D) through EU funding and advocating competitive public procurement in the field of defence.

Ideally, in the achievement of its tasks the EDA would contribute to a common defence policy by recommending/requesting State A to develop capacity X (for instance, mine-clearing) and State B to develop capacity Y (for instance, air surveillance) where the necessary resources (mine detection devices and drones) would be both available in a common defence market. In practice however, defence procurement and industry are too closely linked to sovereignty and States are not likely to accept the opening of their defence sector to competition. In addition, defence industry may constitute an important pressure group at the national level. A significant safeguard in that field is provided by Article 346 of the TFEU:

“The provisions of the Treaties shall not preclude the application of the following rules:

(a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the internal market regarding products which are not intended for specifically military purposes.”

148 Consolidated version of the TEU, art. 42, § 3.
149 See Appendix 2 on total number of troops.
151 See Appendix 3 on total number of deployable and sustainable troops.
152 Consolidated version of the TFEU, art. 346, § 1.
7. Financing

Concerning the funding of CSDP operations, Article 41 provides that “expenditures arising from operations having military or defence implications [cannot be] charged to the Union budget”\(^{153}\), and that “it shall be charged to the Member States in accordance with the gross national product scale”\(^{154}\). Hence, there are two different regimes for the financing of CSDP operations. Indeed, civilian operations are taken into account in the Union budget, while military ones are funded through a specific mechanism, ‘Athena’.

Expenses related to civilian CSDP operations are taken into consideration in the annual Union budget, whether in the Section III title XX (Commission administrative expenses for personnel in Union delegations) and 19 (foreign policy instruments)\(^{155}\) or in Section X Chapter 12 (remuneration of external staff) or 14 (missions)\(^{156}\).

Regarding military operations, the Council has settled, through its decisions 2011/871/CFSP\(^{157}\) and 2015/528/CFSP\(^{158}\), the set of rules for member and third States to contribute financially and materially.

For each mission, contributing States include participating Member States as well as third States wishing to contribute\(^{159}\). All Member States are considered as participating to CSDP missions, except Denmark and those Member States that decide to abstain constructively in the Council\(^{160}\).

Article 6 of the first decision\(^{161}\) establishes a Special Committee in charge of the management of Athena. More concretely, this committee must vote and ensure the respect and transparency of operations budgets. All contributing States can take part in the deliberations and the work of the Committee, but only participating Member States can vote. Unanimity is the rule\(^{162}\), but if no consensus if achievable within the committee, the issue may be referred to the Council.

The procedure for voting and executing a CSDP operation budget is the following: EU Operation Commander draws up a proposal for expenditures\(^{163}\). An administrator consolidates

\(^{153}\) Consolidated version of the TEU, art. 41, § 2.  
\(^{154}\) Ibid.  
\(^{157}\) Council, Decision 2011/871/CFSP establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena), Official Journal of the European Union L 343, 19 December 2011.  
\(^{158}\) Council, Decision 2015/528/CFSP establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) and repealing Decision 2011/871/CFSP, Official Journal of the European Union L 84, 27 March 2015.  
\(^{159}\) Cfr. non-discrimination principle in part I, section 4 (p. 15).  
\(^{160}\) Cfr. constructive abstention in part II, section 5 (p. 31).  
\(^{161}\) Council, Decision 2011/871/CFSP, art. 6.  
\(^{162}\) Ibid, art. 6, § 8.  
\(^{163}\) Ibid, art. 8, § 2 (a).
the draft budget\(^{164}\) and the Special Committee votes it\(^{165}\). Once voted, the accounting officer is entrusted with the “proper implementation of payments and the collection of the revenue”\(^{166}\). In other words, he/she must ensure that any contributing State pays its share. The contribution of States is calculated in proportion with their Gross National Income (GNI), in accordance with the following formula:

\[
\text{State’s contribution} = \frac{\text{GNI of the State}}{\text{Aggregated GNI of all contributing States}} \times \text{Expenses for the operation}.
\]

This means that Member States see their burden diminish when they include third States in their operations. Once the budget is adopted, the EU Operation Commander is “authorised to adopt any measures which he deems necessary to implement the expenditure financed through Athena, for the operation which he commands”\(^{167}\). Expenses can exceptionally exceed the foreseen budget if the EU Commander is confronted with absolute necessity (for instance when lives are endangered).

The Council decision makes the distinction between ‘common costs’ and ‘nation borne costs’. Common costs are those directly generated by the deployment and the activity of the EU-led operation and must be borne by all the contributing States. They are listed in Appendices I to IV of the decision and cover preparation, deployment and operational costs, that is to say costs incurred by the Union for goods, services or works made available by a Member State, a Union institution, a third State or an international organisation (NATO). In contrast, some costs, such as fuel, water and food consumed by troops deployed are borne by Member States contributing to the operation\(^{168}\).

The main problems with disconnecting EU military operations funding from the Union budget is that every new operation gives the opportunity to States to opt out, and that there is no resource available as long as the accounting officer has not collected national contributions.

That being said, Athena improved CSDP funding. First, by establishing a permanent structure composed of experts, the collecting process is faster and smoother. The delay between the decision and the launch of the operation has been reduced. Second, considering participation and contribution of all Member States (except Denmark) as a default option ensures minimum funding. Third, the inclusiveness of the CSDP to third States is profitable for Member States since it makes Member States’ contributions decrease. Finally, States are encouraged to engage their troops and assets in EU-led operations, since – almost – all costs are shared.

\(^{164}\) Council, Decision 2011/871/CFSP, art. 7, § 3.

\(^{165}\) Idem, art. 6, § 9.

\(^{166}\) Idem, art. 9, § 3.

\(^{167}\) Idem, art. 8, § 3.

8. The mutual aid and assistance clause

The Treaty of Lisbon introduces for the first time in the European framework a collective defence reflex. Indeed, Article 42 paragraph 7 states that “if a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.”\(^\text{169}\) It obviously derives from the absorption of the Brussels Treaty into the Treaty on European Union. The clause uses more or less the same wording as Article 5 of the Modified Brussels Treaty: “If any of the High Contracting Party should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military means and other aid and assistance in their power”\(^\text{170}\).

Article 42.7 has materialised collective defence between Member States by making of the Union a military alliance. As underlined by Sven Biscop\(^\text{171}\), its wording “all means in their powers” is more compelling than NATO’s Article 5, which only obliges each ally to take “such action as it deems necessary”.

However, the concrete impact of this new provision can be tempered.

First, even if Article 42.7 has made of the Union an alliance, it did not drastically transform the security order in the region. Actually, the mutual defence clause barely affects the protection of the EU Member States. The ten Member States that were already fully members of the WEU will enjoy the same protection, but must now be ready to aid and assist new members. For the 22 (out of the 28) EU Member States that are also members of NATO, one might argue that this mutual defence clause simply adds an additional safety net. With respect to EU Member States that were neither member of the WEU nor member of NATO, namely Austria, Cyprus, Finland, Ireland, Malta and Sweden, the effect of Article 42.7 is rather profitable, since it applies to them but does not prejudice the “specific character of the[ir] security and defence policy”. Simply put, it means that neutral and non-aligned States (Austria, Finland, Ireland, Malta and Sweden) could benefit of this clause without contributing to it. The impact of this clause on Denmark is less clear. Since “with regard to measures adopted by the Council pursuant to Article 26(1), Article 42 and Articles 43 to 46 of the Treaty on European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications”\(^\text{172}\), it is exempted from helping another Member States that would be attacked. However, there is nothing written down on whether Denmark could rightfully invoke the clause or not. In fine, the clause is mostly significant for Cyprus, which had previously no automatic mechanism of

\(^{169}\) Consolidated version of the TEU, art. 42, § 7.

\(^{170}\) Western European Union, Brussels Treaty as amended by the Protocol modifying and completing the Brussels Treaty, signed in Paris on 23 October 1954, art. 5.

\(^{171}\) BISCOP S., “EU mutual assistance is more than defence”, EuropeanGeostrategy, Vol. 7, No. 70, 2015.

\(^{172}\) Protocol (No 22) on the Position of Denmark, In: Consolidated version of the TEU and the TFEU, Official Journal of the European Union C 202/298, Part II, art. 5.
collective defence, and Greece, which was questioning the reliability of NATO in case of aggression from a NATO member, like Turkey (legal gap)\textsuperscript{173}.

A second reason to question the significance of this mutual defence clause is its lack of clarity. While Article 5 of the Modified Brussels Treaty requested members to “afford all the military means and other aid and assistance in their power” to the attacked State, Article 42.7 avoids any military reference and simply states that “other Member States shall have towards [the attacked Member State] an obligation of aid and assistance by all the means in their power”. This very broad obligation enables Member States to decide what they consider as ‘aid and assistance’, as the case may be (military engagement, resources supply or humanitarian aid). This voluntary absence could also be justified by the fact that neutral Member States could also aid and assist. Also, there is a slight uncertainty about the geographical applicability of the clause. While the Transatlantic collective defence covers its members from attacks against them “in North America and in Europe” as well as in territories included in Article 6\textsuperscript{174} and WEU applies in case of “armed attacks in Europe”\textsuperscript{175}, Article 42.7 only refers to Member States’ territory. In accordance with Article 355 TFEU stating that provisions of the Treaties apply to the outermost regions, one might presume that this mutual defence clause also covers Guadeloupe, La Réunion, Mayotte French Guiana, Martinique and Saint-Martin (French); Madeira and Azores (Portuguese) and the Canary Islands (Spanish). In contrast, CSDP provisions would not apply to overseas countries and territories. In addition to that, the clause does not include any mechanism of intervention and decision-making as it is the case within NATO\textsuperscript{176} or the United Nations\textsuperscript{177}. Once again, it seems to reflect the desire for flexibility and leeway.

Finally, the coexistence of the ‘mutual aid and assistance clause’ with the ‘solidarity clause’ of Article 222 TFEU\textsuperscript{178} may produce some confusion. Obviously, they are distinct: the former triggers collective self-defence and is purely intergovernmental while the latter provides that the Union would mobilise all the instruments at its disposal – hence, it is supranational – to assist a Member State being the object of a terrorist attack or the victim of a natural or man-made disaster. However, after the terrorist attacks of November 2015, French President Hollande decided to invoke the mutual defence clause – rather than the solidarity clause. If it was a strategic move to convince European Member States to mobilise along with France in the fight against the Islamic State in Iraq and Syria (ISIS), this first use of the mutual defence clause and the unexpected circumstance of its activation gave rise to some uncertainty, some passivity too and some institutional debates on how to better implement this article. In practice then, French government negotiated directly through bilateral meetings what Member States could undertake to help France to engage more fully against ISIS.

\textsuperscript{174} North Atlantic Treaty, signed in Washington D.C. on 4\textsuperscript{th} April 1949, art. 5-6.
\textsuperscript{175} Western European Union, Brussels Treaty as amended by the Protocol modifying and completing the Brussels Treaty, signed at Paris on 23 October 1954, art. 5.
\textsuperscript{176} North Atlantic Treaty, Washington D.C., 4 April 1949, art. 9.
\textsuperscript{177} Charter of the United Nations, San Francisco, 26 June 1945, art. 51.
\textsuperscript{178} Consolidated version of the TFEU, art. 222.
Permanent structured cooperation (PESCO) is also a novelty of the Treaty of Lisbon. It foresees, for Member States wanting it, the establishment of closer organised cooperation in the field of CSDP.

Compared to the mutual defence clause, the permanent structured cooperation is very detailed, with a first reference in Article 42 paragraph 6, more precise and technical information in Article 46 and a list of criteria and tasks in Additional Protocol 10.

The rationale of this new mechanism is to introduce some flexibility in the integrative process and to avoid the risk of inertia induced by unanimous decision-making – highly likely in the Union of then twenty-seven (Croatia was not yet a member). The institutionalisation of the process of deeper collaboration has two other advantages: to prevent Member States from developing it outside the Union – like France and did with the Eurocorps – and to ensure its permanency – by getting rid of one-off partnerships.

In substance, permanent structured cooperation works a bit like enhanced cooperation: it allows a group of Member States to develop further Union’s objectives, without prejudice to other Union’s prerogatives and other Member States. Nevertheless, notable differences between the two mechanisms reveal the will of States to use distinct regimes for high and low politics.

First, enhanced cooperation can be established for any type of “Union’s non-exclusive competences” when consensus is unreachable, and treaties do not exclude simultaneous development of multiple fields of enhanced cooperation. Actually, CSDP might be considered as enhanced cooperation (Protocol No 11) if it was not part of the acquis: it has been established within the EU institutional framework by those Member States (all except Denmark) that have decided to cooperate even more in a Union’s non-exclusive field of competences to develop further Union’s objectives (promotion of its interests and contribution to peace and security).

In contrast, permanent structured cooperation is an exceptional procedure which has been tailored for the field of CSDP: primary law has already established the features and the agenda of this cooperation: “[PESCO] shall be open to any Member State which undertakes (…) to proceed more intensively to develop its defence capacities through the development of its national contributions and participation (…) in multinational forces, in (…) European equipment programmes, and in the activity of the [EDA], and have the capacity to supply by 2010 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of carrying out the

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179 Consolidated version of the TEU, art. 20, § 1.
181 Consolidated version of the TEU, art. 3, § 5.
tasks referred to in Article 43 of the TEU within a period of five to 30 days and which can be sustained for an initial period of 30 days and be extended up to at least 120 days”\textsuperscript{182}.

A second difference is that PESCO is purely intergovernmental and that the European Parliament and the European Commission have absolutely no say regarding the creation, accession and functioning of the mechanism, as is the case with enhanced cooperation. One might say that enhanced cooperation is about ‘deeper integration’ while PESCO is about ‘closer cooperation’.

Finally, while the Council may – unanimously – decide which voting rule shall apply in a specific field of enhanced cooperation\textsuperscript{183}, decisions taken within PESCO are only taken unanimously\textsuperscript{184}.

If the wording of the Protocol No 10 was foreseeing a rapid implementation\textsuperscript{185}, permanent structured cooperation was never activated. Why? One may cite three reasons explaining the cautious attitude of the Member States regarding this clause.

First, the very idea of a ‘multiple-speed Europe’ is debated. Several Member States fear that PESCO, just like enhanced cooperation, would have a divisive effect between frontrunners and those members lagging behind.

Second, PESCO is not perceived as essentially necessary to produce deeper cooperation in the field of CSDP. The current regime of CSDP already allows Member States to cooperate on a bilateral or multilateral basis, whether by building \textit{ad hoc} coalitions for specific CSDP operations, by establishing multinational forces (Eurocorps, Franco-German Brigade, German-Dutch Corps), or by collaborating for defence-related projects (Air-to-Air Refuelling Programme\textsuperscript{186}).

Third, the financial and economic crisis starting just after the signature of the Treaty of Lisbon has undoubtedly calmed military ambitions for a few years. During the 2008-2012 period, the share of GDP allocated to defence decreased to an average of 2.1% per year in the EU\textsuperscript{187}. In this context of generalised defence budget cuts (\textit{“By early 2014, the United Kingdom decided on an 8% cut over four years; France announced a 4% cut; and Germany a 6% cut by 2014”}\textsuperscript{188}), it has been difficult for Member States to \textit{“intensely develop their defence capacities”}\textsuperscript{189}.

\begin{footnotesize}
\begin{enumerate}
\item Consolidated version of the TFEU, art. 333.
\item Consolidated version of the TEU, art. 46, § 6.
\item Protocol (No 10), \textit{In:} Consolidated version of the TEU and TFEU, art. 1.
\item See Appendix 2.
\item Protocol (No. 10), \textit{In:} Consolidated version of the TEU and TFEU, art. 1 (a).
\end{enumerate}
\end{footnotesize}
10. The European External Action Service

Finally, a novelty, going along the increased tasks of the High Representative, is the establishment of a new administration. Article 27 provides that “in fulfilling his mandate, the High Representative shall be assisted by a European External Action Service”. Thus, the Council decision of 26 July 2010 established the EEAS as a “functionally autonomous body of the European Union, separated from the General Secretariat of the Council and from the Commission (...) placed under the authority of the High Representative.”\(^190\). It is considered as the diplomatic service of the Union since it is “made up of a central administration (in Brussels) and of the Union delegations to third countries and to international organisations”. However, it does more: it assists the High Representative in the execution of its mandates. Hence, the EEAS is the administration enabling the HR to issue proposals on and conduct the CFSP. At the end of 2015, the EEAS was counting 4,189 staff members, either in Brussels Headquarters (1,928) or in one of the 139 EU delegations (2,261)\(^191\).

The name of the administration is new, but it mostly brings together existing services from the Commission or the Council in a spirit of rationalisation. All the specific bodies involved in the information, formulation or implementation process of the CFSP – which were previously under the authority of the General Secretariat of the Council or of the Commission – have been attached to the EEAS (EUMS, CivCom, SatCen, SitCen, ESDC, ISS, …)\(^192\),\(^193\). “The establishment of the EEAS should be guided by the principle of cost-efficiency (...). Unnecessary duplication of tasks, functions and resources with other structures should be avoided. All opportunities for rationalisation should be availed of.”\(^194\).

Through this process, one might say that the European Commission has lost power and influence in the field of foreign policy. The service is functionally autonomous, under the exclusive authority of the High Representative, and the EEAS staff “shall neither seek nor take instructions from any government, authority, organisation or person outside the EEAS or from any body or person other than the High Representative”\(^195\). However, there are remaining ties and control mechanisms of the Commission on EEAS activities.

First, “the EEAS and the services of the Commission shall consult each other on all matters relating to the external action of the Union in the exercise of their respective functions, except on matters covered by the CSDP”. For instance, trade, international cooperation, development, humanitarian aid, neighbourhood and enlargement policy still involve the Commission and are still governed by the ‘Community’ method. “In areas where the Commission exercises the powers conferred upon it by the Treaties, the Commission may, in

\(^{190}\) Council, Decision 2010/427/EU establishing the organisation and the functioning of the EEAS, Official Journal of the European Union L 201, 26 July 2010, art. 1.

\(^{191}\) EEAS, EEAS Human Resources Report 2015, May 2016, p. 5.

\(^{192}\) See Appendix 6.

\(^{193}\) Departments and functions to be transferred to the EEAS, In: Council, Decision 2010/427/EU, Annex.

\(^{194}\) Council, Decision 2010/427/EU, art. 1, § 15.

\(^{195}\) Council, Decision 2010/427/EU, art. 6, § 4.
accordance with Article 221(2) TFEU, also issue instructions to delegations, which shall be executed under the overall responsibility of the Head of Delegation”\textsuperscript{196}.

Second, the Commission is still in charge of the Union budget, including the new specific EEAS section of the budget: “The implementation of the operational budget will be the Commission’s responsibility in accordance with Article 317 TFEU”\textsuperscript{197}. This gives to the Commission a scrutiny right on the EEAS actions and expenditures.

\textsuperscript{196} Council, Decision 2010/427/EU, art. 5 §, 3.
\textsuperscript{197} Idem, art. 1 §, 14.
Part III. The CSDP in practice

What is the concrete outcome of the common security and defence policy? How does it work in practice? Is it efficient? Is it enough? The following part proposes to answer all these questions by providing an overview of all CSDP operations, comparing them, and dissecting a particular operation, EUFOR RCA.

1. General observations

Since the first ESDP operation in Bosnia and Herzegovina in 2003, the European Union has launched 33 CSDP operations in Europe, Africa, Middle-East and Asia. The table below lists all ESDP/CSDP operations 198 and indicates for each of them its duration, nature, cost, personnel and tasks.

<table>
<thead>
<tr>
<th>Mission</th>
<th>Duration</th>
<th>Nature</th>
<th>NATO assets</th>
<th>Cost (euro) estimates 199</th>
<th>Personnel 200</th>
<th>Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>EUPM BiH</td>
<td>2003-2012</td>
<td>Civilian</td>
<td>No</td>
<td>32.900.000</td>
<td>774</td>
<td>State assistance in rule of law</td>
</tr>
<tr>
<td>EUFOR Concordia</td>
<td>2003</td>
<td>Military</td>
<td>Yes</td>
<td>4.700.000</td>
<td>400</td>
<td>Securisation, stabilisation, implementation peace agreement</td>
</tr>
<tr>
<td>FYROM</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Stabilisation, humanitarian</td>
</tr>
<tr>
<td>Artemis DRC</td>
<td>2003</td>
<td>Military</td>
<td>No</td>
<td>7.000.000</td>
<td>1.800</td>
<td>Reform of justice system</td>
</tr>
<tr>
<td>EUJUST Themis</td>
<td>2004-2005</td>
<td>Civilian</td>
<td>No</td>
<td>2.050.000</td>
<td>27</td>
<td>State assistance in rule of law</td>
</tr>
<tr>
<td>EUPOL FYROM</td>
<td>2003-2005</td>
<td>Civilian</td>
<td>No</td>
<td>15.006.000</td>
<td>200</td>
<td>Consolidation of law and order</td>
</tr>
<tr>
<td>EUFOR Althea BiH</td>
<td>2004-now</td>
<td>Military</td>
<td>Yes</td>
<td>71.000.000</td>
<td>600</td>
<td>Implementing peace agreement</td>
</tr>
<tr>
<td>EUJUST LEX Iraq</td>
<td>2005-2013</td>
<td>Civilian</td>
<td>No</td>
<td>+70.000.000</td>
<td>66</td>
<td>State assistance in rule of law</td>
</tr>
<tr>
<td>EUSEC RDC</td>
<td>2005-2015</td>
<td>Military</td>
<td>No</td>
<td>72.500.000</td>
<td>400</td>
<td>Security sector reform</td>
</tr>
<tr>
<td>AMM Acch</td>
<td>2005-2006</td>
<td>Civilian</td>
<td>No</td>
<td>15.300.000</td>
<td>36</td>
<td>Implementation peace agreement</td>
</tr>
<tr>
<td>EUBAM Ukraine and Moldova</td>
<td>2005-now</td>
<td>Civilian</td>
<td>No</td>
<td>+120.000.000</td>
<td>220</td>
<td>Harmonisation of border control and customs with EU</td>
</tr>
<tr>
<td>EUBAM Rafah</td>
<td>2005-now</td>
<td>Civilian</td>
<td>No</td>
<td>+940.000</td>
<td>14</td>
<td>Border management</td>
</tr>
<tr>
<td>Palestinian territories</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EUPOL Kinshasa</td>
<td>2005-2007</td>
<td>Civilian</td>
<td>No</td>
<td>6.445.000</td>
<td>29</td>
<td>Police support, training, reform</td>
</tr>
<tr>
<td>EUFAT FYROM</td>
<td>2005-2006</td>
<td>Civilian</td>
<td>No</td>
<td>1.500.000</td>
<td>30</td>
<td>Police training</td>
</tr>
<tr>
<td>EUPOL COPPS</td>
<td>2006-now</td>
<td>Civilian</td>
<td>No</td>
<td>70.220.000</td>
<td>114</td>
<td>Institution-building</td>
</tr>
<tr>
<td>Palestinian territories</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EUFOR DRC</td>
<td>2006</td>
<td>Military</td>
<td>No</td>
<td>16.700.000</td>
<td>2.300</td>
<td>Support MONUC during elections</td>
</tr>
<tr>
<td>EUFOR DRC</td>
<td>2007-2014</td>
<td>Civilian</td>
<td>No</td>
<td>45.600.000</td>
<td>56</td>
<td>Security sector reform</td>
</tr>
<tr>
<td>EUPOL Afghanistan</td>
<td>2007-2016</td>
<td>Civilian</td>
<td>No</td>
<td>305.000.000</td>
<td>312</td>
<td>Building civilian police service</td>
</tr>
<tr>
<td>EUFOR Tchad/RCA</td>
<td>2008-2009</td>
<td>Military</td>
<td>No</td>
<td>119.000.000</td>
<td>3.700</td>
<td>Civilian protection</td>
</tr>
<tr>
<td>EU SSR Guinea-Bissau</td>
<td>2008-2010</td>
<td>Civilian</td>
<td>No</td>
<td>7.810.000</td>
<td>24</td>
<td>Sector security reform</td>
</tr>
<tr>
<td>EUMM Georgia</td>
<td>2008-2013</td>
<td>Civilian</td>
<td>No</td>
<td>180.230.000</td>
<td>208</td>
<td>Cease-fire monitoring</td>
</tr>
<tr>
<td>EULEX Kosovo</td>
<td>2008-2009</td>
<td>Civilian</td>
<td>No</td>
<td>+1.000.000.000</td>
<td>2.250</td>
<td>Strengthen justice system</td>
</tr>
<tr>
<td>EUNAVFOR Atalanta</td>
<td>2008-now</td>
<td>Military</td>
<td>No</td>
<td>+55.000.000</td>
<td>1.200</td>
<td>Piracy deterrence, ship protection</td>
</tr>
<tr>
<td>EUTM Somalia</td>
<td>2010-now</td>
<td>Military</td>
<td>No</td>
<td>19.700.000</td>
<td>195</td>
<td>Military training</td>
</tr>
<tr>
<td>EUAVSEC South Sudan</td>
<td>2012-2014</td>
<td>Civilian</td>
<td>No</td>
<td>12.500.000</td>
<td>49</td>
<td>Strengthen aviation security</td>
</tr>
</tbody>
</table>

198 Also available in Appendix 5.
199 Aggregation of the resources allocated to the operation in the initial establishment Council decisions and the subsequent decisions extending the mission.
200 Includes international and local personnel hired for the operation, as given by the last available factsheet on the operation.
By giving practical information on the finished and ongoing CSDP operations, this table enables to draw some statistical observations.

First, the EU has led more civilian operations (20) than military ones (13). Of course, all the CSDP operations are related to security and defence sector (police, army, borders, trafficking, terrorism, justice system), but the EU has used more civilian means than military ones. Among military operations, it is also possible to distinguish between those involving the deployment of military troops for combat or probability of combat (EUFOR) and those dealing with training or advisory but related to the military sector (EUTM, EUMAM, EU SSR). This first categorisation enables to conclude that CSDP, despite its military connotation, relies more on its civilian assets for crisis management. One might also add that EUFOR military missions all have short mandates (max. 1 year).

Second, it is interesting to observe the geographical dispersion of operations: they are led in Europe (11), Africa (17), Middle-East (4) and Asia (1). While the five first years mostly focused on Europe, the number of operations in Africa has highly increased from 2008 onwards.

Finally, it may be noted that an operation in a specific place never comes alone, but is almost always followed by subsequent operations. This continuity means that the Union elaborates long term policies for crisis management. The concept of comprehensive approach to crises will be developed below.


By focusing on a specific CSDP operation, this second section will try to understand how the mechanisms and procedures developed in part II are applied in practice, and how the CSDP takes shape from the European Council strategy until the personnel action on the ground. To that end, the EU military operation in the Central African Republic (EUFOR RCA) of 2014 has been chosen for being recent, military and finished.
a) Context

Ten years after the coup that brought him into power, Central African President François Bozizé was overthrown by armed militia – the so-called Seleka – in March 2013. His successor, Michel Djotoda formally disbanded the Seleka coalition, but most combatants refused to disarm. The power vacuum resurrected ethnic and religious tensions between the Muslim, Christian, animist and Fula communities, leading to exactions from Seleka and Anti-balaka (initially self-defence militias) armed groups, such as slaughter, mass rape, forced displacements and ethnic cleansing.

The United Nations Security Council authorised on 5th December 2013 the deployment of the MISCA – the African Union (AU) peace-keeping mission in Central African Republic (CAR) – as well as of French troops called Operation Sangaris – to protect civilians, restore security and stabilise the country. The same resolution also encouraged “Member States and regional organisations to cooperate closely with the African Union (...) to this end”.

b) EU action

In reaction, the European Council declared in the conclusions of its December 2013 summit that “as part of a comprehensive approach, the European Council confirms the EU’s willingness to examine the use of relevant instruments to contribute towards the efforts under way to stabilise the country, including under the Common Security and Defence Policy, in both its military and civilian dimensions”.

It is interesting to mention that the CSDP is only considered as one of the several instruments within the ‘comprehensive approach’ of the CAR crisis. To put an end to the conflict and stabilise the country, the Union relies on:

- Diplomatic efforts: it invites the Economic Community of Central African States (ECCAS) and the African Union to continue to support the political peace process and welcomes the efforts of state and non-state actors in that direction;
- Financial support to existing peace-making operations: the Union paid 125 million euro in support of the African-led MISCA;
- Humanitarian aid: the EU is the main provider of humanitarian assistance (150 million euro for 2013 and 2014);
- Contribution to future reconstruction and development: even if the crisis has “slowed down cooperation considerably”, the Union has committed to invest 216 million euros.

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201 UNSC, Resolution S/RES/2127, 5 December 2013, § 28.
202 Idem, § 50.
203 Idem, § 34.
206 Ibid.
208 Ibid.
euro for stabilisation and medium-term assistance. Furthermore, the EU has committed to engage, after the cease-fire, in reinforcement of the rule of law and in reform of the security sector;

- Support to human rights: it “encourages the rapid establishment of the international commission of inquiry provided for in UN Security Council [UNSC] Resolution 2127 and reaﬃrms its resolute support for the International Criminal Court”;

- Refugees management: the Union also contributed to welcome Central African refugees to Chad, Cameroun and Democratic Republic of Congo borders (10 million euro) and to their integration or return process (12 more million euro); and, of course

- Operational capacities: through the EUFOR RCA operation, the EU sent military personnel to Bangui to impact the situation on the ground. A CSDP mission is the ultimate step of EU involvement.

c) Political level

Common action decided by the European Council

On 20th December 2013, the European Council adopted a common position on CAR and agreed on the deployment of a CSDP operation. To that end, it “invite[d] the High Representative to present a proposal for a decision at the Council (Foreign Affairs) in January 2014”. With this mere push, the European Council has done its job and will not take any other measure on the issue, unless “international developments so require”.

High Representative proposal

From this moment on, the High Representative had one month to issue to the FAC a credible proposal. Hence, the High Representative worked with – or maybe relied on – its administration (EEAS) to propose acceptable options. The Crisis Management and Planning Directorate (CMPD) elaborated a ‘Crisis Management Concept’ developing several options on "what to do, why, where and with whom". After having passed from hand to hand, the report went up in the hierarchy, from the CMPD to the HR, passing through the PSC and COREPER. The High Representative finally presented it during the FAC meeting of the 20th January 2014.

212 Ibid.
215 Consolidated version of the TEU, art. 26, § 1.
The report in question proposed to assist the Central African Republic, the African Union and the United Nations by launching a “bridging operation”\(^{217}\), that is to say a small temporary operation “to buy time until a larger and long-term operation can deploy”\(^{218}\).

**Council approval**

In its conclusions on the Central African Republic, the Council stated that “the Council, convinced of the importance of supporting African efforts and stepping up EU involvement in the CAR as part of its overall approach, wishes to thank the High Representative for the proposal she has put forward to ensure that the EU plays an active part in helping to stabilise the CAR under the CSDP. The Council reached political agreement on a future CSDP military operation and, to that end, approved the Crisis Management Concept. It asked the competent bodies to prepare the necessary measures in order rapidly to establish this operation, subject to a new Council decision. The operation will provide temporary support, for a period of up to six months, to help to achieve a secure environment in the Bangui area, with a view to handing over to the African Union”. In other words, the Council unanimously accepted the outline of the operation and the proposal of the High Representative in its entirety. However, it requested the operation to be further detailed by the EEAS services in order to be officially launched. Regarding the content of the operation, the ministers adopted a cautious approach. They did not pretend to solve the problem, but simply proposed to “support African [and French] efforts”, in a limited area (Bangui) and for a limited time (up to six months). The term EUFOR means that the operation is purely military and terrestrial.

“The military force would thereby contribute, within its area of operations, to international and regional efforts to protect the populations most at risk and would contribute to the free movement of civilians. All these efforts will create the conditions that are required in order to provide humanitarian aid for those who need it. The Council wishes to stress that this operation must be based on a United Nations Security Council resolution which will make it possible for a EUFOR operation in the CAR to be launched without delay in support of the efforts deployed by the international community, in particular the AU, the UN and France, and by the Central African authorities (...).” Here, the Council sets the objective of the mission, namely to protect civilian populations in Bangui and create the conditions for the supply of humanitarian aid. A priori, this would take the form of a peace-keeping operation, but the conditions for the use of force will only be provided by the Council decision establishing the mandate for EUFOR RCA. It also called the UN Security Council to give the Union a mandate for military intervention. This prior go-ahead is mandatory for the EU to lawfully use force. Indeed, Article 53 of the UN Charter provides that “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorisation of the Security Council”\(^{219}\).


\(^{219}\) Charter of the United Nations, San Francisco, 26 June 1945, art. 53, § 1.
During the same meeting, the FAC designated the EU OHQ in Larissa (Greece) as the planning authority. This choice might seem curious, since Larissa is relatively distant from Brussels and that there is no direct flight from Greece to the operation field in Bangui, contrary to the Paris, Stuttgart or London available headquarters. It is very likely that Greece took advantage of its half-year presidency (January 2014 - June 2014) to propose its own operational headquarters. Anyway, the EU OHQ tasks do not especially require it to be located near the operational theatre (intelligence, planning, and logistics), unlike the Force Headquarter (FHQ) which is to operate in Bangui\(^{220}\).

**UN mandate**

The following day, High Representative Catherine Ashton sent a letter to the UN Secretary General Ban Ki-Moon expressing the “*readiness of the European Union to contribute to stabilisation of the Central African Republic*”\(^{221}\) and requesting a resolution authorising the deployment of European Union force.

Meanwhile, on 24 January 2014, in a letter addressed to the HR, the interim President of CAR Catherine Samba-Panza accepted and welcomed the deployment of the EUFOR operation\(^{222}\). This authorisation is not indispensable when the UN Security Council – the supreme authority authorising the use of force – agrees on coercive measures for the restoration of peace. However, in the absence of such a resolution, State practice and ICJ rulings would tend to recognise the ‘intervention by invitation’\(^{223}\).

A few days later, on the 28\(^{\text{th}}\) January 2014, the UN Security Council Resolution 2134 “*authorised the European Union to deploy an operation in the CAR*”\(^{224}\). It also “*authorised the EU operation to take all necessary measures within the limits of its capacities and areas of deployment from its initial deployment and for a period of six months from the declaration of its full operational capacity*”. ‘All necessary measures’ means that the EU receives *carte blanche* to achieve its goals, including the right to kill, as long as it can justify the necessity of such acts.

**Council Decision**

Once the military intervention in CAR has been authorised by the Security Council of the United Nations, the Council could officially establish its CSDP operation. On 10\(^{\text{th}}\) February, the Council adopted the Decision on a European Union military operation in the Central


\(^{224}\) UNSC, Resolution S/RES/2134, 28 January 2014, p. 11.
African Republic\textsuperscript{225}, or EUFOR RCA. In accordance with Article 28 TEU, the Council “la[id] down the objectives, scope, means to be made available to the Union, duration and conditions of the operational action”. The resulting decision mainly distributes the tasks and functions of the mission:

- The Council remains the supreme decider and can modify, extend or interrupt the operation mandate.
- The High Representative has responsibility to implement the decision, to ensure the consistency of Union’s external action in CAR and Africa and to act as contact point between all the actors involved in CAR (CAR transitional government, ECCAS, AU, France and UN)\textsuperscript{226}.
- The Political and Security Committee is to “exercise the political control and strategic direction of EUFOR RCA”\textsuperscript{227}. Within the framework of the mandate (bridging mission of 6 months in the Bangui area), the PSC is authorised to take necessary political and strategic decisions and to “amend the Operations Plan and the Rules of Engagement”. However, any event likely to affect the mandate of the mission must be reported to the Council. It must regularly report to the Council.
- The EU Operation Commander (Michel Pontiès) – proposed by the Council and appointed by the PSC – conducts EUFOR RCA and reports to the EUMC\textsuperscript{228}.
- The EUMC “monitors the proper execution of EUFOR RCA” and reports to the PSC\textsuperscript{229}.
- The EU delegation in Bangui, in charge of diplomatic relations with CAR can give local political advice and guidance to the EU Operation Commander\textsuperscript{230}.

Finally, Article 4 provides that “the decision to launch EUFOR RCA shall be adopted by the Council following approval of the Operation Plan and of the Rules of Engagement necessary for the execution of the mandate”\textsuperscript{231}.

One month later, the High Representative and the CAR transitional government reached an international agreement on EUFOR RCA mandate through an exchange of letters validated by the Council\textsuperscript{232}. It was agreed that the terms of the Agreement signed in May 2008 for the intervention of EUFOR Tchad/RCA\textsuperscript{233} would also suit EUFOR RCA 2014.

\textsuperscript{226} Idem, art. 7, § 3.
\textsuperscript{227} Idem, art. 5.
\textsuperscript{228} Idem, art. 6, § 2.
\textsuperscript{229} Idem, art. 6, § 1.
\textsuperscript{230} Idem, art. 7, § 2.
\textsuperscript{231} Idem, art. 4.
From this step until the renewal and, finally, the termination of EUFOR RCA, EUFOR RCA was carried out by executive actors, namely the HR, the PSC, the OHQ and the EU Operation Commander which executed the tasks conferred upon them in the Decision 2014/73/CFSP.

d) Operational level

Before to launch EUFOR RCA, the PSC had to prepare the Operation Plan and the Rules of Engagement with the help of the EU Operation Commander. They were approved by the Council on 17th March 2014.

Besides this strategic preparation, the EU Operation Commander Michel Pontiès also had to organise ‘force generation’ conferences to find, among Member States and contributing third States, the assets necessary for the achievement of the mission. For that purpose, the PSC invited third States’ contributions234 and established a Committee of Contributors235. The first force generation conference took place three days after the Council decision, but failed to generate the 1.000 required troops. The two following conferences did not produce more results. By mid-March, only France, Georgia and Estonia had committed to provide a contingent of 140 men236. The reluctance of Member States to contribute to EUFOR RCA was maybe linked to the occurrence of troubles in eastern Ukraine in late February. Several extra conferences and diplomatic pressure were necessary during the following weeks to convince Italy, Portugal, Latvia, the UK, Sweden and Germany to step in237.

EUFOR RCA was finally launched on 1st April through Council Decision 2014/183/CFSP238. The full operational capability (FOC), that is to say the situation when all foreseen capabilities were deployed and active, was reached on 30th April and the troops could finally replace French soldiers of Operation Sangaris in Bangui’s 3rd and 5th districts as well as in the M’Poko Airport. In total, 700 (rather than the 1.000 initially envisioned) soldiers and gendarmes were deployed in Bangui239. 28 states (all the Member States except Denmark, plus Georgia) participated to the operation (financially) but only 14 contributed in the field with infantry battalions (France, Estonia, Georgia), special forces (Spain), national police corps (Spain), aircraft (Portugal), anti-IED elements (Finland), vehicles (Sweden, UK, Germany), medical infrastructure (Germany) and a gendarmerie force (France, Spain,

Portugal, Italy, Netherlands, Poland, Lithuania, Romania and Turkey through the multinational framework of EUROGENDFOR.\(^{240}\)

Concretely, in order to maintain order in the area, EUFOR RCA role was to prevent violence and impunity, by patrolling and disarming the population and arresting and detaining wrongdoers. The particularity of EUFOR RCA was the 24/7 presence of peacekeepers in the area.\(^{241}\) Regarding the airport, keeping it safe and operational was essential since it was the only place through which humanitarian aid could access the Central African population.

According to official sources, EUFOR RCA has “\textit{successfully completed its mission}”\(^{242}\) and “\textit{improved the security environment in Bangui districts}”\(^{243,244}\), enabling the access of humanitarian aid in the capital through the airport. EUFOR RCA also permitted French troops to deploy elsewhere in CAR and prepared the ground for a wide-scale UN peace-keeping operation, the Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA), with almost 12,000 military, police and civilian personnel.\(^{245}\) In total, one French corporal died during the mission, from malaria, and several soldiers and policemen were wounded during patrols and raids.

e) Termination, take-over and follow-up

On 7\(^{th}\) November 2014, the Council decided to extend to duration of EUFOR RCA until the 15\(^{th}\) March 2015\(^{246}\) to give more time to MINUSCA.

The peace-keeping tasks were handed over in two steps. MINUSCA was first vested with the responsibility for the airport on the 17\(^{th}\) of November, and then of the 3\(^{rd}\) and 5\(^{th}\) Bangui districts on 28\(^{th}\) of February.

The termination of EUFOR RCA does not mean that the EU has not played a role in CAR since then. Quite the contrary, the Union launched an advisory mission for the reform of the Central African security sector (EUMAM RCA).\(^{247}\) This operation lasted one year, but EU


\(^{246}\) UNSC, Resolution S/RES/2149, 10 April 2014, § 20.


pursued its efforts in Security Sector Reform (SSR) through a military training mission, EUTM RCA\(^{248}\), still ongoing today.

3. Assessment

The conduct of EUFOR RCA reveals strengths and flaws in the CSDP structure. It also prompts some observations regarding the CSDP in general.

On the one side, the launch, execution and termination of the operation happened smoothly. As the ninth EU military operation, the chain of command was running perfectly. The mandate was clear and rapidly executed, with some delay on the account of the Member States. Moreover, EUFOR RCA confirmed the quality of the Union diplomacy and of its interinstitutional interactions. There has been a total trust between the European Council, the High Representative, the UN Secretary-General and African leaders: communication and deals were prompt and efficient, and the UNSC readily authorised EUFOR RCA to use force for its mandate. This contributes to the reputation of the Union on the international stage: the EU appears as a credible, reliable and honest partner.

On the other side, the operation was rather modest in light of the chaos reigning in CAR early in 2014. While civilian war, ethno-religious cleansing and humanitarian crisis were deplored by the UN and the media, the EU decided to limit its intervention in scope (only 1,000 men), time (only six months) and space (only two districts of the capital). Even after four ‘force generation conferences’, the contribution of States only reached 700 men, that is to say one quarter less than what was initially proposed. Some say the CAR situation was the ideal occasion to deploy one EU Battlegroup (1,500 men) on the field\(^{249}\), which could have been operational within ten days and for a period up to four months. The ongoing events in Ukraine might have deterred Member States from engaging too strongly outside Europe. According to Tardy, the “unfolding of the Ukrainian crisis impacted the prioritisation of security threats”\(^{250}\). However, for Nimark, “using the Ukrainian crisis as an excuse for the EU to not act in the CAR only demonstrates the EU’s inability to tackle multiple crises simultaneously. This is particularly embarrassing since the Ukrainian crisis has so far not required a military response by the EU”\(^{251}\). This reluctance from States to provide the necessary efforts is all the more deplorable given that the European Council committed in December 2013 to strengthen the CSDP: “Today, the European Council is making a strong commitment to the further development of a credible and effective CSDP, in accordance with the Lisbon Treaty and the opportunities it offers. The European Council calls on the Member States to deepen defence cooperation (…) in order to improve the development and availability of the required civilian


\(^{250}\) Ibid.

\(^{251}\) NIMARK. A., “EUFOR RCA, EU force or farce?”, Opinión No. 230, Centro de Estudios y Documentación Internacionales de Barcelona (CIDOB), March 2014, p. 2.
and military capabilities". It shows one more time the gap existing between what national governments commit to do and what they actually achieve.

Clearly, the Union – and to a larger extent its Member States (except maybe France) – did not want to assume a major military role in the Central African Republic. However, it does not mean that it did not play any role. When EUFOR RCA was deployed, French Operation Sangaris already counted 2,000 troops in CAR, the African Union-led operation MISCA (French generic name)/AFISM-CAR (African Union International Support Mission in CAR) 6,000 troops in the field and the UNSC was about to send 10,000 military personnel for United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA). Since national, regional and international security actors were already involved in the Central African Republic, the Union only acted to support France, the African Union and the United Nations. Actually, the Union’s contribution to the peace process in CAR can better be perceived by its financial support to regional actors. While it only spent 31.6 million euro for its CSDP operation, the financial assistance to MISCA/AFISM-CAR cost the Union 125 million euro. Other hundred millions were invested in humanitarian help, development programmes, security sector reform and the management of refugees flow. In two years, the EU “had committed more than €360 million of new funding to respond to the crisis in CAR since it started in 2013”. Within this budget, the CSDP operation looks insignificant and only constitutes the visible part of the effort.

In conclusion, some might say that the Union prefers to pay than to send troops. This is true. More exactly, instead of solving the crisis itself, the Union prefers to empower regional actors (CAR and AU) to solve their crises by themselves. The EU accepts to share the burden of global security, but in line with its 2003 European Security Strategy (ESS) and its ‘comprehensive approach’ to crises: “Regional conflicts need political solutions but military assets and effective policing may be needed in the post conflict phase. Economic instruments serve reconstruction, and civilian crisis management helps restore civil government. The European Union is particularly well equipped to respond to such multi-faceted situations.”

Within this comprehensive approach towards CAR, EUFOR RCA was only considered as an additional tool giving some time for France and the UNSC to reorganise.

Finally, one last observation merits attention. Once again, EU abstained from soliciting NATO for military assets (including OHQ). Here are some hypotheses that might explain this choice:

- For historical reasons, European States have strong relations with Africa, and the US may consider the region as part of the European ‘sphere of responsibility’;

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253 UNSC, Resolution S/RES/2149, 10 April 2014, § 18.
255 Cfr section 2 on the comprehensive approach of the Union (p. 45).
- In the spirit of “equitable and sustainable distribution of roles, responsibilities, and burdens”\textsuperscript{258}, the EU is maybe more relevant for this kind of task. Despite the fact that NATO has developed its crisis management capacity through its Strategic Concept, it mostly deploys for combat tasks (Bosnia, Iraq, Afghanistan, Somalia, Libya);
- Another practical hypothesis is that NATO saw no necessity to intervene since the scope of the crisis was not of a nature to threaten any member of the Alliance and since crisis management was already carried out by France and the African Union;
- NATO might also have refused to engage in Africa following the criticisms of the NATO-led operation in Libya in 2011;
- Finally, declining to mobilise NATO could also illustrate the Union desire of autonomy in foreign affairs.

Conclusions

After having travelled through the European defence project’s evolution and its major events, scrutinised the legal provisions of the Common Security and Defence Policy and had an empirical look at CSDP achievements, it is now time to draw some conclusions on this topic.

The first part of this paper revealed that the Union defence-related history is mainly a quest for security in response to common threats: Germany militarism at the end of the forties, Soviet expansionism until the end of the Cold War and regional instability since the nineties. Instead of a linear process, the evolution of a European defence policy has been the object of path dependence: The signature in 1949 of the North Atlantic Treaty put an end to European military integration (EDC plans) and discouraged for a long time European states to develop an autonomous European defence policy. Member States had to await the nineties and the war in Yugoslavia to regain interest in European autonomous capacities.

One might think the successive series of enlargement would jeopardise further cooperation in defence and military matters, but the second part of this paper refutes this assumption. The Treaty of Lisbon added significant novelties to the European defence dimension: the European Union is now in charge of the Petersberg tasks; Member States are bound by the mutual aid and assistance clause; the European Defence Agency has received a legal basis; members can abstain from taking part in a common action without preventing others from doing so and a possibility to cooperate more closely – for those members willing and capable to do so – exists. Some of these elements deserve to be further developed – or at least implemented – in order to move towards the underlying goal of the Union in the framework of the CFSP, that is to say “the progressive framing of a common defence policy that might lead to a common defence”. This part exposed an essential characteristic of the CSDP: its intergovernmental nature. Since Member States keep control over their defence policies, the European defence project – cooperative rather than integrative – is pursued with caution and circumspection.

In the third part, the scrutiny of a particular CSDP operation showed how the Union uses this policy: not as a way to project power, but instead as an additional instrument in its crisis management toolbox – along with diplomacy, economic sanctions, development, humanitarian or financial support – and mostly as a last resort. The fact that expenses for EU military operations are not included in the Union budget but are at the charge of participating members clearly deters Member States from engaging strongly abroad, even for ‘safe’ CMOs. This flaw in the CSDP functioning was illustrated in our case study by the paradox between the consensual decision within the Council to launch EUFOR RCA and the practical impossibility for the EU Operation Commander to gather necessary troops for it.

260 Consolidated version of the TEU, art. 24, § 1.
This paper provided sufficient information to answer the initial questions.

“What is the Common Security and Defence Policy?”

The Common Security and Defence Policy is a policy field of the European Union providing it with civilian and military operational capacity for its external action. It is also the framework within which Member States have committed to achieve closer cooperation in defence and military matters in order to establish a EU defence policy and, in the longer term, a common defence, that is to say an army able to defend European territory and interests.

Although capacity for CMOs and the development of a common defence policy are both part of the same section in the Treaty on European Union and are thus ruled by the same regime (unanimity), they are two distinct things. CSDP operations are effective and regularly deployed within the CFSP, while the European common defence policy is a distant objective which mostly serves as benchmark for closer cooperation.

“What does it come from?”

As shown in the first part, the CSDP constitutes the latest manifestation of the European quest for security. In short, one might say that the CSDP is the direct result of the following events:

- the creation of a common foreign and security policy in the Maastricht Treaty (1993);
- the Union incapacity to react to the crises in the Balkans in the nineties;
- the following British-French summit of 1998 expressing the need for European autonomous capacities; and
- the absorption of WEU tasks within the European Union, completed with the Treaty of Lisbon.

NATO has unquestionably played a determinant role in what is the CSDP today and what is not. As aforesaid, the fact that the defence of Europe is ensured by the transatlantic alliance since 1949 has discouraged European states from creating an ambitious European defence system. However, it is pointless to speculate on what the EU would look like if this or that happened. Without NATO, Europe could as well be part of the Soviet Union.

“What is the purpose of the CSDP?”

In accordance with Article 42 of the TEU, the CSDP is to provide the Union with an operational capacity to intervene abroad in order to strengthen international security (humanitarian, peace-keeping or peace-making operations, tasks of combat forces, fight against terrorism, etc.\(^{261}\)). The CSDP also includes the progressive framing of a common Union defence policy that will lead to a common defence – when the European Council so

\(^{261}\) Consolidated version of the TEU, art. 43.
decides. In line with these objectives, Member States are required to improve their military capabilities. To do so, an armament policy will be defined.

Everything suggests that the Union aspires to become a hard power. It seeks to improve Member States’ military capabilities, which should be eventually integrated into a common defence and used for military operations abroad. Currently, CSDP interventions only focus on crisis-management – the TEU does not limit the interpretation of crisis – but the completion of common defence would probably go along with new CSDP objectives and a specific military doctrine.

It is worth noting that the expression ‘common defence’ remains unclear and enables to avoid the term of ‘army’. This terminological preference – as well as the declaratory tone of the provision – reveals the sensitive character of the project, even amongst the Member States.

**What can the EU achieve through the CSDP?**

Since the establishment of the ESDP in the Treaty of Amsterdam, European actors have contributed to improve its capacity. The Berlin Plus Agreement allowed the Union to use NATO assets for CM operations; the Headline Goals set military benchmarks for EU to achieve; the European Security Strategy – and the European Union Global Strategy later – has identified the key threats to address and the way to do so; a European Defence Agency has been created to help Member States in their military efforts; an External Action Service has been established to assist the HR in the conception and the execution of CFSP and CSDP decisions; new bodies and positions have been created to respond operational needs; a funding mechanism, Athena, accelerates the launch of CSDP military operations while other mechanisms such as constructive abstention and the permanent structured cooperation have been introduced in order to overcome the potential inertia of unanimous decision-making. These Union’s instruments, combined with the national means of the Member States\(^\text{262}\), provide today the Union with the potential capacity to achieve the two objectives of the CSDP, namely crisis management and the development of a common defence policy.

However, the intergovernmental nature of the CSDP remains a constraint for its functioning and its development. First, decisions taken unanimously with 28 members often lack ambition. Second, Council decisions are binding for the Member States which have voted, but unfortunately not enforceable since the European Court of Justice has no jurisdiction in the CFSP field.

**“What does the EU concretely achieve through the CSDP?”**

Regarding the development of military capacities, not much has been achieved since the Treaty of Lisbon. It is sufficient to look at the evolution of defence budgets across the EU to understand that the Union is not likely to launch its common defence policy under current circumstances. Almost all Member States fail to meet their defence budget commitment

\(^{262}\) See Appendix 3.
within NATO and there is no reason to believe that they would make the effort for the European Union.

Regarding its crisis management component, the Union has been pretty active with more than 30 peace-keeping, stabilisation, training or advising operations since 2003. Even more interesting is its capacity to lead several operations simultaneously: 15 CSDP (9 civilian and 6 military) operations are taking place today in Europe, Africa and Middle-East. By establishing and adapting its institutional bodies and procedures in the field of the CSDP, the Union has confirmed its will to develop expertise and efficiency in crisis management. However, one should not overestimate the military engagement of the Union: the European Union is no warmonger and Member States remain reluctant to engage in military operations. CSDP operations are launched as a last resort option and only in the framework of a comprehensive approach. Plus, the EU never took part in any conflict as belligerent and no EU battlegroups has ever been deployed. In practice then, CSDP operations are mostly used as soft power instruments to give the Union some visibility on the international stage.

Each of these three parts enabled to identify a factor explaining the discrepancy between what the CSDP should achieve and what it actually does: the counter-incentive posed by NATO protection, the intergovernmental decision-making for CSDP decisions and the lack of political will from national actors. It remains to be seen whether, and to what extent, current political events such as the Brexit, the proposals on the future of Europe, US isolationism, Russia expansionism and instability in the Middle-East will constitute sufficient pressure for the Common Security and Defence Policy to progress.

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European Defence Agency: [https://www.eda.europa.eu/](https://www.eda.europa.eu/)

Appendices

Appendix 1


Appendix 2

Appendix 3


Appendix 4

## Appendix 5

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<th>Mission</th>
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<th>Tasks</th>
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<td>2005-2006</td>
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<td>No</td>
<td>15.300.000</td>
<td>36</td>
<td>Implementation peace agreement</td>
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Appendix 6

EEAS, EEAS Organisational chart. Available on