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## Spearheading European Defence

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# Spearheading European Defence

Employing the Lisbon Treaty  
for a Stronger CSDP

Anne Bakker  
Sven Biscop  
Margriet Drent  
Lennart Landman

Clingendael Report



**Clingendael**

Netherlands Institute of International Relations



# Clingendael

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Clingendael Report  
September 2016

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# Executive Summary

It is now more urgent than ever that the EU delivers as a security provider in an increasingly complex and insecure environment. This Report assesses to what extent the provisions that were introduced with the Lisbon Treaty could contribute to spearheading the CSDP. This includes Articles 42.6 and 46 on Permanent Structured Cooperation (PESCO), Article 44 on groups of states taking the lead on operations, as well as Article 42.7 on mutual assistance – the latter having recently been invoked by France. The articles can be instrumental in circumventing some of the CSDP's bottlenecks by offering more political and operational flexibility; increase the potential for attaining more relevant capabilities and a broadening of the CSDP's purpose to fit today's security challenges.

Although all member states share the assessment that a more credible role for the EU in security and defence requires more cooperation, not all of them are willing to act on it. Therefore, flexible formats of groups of countries that choose to work together more closely or on a faster time scale are inescapable.

What follows is a selection of conclusions and recommendations on how the Treaty can be tapped to strengthen the CSDP:

## Permanent Structured Cooperation

- Permanent Structured Cooperation (Arts. 46, 42.6 and Protocol 10) comes with binding commitments and top-down coordination which are indispensable for the effectiveness of core groups, and can benefit from EU institutional support. But the binding nature of these commitments make them more difficult for member states to agree upon;
- Creating PESCO-*esque* groups outside the Treaty might be easier to establish since this circumvents the Protocol criteria and leaves the member states with more flexibility. However, such a group still needs to have binding agreements and top-down coordination just like PESCO in order to be effective, otherwise it is 'just' another voluntary grouping with very limited results;
- What matters is not whether cooperation is launched inside or outside the Treaty, because some legally binding framework will eventually be necessary whichever route is chosen. What really counts is the depth of the cooperation.

## Implementing missions and operations by a group of member states

- Art. 44 allows member states to have greater control over the implementation of the operation, depending on Council interpretation, and may provide member states with an extra incentive to contribute. Depending on implementation, Art. 44 may allow for swifter planning and force generation processes which would benefit rapid reaction;
- To ensure effective application, in particular with rapid reaction, the modalities of Art. 44 should be clarified and its implementation well prepared, for instance by including scenario-based discussions, in the Council and the EEAS.

## The mutual assistance clause

- The invocation of the mutual assistance clause (Art. 42.7) broadens the EU role to include defence of EU territory and adds an extra option for a collective response in a complex security environment, next to NATO's Art. 5 and the EU's solidarity clause (Art. 222 TFEU);
- To ensure a credible and effective EU response after the invocation of the mutual assistance clause, the EU institutions should develop a facilitating and coordinating role, while EU member states remain in the lead.

As this Report reiterates, it is not the lack of potential that the Treaty offers which has left the relevant Articles mostly dormant. Although the Articles regulating PESCO, flexible conduct and command of operations and mutual assistance are at some points ambiguous, they leave sufficient leeway for willing member states to breathe life into them. The problem seems to be, as so often is the case, that there is a lack of political will, insufficient political courage, bad timing and a lack of leadership. France has taken a considerable step in forcing other member states to show their hand when invoking Art. 42.7. The implications for the nature of the EU's role as a security provider have not fully crystallised and need further implementation. Further research is needed to uncover what it will take to align the interests of key member states to such an extent that they can muster sufficient political will, courage and leadership for tapping into the Lisbon Treaty's full potential.

# Introduction

The United Kingdom leaving the European Union poses questions about the future of the European integration process at a time in which Europe's deteriorated security environment places higher demands on the EU as a security actor. The latter challenge requires a stronger and more effective Common Security and Defence Policy (CSDP). The former challenge requires a rethink on how such a CSDP could be brought about. For more than fifteen years, the EU member states have been able to hide behind the almost assured veto by the United Kingdom on many CSDP-related issues. In the years ahead it will become clear whether the UK was really the main obstacle to a credible and effective CSDP or whether divergent views will come to the fore among other member states.

It should be kept in mind that there are still many positions on the role of the CSDP among the remaining 26 member states participating therein, with almost as many different types of strategic cultures. To cater for these differences, flexible cooperation and flexible decision-making on security and defence within the EU seems to be a requirement. This would acknowledge the ongoing trend that countries are searching for tailor-made and sometimes ad hoc cooperation models for organising capabilities as well as for fielding operations. At the same time, the complex security challenges that are mounting at and even within Europe's borders demand an effective EU as a security provider. Equally, the EU being able to demonstrate to its citizens that it is effective in tackling the manifold security threats would be conducive to shore up its increasingly questioned legitimacy.

The Lisbon Treaty introduced several provisions that could contribute to this end, but have not yet, or only recently, been implemented. This includes Articles 42.6 and 46 on Permanent Structured Cooperation (PESCO) and Article 44 on groups of states taking the lead on operations, as well as Article 42.7 on mutual assistance – the latter having recently been invoked by France. Immediately after the UK referendum, the Ministers of Foreign Affairs of France and Germany called for a differentiated EU in their paper *A strong world full of uncertainties*<sup>1</sup>, most notably on defence matters. They acknowledged that member states differ in their level of ambition regarding European integration and “member states willing to establish permanent structured cooperation in the field of defence or to push ahead to launch operations should be able to do so in a flexible manner”.<sup>2</sup> Although not explicitly acknowledged, it is clear that they are

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1 Jean-Marc Ayrault and Frank-Walter Steinmeier, *A strong Europe in a world of uncertainties*, 27 June 2016.

2 *Ibid.*, p. 4.



referring to Art. 42.6 and Art. 44. Similarly, the recent Global Strategy for the European Union's Foreign and Security Policy, entitled 'Shared Vision, Common Action: a Stronger Europe',<sup>3</sup> refers to the untapped potential in the Treaty. It refers to mutual assistance and solidarity (Art. 42.7 and Art. 222 TFEU) as well as to the need to explore enhanced cooperation between member states.

It is therefore very timely for this Clingendael Report to look into these treaty provisions and analyse to what extent they can contribute to a stronger and more effective CSDP. First, the report analyses which bottlenecks prevent a stronger CSDP from emerging. Subsequently, the report analyses to what extent, and in which way, the treaty provisions could be employed to adapt and spearhead the CSDP. It concludes with a short conclusion and policy recommendations.

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3 *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy*, June 2016, p. 7 and p. 8.

# 1 CSDP Bottlenecks

At the start of the EU's Common Security and Defence Policy, political ambitions were high. In St. Malo, back in 1989, the French and the British prime ministers expressed the ambition for an EU capable of "autonomous action, backed up by credible military forces, the means to decide to use them and a readiness to do so". This ambitious rhetoric, despite being embraced by the EU member states at the Cologne European Council, has not turned into reality. Today, nearly 20 years later, the EU's capacity for autonomous action is limited, it is only partially backed up by credible forces, hampered by insufficient means to use them and a lack of political willingness to do so. Unsurprisingly, a sense of disenchantment surrounds discussions on the current state of the CSDP. In the following section, an analysis is provided of the factors that hamper the materialisation of the spirit of St. Malo. Ironically, while France and the UK stood at the cradle of the CSDP, this spirit might in some areas be easier to retain with the impending departure of the United Kingdom from the EU. The overview provided here is not exhaustive, but rather lists the main bottlenecks that prevent a stronger and more effective CSDP from coming about. They are: the CSDP is less fit for purpose for today's security challenges, its lack of political and military flexibility and a shortage of relevant capabilities.

Firstly, the ambition level of the CSDP stems, both literally and figuratively, from another era. The CSDP thereby risks losing its relevance in light of the deteriorated security situation and Washington's shifting focus. A fundamental review is needed; 'crisis management only' no longer suffices. The ring of instability brings the CSDP closer to Europe's borders. As Operation Sophia demonstrates, the CSDP has a role to play in protecting these borders. To the EU's East, the CSDP can be employed to counter hybrid threats emanating from Russia. The CSDP also has a potential role to play in collective defence. France's invocation of the EU's mutual assistance clause requires a further exploration of the role of the CSDP in such a situation. These new challenges and scenarios have to be incorporated into an updated level of ambition.

Secondly, despite the ample possibilities in the Treaty for flexibility, member states have been unwilling to make use of them. This lack of flexibility, both politically and militarily, is increasingly presenting itself as a bottleneck for the CSDP to be able to respond effectively to a widening range of conflicts. A shared vision among the member states on the objectives for the CSDP is lacking, which results in lengthy decision-making and hampers the deployment of CSDP missions and operations. Although all member states agree on the magnitude and complexity of the challenges facing the EU, they differ greatly in their assessment of these challenges. Whereas member states on the EU's Eastern border, for example, prioritise the threat that is posed by Russia, Southern

member states are mainly concerned with instability in the Middle Eastern and North African region, the resulting migration flows and the terrorist threat. Similarly, there is a divide among member states in terms of strategic cultures, attitudes towards the transatlantic relationship and the quality of their armed forces. These diverging priorities, inclinations and capabilities result in a limited intersection of ambitions and geographical focus. Finding consensus is therefore problematic, and action is consequently limited. It is unlikely that all member states will be equally willing and able to proceed with the same speed, priorities and level of commitment with strengthening the CSDP. A variable geometry on the CSDP could be the inescapable consequence.

Also militarily, the CSDP lacks flexibility. Thus far, EU deployments have taken place in relatively permissive environments. The increased level of intensity of the conflicts around Europe, however, requires the EU to be able to deploy operations at the higher end of the spectrum as well. Furthermore, as the relationship between internal and external security becomes ever more tangible, better coordination between military and civilian actors becomes increasingly urgent. In order to take the CSDP out of its relative isolation, the institutional, legal and financial barriers that prevent structural civil-military coordination have to be overcome.

A third bottleneck is formed by the lack of relevant capabilities that are needed to underpin a more flexible approach. The trend of declining defence budgets, although partially (and modestly) reversed, has left deep marks on European capabilities. Well-known capability shortfalls, for example strategic reconnaissance and air-to-air refuelling, persist. Not only investments in capabilities leave much to be desired, so does the coordination of these investments and the extent to which they are made collaboratively between EU member states. Too often member states hide behind sovereignty to justify not investing in collaborative procurement and the joint use of capabilities. Furthermore, nationally-owned capabilities are not always interoperable and lack standardisation. This disappointing performance of the EU on capability development is caused by a lack of willingness among member states to act on their political declarations and commit themselves to concrete programmes.

The Lisbon Treaty introduced several provisions that were intended to address some of the bottlenecks outlined above. This report investigates to what extent these clauses provide the instruments that are needed to spearhead the CSDP.



## 2 Permanent Structured Cooperation

### A False Start<sup>4</sup>

As soon as the Lisbon Treaty entered into force, detailed proposals were advanced on how best to implement its new mechanism on defence: Permanent Structured Cooperation (PESCO). However, shortly thereafter during the Belgian Presidency in the second half of 2010, it was realised that most member states were rather asking: should PESCO be implemented at all? By the end of the Presidency, PESCO was circumvented. Instead, member states opted for a more informal and bottom-up process, seeking to generate a list of opportunities for the pooling and sharing of capabilities from which they could pick and choose, on the basis of an overview of capability areas deemed suitable for cooperation to be produced by each capital itself.

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4 The authors thank Brig.-Gen. (Ret.) Jo Coelmont, Senior Associate Fellow at Egmont, for his invaluable part in this contribution.

Why was PESCO not used?<sup>5</sup> Most arguments advanced against it at the time seem unjustified. PESCO would not create an additional layer of bureaucracy, as many hinted, for it would rely on the support of existing institutions, in particular the European Defence Agency (EDA). The intention was for PESCO to be inclusive, seeking to lift up as many member states as possible to a higher level by setting ambitious but realistic criteria for participation. However, ultimately, as PESCO did not materialise, the gap between the member states that remain the most capable and the others has widened even more. Defining quantitative criteria for participation proved very difficult, however. In the end, what mattered most in 2010 was that too many member states seemed to fear that they would be excluded for not meeting the criteria. That fear was but the symptom of their lack of political will to undertake the necessary defence effort. But it effectively ended the debate, in combination with the fact that not a single member state emerged as PESCO's champion, not even France or the United Kingdom, which had pioneered the inclusion of the mechanism in the Treaty in the first place. Telling was that 2010 was also the year of the French-British Lancaster House Treaty. By 2010, both countries preferred a binational deepening of defence cooperation. In an intergovernmental policy area such as the Common Security and Defence Policy (CSDP) the lack of a champion is lethal: the EU institutions can facilitate and support the actions of the member states, but no initiative will survive if only the institutions are behind it.

## Potential Left Unused

Ever since, PESCO has been dormant. Is it enough of a sleeping beauty to awaken it from its slumber? One thing is certain: since 2010, Europe's military capabilities have continued to decline, while the security challenges have only grown. Even as in some countries defence expenditure is now rising, this increase does not yield enough employable capability because of fragmentation and duplication. Meanwhile many key capability shortfalls remain unaddressed. Multinational cooperation is the only answer. The question is: does PESCO offer the best format for such cooperation?

What would PESCO enable member states to do that they cannot do until now? To create a smaller group (which can mean any number of member states smaller than 28) of states "whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions", which would cooperate "within the Union framework" (Art. 42.6 TEU). For the first time, not only would member states thus be able to organise multilateral defence cooperation within the Treaty framework; they would also enter into binding

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5 For a detailed analysis, see chapter 4, "Military Convergence through CSDP", in Sven Biscop and Jo Coelmont, *Europe, Strategy and Armed Forces*. Abingdon: Routledge, 2012.

commitments, and they would accept that an EU body, the EDA, would assess their performance.

Protocol 10 on PESCO, annexed to the Treaty, lists two specific objectives (Art. 1), one of which, to supply or contribute to an EU Battlegroup, has already been achieved by most if not all member states. That leaves a single objective: to proceed more intensely to develop defence capacities. Art. 2 of the Protocol then details five areas to be operationalised and translated into criteria by the participating member states:

- To agree on objectives for the level of investment in defence equipment;
- To “bring their defence apparatus into line with each other as far as possible” by harmonising military needs, pooling and, “where appropriate”, specialisation;
- To enhance their forces’ availability, interoperability, flexibility and deployability, notably by setting “common objectives regarding the commitment of forces”;
- To address the shortfalls identified by the Capability Development Mechanism, including through multinational approaches;
- To take part, “where appropriate”, in equipment programmes in the context of the EDA.

The text of the Lisbon Treaty certainly is ambitious. The preamble to the Protocol speaks of “a more assertive Union role in security and defence matters” and even of “embarking on a new stage in the development of the European security and defence policy”. PESCO would have been a new departure indeed, for one important reason: implementing it would have turned the dynamics of defence cooperation upside down. By changing the mind-set of the participating member states, it would have heralded a shift from exclusively voluntary and bottom-up cooperation to binding commitments and top-down coordination.

## The Objective: Top-Down Cooperation

To this day, European defence cooperation, be it at the EU level or in regional clusters, is almost entirely bottom-up, and the national focus remains predominant. States draw up their national defence white paper or equivalent first, in splendid isolation and without much regard for guidelines from either the EU or NATO. Only after finalising their national defence guidelines do those that are willing then explore possibilities for cooperation with other states. By that time, many opportunities have already been precluded by the national choices that were made. This is what in the end PESCO could change.

Even in states with larger defence budgets, the margin to invest in new initiatives is limited. Thus, those which would join PESCO would quite soon be allocating that entire margin to meeting the criteria set for participation and the capability objectives decided upon in that framework. Those common objectives would be achieved through

cooperative projects, so before long participating member states would find themselves devoting their budgetary margin to developing and acquiring capabilities that have been commonly decided upon – that have been commonly planned for. The logical endpoint of such defence cooperation thus amounts to integration. In other words, instead of everybody engaging in national force planning separately and then deciding on which aspects they want to cooperate with others, the members of PESCO would end up *planning* together, as if for one full spectrum force, and then decide which contribution every individual state will make to that single force.

In this way, PESCO would lead to substantial synergies and economies of scale, ultimately release funds for investment, and enhance capabilities – that is, if participating member states would:

- Adapt their national defence planning to the commonly agreed objectives, and do away, without any taboos, with national capabilities (current and envisaged) proven to be redundant in this light;
- Pool assets and capabilities and/or trust in specialisation to a maximum extent;
- Invest in commonly agreed projects.

Activating PESCO is not the only way of achieving this level of integration. In its initial form, the Framework Nations Concept (FNC) that Germany proposed in the context of NATO looked very *PESCO-esque* indeed. The German idea was for a number of smaller states to group around one larger state and to start common planning in order to build a full spectrum force together, without every state necessarily contributing to every capability area. Unfortunately, in the implementation phase the FNC has been very much watered down; it is now basically seen as a means of generating the successive rotations of NATO's Very High Readiness Joint Task Force. That is a laudable purpose, but it will probably produce little added value in terms of creating additional capability or deepening cooperation unless greater attempts at effective integration are made.

Common planning is in fact a logical objective whenever states opt for far-reaching military cooperation in any format – it does not necessarily require one larger and several smaller partners, nor a large group of partners. Belgian-Dutch naval cooperation (BENESAM) is a case in point. It is by now so far advanced that although in theory each country is free to decide to withdraw from it, in reality neither country could now afford to do so for simple budgetary reasons.<sup>6</sup> Consequently, since they have no choice but to maintain the degree of integration that has been achieved over many years, the Netherlands and Belgium (for those parts of their navies that fall under BENESAM)

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6 The Belgian-Dutch naval cooperation (BENESAM) is a long-standing cooperation in which training, maintenance, logistics and work-up are integrated under a binational command, the Admiralty Benelux. For instance, the Belgian navy performs these tasks for the Minehunters of both navies and the Dutch take care of training, maintenance and readiness for the M-frigates of both countries.

now have no choice but to plan together and take common decisions on the desired capabilities and platforms.

Since PESCO is not the only option, that leads us back to the question: is it the best option and therefore worth reviving?

## A Future in the Treaty

The advantage of PESCO is its legally binding nature: once agreed upon, participating member states must fulfil the criteria or risk suspension (which is decided upon by a qualified majority of the participating member states, as regulated in Art. 46 TEU). Art. 3 of the Protocol on PESCO mandates the EDA to report on member states' performance at least once a year. A mechanism akin to a "European semester for defence" could thus emerge.

The difficulty remains of course to quantify the generic criteria included in the Protocol. As already stated, criteria must be real as well as realistic. If one can take part in PESCO by doing what one is already doing, there is no point, but the threshold should not be set so high that only a very few can join – the aim is to stimulate those that are willing to undertake the necessary effort. Furthermore, criteria should not just focus on input (how much is spent), but also on output (what is it spent on and is that being used), otherwise PESCO would just result in another catalogue of merely theoretically available non-identified capabilities. These criteria can be seen as objectives over time – not all criteria need to be fulfilled at the moment of entry.

Taking this into account, the following is an example of a set of criteria to be pursued simultaneously:

- *To be able*: committing to increase the deployability and sustainability of one's forces by an agreed percentage by an agreed deadline, in successive steps, until an overall target has been reached. That overall target could be the one that most member states have already agreed to in the context of NATO: that 50% of their forces are deployable and 10% sustainable.
- *Solidarity in spending*: committing not to decrease defence expenditure after the moment of entry, neither in real terms nor in the percentage of GDP, and, for those spending less, to bring defence expenditure up to an agreed benchmark in conformity with a deadline. Spending should be prioritised to meet existing capability shortfalls.
- *Solidarity in projects*: committing to devote an agreed percentage of defence expenditure to the commonly agreed upon projects (without each state having to participate in each project). The EDA would be the obvious forum for the implementation of these projects. In this case, the EDA would be allowed to grow in size and budget to be able to fulfil this task.



- *Solidarity in operations*: participating with significant contributions (that is forces deployed in theatre and listed in the statement of requirements) in most CSDP operations. As operations are launched by a unanimous Council decision, whether or not to have recourse to military force remains a sovereign decision. But it can no longer be a decision without consequence: voting for an operation in the full knowledge that one will not contribute anyhow will become impossible (as it should be already).

The legally binding nature is to guarantee that PESCO would not amount to another process without impact on member states' actual decisions. But at the same time it can be an obstacle, for it remains questionable whether in the short to medium term a sufficient number of member states to constitute a viable PESCO (that is one that can build a single full spectrum force) is willing to take this step. It should also be noted that the decision to establish PESCO is taken by a qualified majority of all member states, so a sufficient number of those not participating must agree as well. (Art. 46 TEU stipulates that once activated, decisions are taken by participating member states only, by qualified majority for later admissions and suspensions, by unanimity for all other issues).

The prize to be gained by opting for PESCO within the Treaty framework and for projects through the EDA could be increased support from the European Commission. It has already been decided that the Commission will start funding defence research (the call for proposals for a pilot project was launched in March 2016).<sup>7</sup> As the Commission becomes increasingly active in the area of security and defence, in the future its support might go even further. One can imagine, for example, that the Commission participates in actual capability projects of a dual-use nature along the same lines as the participating member states.

## Or outside the Treaty

The alternative would be for a group of member states to *de facto* organise a PESCO-like framework outside the Treaty. Procedurally this might be easier, for a relatively small group could establish cooperation without requiring the consent of any non-participating states. And a small group of say France, Germany and the Benelux countries, with perhaps Italy, Poland and/or Spain, would be a highly significant one. Furthermore, the spirit of the Treaty is clearly that there can be only one PESCO, which can start out small, with specific provisions for later accession. Outside the Treaty, there

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7 EDA, Call for proposal for the Pilot Project on defence research, <https://www.eda.europa.eu/procurement-gateway/opportunities/eda-procurement/procurement-view/call-for-proposal-for-the-pilot-project-on-defence-research>.

can be more than one PESCO-like group. At an early stage, it might be easier to find consensus to create two or three smaller clusters instead of a single framework.

If one of the member states' aims is to develop and acquire strategic enablers, however, they will inevitably have to have recourse to a broader framework as well in order to reach the critical mass to make projects economically viable. A contribution from the European Commission also seems unlikely if all cooperation takes place outside the Treaty.

At first sight, the main reason why a PESCO-like group outside the Treaty seems easier to create is because one need not agree on how to quantify the criteria listed in the Protocol. But if member states want to achieve the same degree of integration that PESCO offers, they cannot escape making binding commitments among themselves. Trust is the *conditio sine qua non* to start cooperation. But if the desired end-state is *integration*, that is, to see participating member states' contributions as a single force (in one specific capability area or across a range of capabilities), they will want guarantees that each will continue to finance its contribution over time, as a safeguard against national budget cuts, and procedures for deployments will have to be agreed. Even outside the Treaty, all of this will eventually necessitate *legally* binding agreements. Of course, less ambitious initiatives can be imagined, but then the chances are that we will see just another framework that only touches the surface of what could be done – and we have many of those already.

What matters therefore is not whether cooperation is launched inside or outside the Treaty, because some legally binding framework will eventually be necessary whichever route is chosen. What really counts is the depth of the cooperation.

## The way forward

Once it became clear, in the year following the entry into of force of the Lisbon Treaty, that member states were not (yet) willing to implement an ambitious scheme such as PESCO, it came to be seen as intrinsically unrealistic. But PESCO is in the Treaty, which has been negotiated, signed and ratified by all member states. At some point in time, therefore, those member states must have considered it not to be that far-fetched. Maybe the time is ripe to reconsider. The German FNC proposal, calls for more structured defence cooperation by the French, German and Italian foreign and defence ministers, echoed by Commission President Jean-Claude Juncker in his 14 September 2016 State of the Union speech, new initiatives in various existing clusters of defence

cooperation, as well as the resonance that think-tank reports<sup>8</sup> about defence integration receive these days: these are all indications that member states know that another step, or better said, another leap is necessary. Sometimes it feels as if although they are still resisting, deep down they want to be convinced. Time for some introspection, perhaps?

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8 For example *More Union in European Defence*. Brussels: Centre for European Policy Studies, 2015, and *Envisioning European Defence: Five Futures*. Paris: EU Institute for Security Studies, 2016.



### 3 Implementing missions and operations by a group of member states

Article 44 TEU introduced with the Lisbon Treaty allows the Council to entrust the implementation of a civilian mission or military operation to a group of member states which are willing and able to perform the task. To date, the article has not been applied, but lately it has been gaining attention. The European Parliament, the High Representative, and the Council all have called for exploring the article's potential, for example its use for rapid reaction or to address issues with force generation. However, it is not a 'silver bullet' for the problems of the CSDP, and before this forgotten article can be put into practice the Council will need to clarify its modalities.

#### Designed for flexibility

At its core, Article 44 is about flexibility and allowing a group of member states to take (the implementation of) the CSDP to a higher level. The article was originally drafted in 2004 for the Treaty establishing a Constitution for Europe (then Article III-310) and was

inserted essentially unchanged in the Lisbon Treaty. The idea was devised in tandem with Article 46 on Permanent Structured Cooperation in Defence, although it shares no legal or institutional connection with Article 44. The central reasoning behind Article 44 can be found in the reports of Working Groups of the Convention on External Action and Defence, although the idea goes further back.<sup>9</sup> Here, the convention members indicated the need for flexibility in the CSDP in order to deal effectively with member states' varying levels of ambition and capacities combined with unanimity decision-making, in particular in light of the 2004 Enlargement.<sup>10</sup>

In some sense, Article 44 expands the option of 'constructive abstention', through which a member state can decide to abstain from voting in favour of an operation in order to be exempt from a role in its implementation. But more importantly, Article 44 allows the Council the flexibility to delegate an operation to a group of capable and willing member states, which can incentivise member states to contribute and circumvents the regular force-generation process which can take a long time and have disappointing results. The group of member states in return is granted the flexibility, within the parameters provided by the Council, to manage the operation among themselves.

## Delegation of decision-making

Article 44 operates squarely within the legal framework of the CSDP. Depending on the extent to which the Council decides to delegate decision-making powers to the group of member states, an Article 44 operation may not differ that much from a regular CSDP crisis management operation.

Article 44 finds its legal basis in Article 42.5 and must be in accordance with Article 43 (and by extension Article 42.1), also known as the 'expanded Petersberg tasks'. It does not create a new type of task and it does not introduce an alternative legal basis. Simply put, an 'Article 44 operation' is a CSDP operation with all its accompanying legal, institutional and financial provisions, with the exception that:

- The implementation<sup>11</sup> of the operation is delegated to a group of member states, in association with the High Representative.

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9 See for example, Christian Deubner et al., "Flexibility and Enhanced Cooperation in European Security Matters: Assets or Liabilities," Occasional Papers (Paris: Western European Union Institute for Security Studies, January 1999).

10 Convention on the Future of Europe, "Final Report of Working Group VII on External Action, CONV 459/02," December 16, 2002, paras. 50–51; "Final Report of Working Group VIII – Defence, CONV 461/02," December 16, 2002, para. 53.

11 The Treaty refers in the various paragraphs to the 'execution', 'implementation' and 'management' of the task.

- The group of member states must keep the Council informed on a regular basis or at the request of another member state.
- The Council must be immediately informed, and can take the necessary decisions, if the completion of the task entails 'major consequences' or if the objective, scope or conditions of the task need to be amended.

The wording of Article 44 is somewhat ambiguous, in particular on which decision-making powers remain with the Council and what is delegated to the group of member states. According to the interpretation of the Council's legal service, the Council retains a considerable level of control over the establishment and the running of the operation.<sup>12</sup> Establishing an Article 44 operation requires the regular unanimous Council decision for an Article 43 CSDP operation and a second unanimous decision to apply Article 44. The Council also decides on the political and strategic parameters of the operation such as objectives, geographical scope, the political and military assumptions, limitations and rules of engagement, laid down in documents like the Crisis Management Concept (CMC) and the Operations Plan (OPLAN). The group of member states implementing the operation would be in charge of the force-generation process, force composition and appointment of the military command. During the operation, the Council and PSC retain their roles in political control and strategic direction, but command and control at the operational level would be delegated to the C2 structure identified by the group of member states (e.g. national or multinational OHQ/FHQ) and the operation commander they appoint.

According to the interpretation of the legal service, the Council thus retains a great deal of control over an Article 44 operation. Yet, in practice, the Council has considerable leeway in determining what it allows to the remit of the group of member states on a case by case basis, making the extent of delegation foremost a political question rather than a legal/procedural question. This underlines the need for the Council to hold preparatory discussions and exercises on the use of Article 44, in order to reduce uncertainty and avoid lengthy discussions at the moment of a crisis. In the most far-reaching case the Council could decide, after laying down the general political and strategic objectives of the operation, to leave further decision-making on the planning and implementation of the operation entirely to the group of member states. However, it is more likely that the other member states will opt to retain a measure of control over the operation.

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12 For its extensive assessment, see Legal Service of the Council Secretariat, "Legal Service Contribution on the Conditions and Modalities of Recourse to Article 44 TEU, 5225/1," January 13, 2015, paras. 27–42.

## Groups

While any collection of member states that are ‘willing and able’ can form a group for the purpose of an Article 44 operation, it can have particular synergy with groups of member states that already engage in more intensive defence cooperation such as Permanent Structured Cooperation, EU Battlegroups or clusters of cooperation like the Visegrad Group or the German-Netherlands bilateral cooperation. By engaging in regular interaction at political and working levels, joint exercises, standardisation and the streamlining of procedures, these groups can boast more rapid planning processes and parliamentary decision-making<sup>13</sup> and can have higher interoperability of forces, thereby improving force generation and force composition. Of course, the Article 44 operation remains open to any member state or third state willing to contribute.

What needs clarification is whether the group can rely on third party capabilities. Article 44 requires the group to have the ‘necessary capability’ for the task. While this wording allows individual member states to make token contributions, it does suggest that the group as a whole needs to meet a certain capability condition. Depending on configurations, certain groups would not be able to collectively provide a full range of capabilities, as member states lack strategic enablers like air transport, command and control and satellite imaging. For now, it is unclear to what extent groups are allowed to rely on EU or NATO-owned capabilities, or capabilities owned by third states (in particular when they do not want to be formally part of the operation, e.g. the United States ‘leading from behind’). While the assessment of what is ‘necessary capability’ is at the discretion of the Council, it is advisable to clarify its general interpretation beforehand to avoid uncertainty and lengthy discussions at the wrong time.

## Europeanising an operation

There are two general cases in which Article 44 can be applied. First, Article 44 can be used to ‘Europeanise’ an operation that would otherwise be conducted by a coalition of the willing outside of the framework of the CSDP. Second, Article 44 can be used to speed up force generation and incentivise member states to take on the implementation of a CSDP operation. In both cases, the ‘deal’ centres on relinquishing some control over decision-making in return for contributions to the implementation of the operation.

The major benefit of Europeanising an operation and bringing it within the framework of the CSDP through Article 44 is that it opens up access to EU resources and provisions. This allows the operation to receive similar support that other CSDP operations

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13 See Anne Bakker, Margriet Drent, and Lennart Landman, “The Parliamentary Dimension of Defence Cooperation,” Clingendael Report (The Hague: Clingendael Institute, April 2016).

receive, for example from the EU Operations Centre, the EU Satellite Centre and the European Defence Agency. It also allows access to financial facilities such as the Athena mechanism<sup>14</sup> or for non-military aspects of the Instrument contributing to Stability and Peace. Equally important, conducting an operation within the framework of the CSDP ensures better follow up and legal, procedural and institutional connectivity with other EU policies and activities as part of a comprehensive approach. The group also benefits from arrangements in place between third parties and the EU, such as status of forces agreements. In addition, putting an operation under the EU flag sends an important political signal and may increase legitimacy locally on the ground as well as within the international community.

There are trade-offs involved for member states willing to Europeanise an operation with Article 44. The article adds CSDP rules and procedures to be followed, cedes political and strategic control to the Council, and involves more actors with which to coordinate on the political and operational level. It risks increasing the complexity of the operation and slowing down decision-making, in particular compared to an operation that would be conducted primarily by one capable actor. This was arguably the case for the first phase of the French-led operation 'Serval' in Mali in early 2013, which required a military response within 24 hours and a high tempo of operations on the ground to push back the insurgents' advance on Bamako.<sup>15</sup> It is difficult to see how Article 44 would have improved the swiftness and effectiveness of the operation in these crucial first moments where conditions and windows of opportunity changed quickly. The uncertainty over the modalities and process of the Article in practice, since it has not been previously used or clarified by the Council, only makes its use less likely.

On the other hand, the second phase of Serval which involved the stabilisation of an enormous region could have benefited from applying Article 44 to the ongoing operation. In the second phase, conditions were more stable and the speed of decision-making was no longer key. With the use of Article 44, the operation could have made full use of the benefits of integration into the EU framework, i.e. connecting other EU activities in the region, having the political back-up of the Council, receiving EEAS and EDA operations assistance<sup>16</sup> and access to the Athena mechanism.

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14 The use of the Athena mechanism would require another Council decision to approve the financial reference amount and thereby the general size of the force, see Legal Service of the Council Secretariat, "Contribution on the Conditions and Modalities of Recourse to Article 44 TEU, 5225/1," January 13, 2015, para 35.

15 On Operation Serval, see François Heisbourg, "A Surprising Little War: First Lessons of Mali," *Survival* 55, no. 2 (May 1, 2013): 7–18.

16 For examples of EDA support see <http://www.eda.europa.eu/what-we-do/activities/activities-search/operations-support>



## CSDP rapid response

The use of Article 44 for what would otherwise be a regular CSDP operation changes little in terms of access to EU resources and facilities, but it may contribute to rapid response. Its main benefit is that it circumvents the normal force-generation process, which can take several conferences and weeks or months to complete and is a major delaying factor for operations. However, this does assume that member states are (more) willing to contribute to an Article 44 operation, because if not, it would suffer from the same issues of lack of commitment and delays that regular CSDP operations experience. The core thus lies in incentivising the member states to contribute by allowing them to have greater control over the implementation of the operation. If few powers are delegated, Article 44 will fare not much better than the regular process.

Another argument for using Article 44 for rapid response is the potentially shorter planning process, if this aspect is delegated to the group. This could apply to EU Battlegroups as well.<sup>17</sup> However, as mentioned earlier, under the current interpretation of Article 44 the Council would retain much of the regular control over the planning process (CMC, OPLAN), thereby making any significant time savings questionable. A possible solution would be to delegate planning to a greater extent to the group of member states, which would also increase the incentive for member states to contribute. It must however be noted that in the current framework the primary method for rapid response is through the Option for Urgent Response and/or the fast-track process, which can also be applied to an Article 44 operation.<sup>18</sup> Ideally, their combined use would result in a swifter response than the urgent response/fast-track option by itself.

The use of Article 44 should not be seen solely in the light of rapid response. For regular CSDP operations, it can provide an incentive for member states to contribute because it grants them more visibility and political leverage in addition to control over the implementation of the operation. What should also not be discounted is the possibility that some operations may be conducted more effectively by cutting back on EU management and the number of actors involved, for example by delegating a separate task within an operation instead of the entire operation under Article 44.

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17 Maurice de Langlois and Bénédicte Ara, "Article 44 of the Treaty on European Union: Enhancing Efficiency in EU Operations: Content, Benefits and Limits", Institute de Recherche Stratégique de l'École Militaire (IRSEM), November 2015, p 8-9.

18 EU Military Committee, "EU Military Rapid Response Concept, EEAS 02168/4/14 REV4," January 8, 2015.

## The way forward

The two cases on Europeanising an operation and its use for rapid response show the bottom line of Article 44. It is about supplying forces for an operation in a CSDP framework, in return for increased control over its operational modalities and access to EU funding and support. If the Council wants to entice a group of member states (or the other way around) to deliver under Article 44, it must provide a compelling 'deal' on these elements.

Although the Council can decide these matters on a case by case basis, there is good reason to clarify the potential applications and allow expectations to converge. Having to negotiate the entire interpretation of the article at the Council in the hour of crisis is detrimental to rapid response. Member states may also be reluctant to spend time and political capital on a possibly protracted discussion with uncertain outcomes on the modalities.

The Council should therefore hold an exploratory debate, including scenario-based discussions, to clarify the general modalities of Article 44. The costs and benefits of delegating powers in both the planning process and implementation should be well understood for both the Council and the group of member states. Political exercises on Article 44 can be used to establish consensus on modalities and test the swiftness of decision-making. In parallel, member states involved in clusters of cooperation or Battlegroups should discuss among themselves the general circumstances and modalities under which they would be willing to contribute to an Article 44 operation, and provide this as input to the Council.

Article 44 is not necessarily a quick fix for force generation or rapid response, but if applied with the right incentives it can help provide more, and swifter, contributions to CSDP operations.



## 4 The EU's mutual assistance clause

In the wake of the Paris terrorist attacks of November 2015, France invoked a provision of the Lisbon Treaty that was long deemed irrelevant. Through Article 42.7, the mutual assistance clause of the European Union, France called upon its fellow EU member states to provide 'aid and assistance by all the means in their power'. The invocation marks a watershed moment for the EU as a security provider. Some even argued that it called for making collective security the cornerstone of the EU's security and defence policy. Does the mutual assistance clause indeed open the door for a collective defence task for the EU? And how does it relate to the EU's other solidarity commitment, Art. 222 TFEU, and to NATO's Article 5?

### Roots of the mutual assistance clause

The first proponents of an EU mutual assistance clause, France and Germany, did have a collective defence task for the EU in mind when they presented their proposal for such a clause at the Convention preparing the EU Constitutional Treaty. They voiced the ambition to establish a European Defence and Security Union (EDSU), which would

take on a collective security task for the EU. The blueprint for the solidarity assistance commitment was taken from the dissolving Western European Union (WEU). The EDSU would take over the WEU's Article 5, which committed member states to provide 'all the military and other aid and assistance in their power' if another member state was the victim of armed aggression.

France and Germany envisioned the EDSU to facilitate an EU *à la carte* on defence. They proposed the introduction of a solidarity clause with PESCO characteristics, which would allow a group of willing member states to move forward on collective defence by taking over the WEU solidarity commitment. Despite these high ambitions, however, the eventual provision was considerably watered down. The Franco-German proposal was heavily criticised by some NATO member states which believed the commitment to be "divisive and a duplication of NATO", and by neutral member states which feared that their neutrality was at stake because the provision anticipated a decision by the Council on common defence. To accommodate these concerns, the ambition for enhanced cooperation on mutual defence was abandoned and potential loopholes for NATO member states and neutrals were included.

The mutual assistance clause was also criticised for being out of date in response to new security threats. The Convention on the Future of Europe Working Group on Defence intended the clause to provide collective defence in response to armed aggression by state actors. With the terrorist attacks of 9/11 still fresh in the mind, the Working Group argued for the clause to be complemented by another solidarity commitment to respond to threats emanating from non-state actors. This led to the introduction of the EU solidarity clause (later to become Article 222 TFEU), which provides Union solidarity in response to terrorist attacks and natural or man-made disasters. As the latter category of threats had a much higher probability than the interstate aggression to which Article 42.7 was designed to respond, the mutual assistance clause was believed to be outdated and thereby lost political salience and momentum until the French invocation.

Despite its rocky start and the caveats that were introduced, Article 42.7 still amounts to a mutual assistance clause and for the first time allows EU member states to provide military assistance on another member state's soil. *De jure* this makes the EU an organisation with a collective defence task. But is this also *de facto* the case?

## The French invocation

The French invocation in November 2015 demonstrated the vagueness that surrounds the article's implementation. With only the two sentences of the provision to go on, member states were left with a great deal of room for interpretation – and improvisation.

On the one hand, the flexibility of Article 42.7 enabled a tailor-made approach which suited France's needs. The French government was looking for support in the shape of military assistance in Iraq and Syria and back-filling in missions in the Sahel. The mutual assistance clause enabled this as the clause, unlike Article 222 TFEU and NATO's Article 5, does not contain any geographic restrictions. Furthermore, by resorting to Article 42.7 instead of Article 222, France did not have to admit being 'clearly overwhelmed' and to have exhausted all means and tools at its disposal. For a member state with considerable political and military weight like France, this would have been a difficult hurdle to take. Finally, invoking an EU treaty provision allowed for a common response without having to resort to NATO's Article 5, as NATO involvement in Syria would have increased tensions with Russia and could have undermined the Vienna peace talks.

Calling on NATO would also have meant involving both the United States and Turkey, thereby complicating the decision-making process. By invoking Article 42.7 instead, France could remain in charge of the process and engage with other member states through bilateral consultations. Additionally, if France would have resorted to Article 222, it would have had to hand over political coordination to the Council Presidency (at the time: Luxembourg). The flexibility of the mutual assistance clause thus allowed France to retain political control. On the other hand, the lack of implementation arrangements for 42.7 led to a fragmented and rather limited response of EU member states. The obligation to provide aid and assistance was not felt equally by all member states. Although member states unanimously supported the French invocation, many did not feel obliged to aid and assist beyond political support. Limited contributions were made in the Sahel to relieve French forces, which could then be deployed elsewhere. Only a handful of member states provided (increased) support to operations in Syria and Iraq. It can also be argued that the contributions in the Sahel would have been made regardless of the activation of the mutual assistance clause. To be fair, France was not looking for a collective response by all member states. It approached member states selectively and emphasised that the invocation of Article 42.7 was first and foremost "a political act, a political message". Nonetheless, the contributions of Germany and the United Kingdom in Iraq and Syria were significant. The mutual assistance clause formed (part of) the legal justification for their contributions, and it is unlikely that the same response would have come about without the activation of the clause.

The absence of implementation arrangements also allowed France to sideline the EU institutions. Apart from the fact that the mutual assistance clause is an EU treaty provision and that it was invoked at the Foreign Affairs Council, the EU only had a marginal role to play. While HR/VP Federica Mogherini stated that the institutions could "facilitate and coordinate [...] whenever and however it is useful and necessary", France decided not to involve them. France presented its operational requests at the Political and Security Committee and subsequently kept it informed, but talks on member state contributions took place on a bilateral basis. The non-involvement of the institutions,

combined with the rather limited member state contributions, did not make it seem like the EU's response was very 'common' or driven by 'solidarity'.

## Exploring potential

To be able to reap the full potential of the mutual assistance clause, the ambiguity that currently surrounds its implementation needs to be addressed. A further clarification of the article's implications for the EU as a security provider and its role in territorial security is needed. The article's relation to NATO's Article 5 and the EU's other solidarity commitment, Article 222, has to be clarified. What added value does the mutual assistance clause bring in relation to these articles?

At first sight, there are large similarities between the mutual defence commitments of the EU and NATO. Article 42.7 provides the legal basis for a collective defence role for the EU, much like Article 5 does for NATO. But while the articles are similar in their wording, the military resources by which they are backed up are not. Unlike the EU, NATO can fall back on force planning capabilities, training and exercises, and an extensive military headquarter capability. For those countries that are both members of NATO and the EU, traditional territorial defence therefore remains the domain of NATO. Nonetheless, the EU does have a responsibility for protecting the territorial security of those EU member states that are not members of NATO, like Sweden and Finland, or when attacks take place outside the North Atlantic area, such as the EU overseas territories in the Caribbean, and are therefore not covered by NATO.

Furthermore, in the current security context collective defence comprises more than just traditional territorial defence. While it is still possible that the territorial security of an EU member state might be violated, the likelihood of a large-scale military attack – the response to which NATO would be primarily responsible – remains small. More prevalent are complex threats to EU member states' territory that require a cross-sectoral response. The EU has a role to play here, in full partnership with NATO. Although Article 42.7 was originally intended to respond to military threats by state actors, the article is well-fitted to respond to non-traditional threats as well. It covers a wider category of threats than NATO's Article 5. Whereas the latter refers to an 'armed attack', Article 42.7 makes reference to the broader category of 'armed aggression'. This is relevant in light of current security threats which are hybrid by nature and thereby fall below the threshold of NATO's Article 5. Naval blockades or air incursions, for example, do not qualify as armed attacks, but do constitute armed aggression. The EU can also step in to provide assistance in cases where NATO involvement would be escalatory, as previously mentioned with regard to tensions resulting from NATO involvement in Syria. In any case, it will eventually not be the exact interpretation of the wording of either Art. 5 NATO or Art. 42.7 TEU that will decide which clause will be invoked.

The choice for Article 42.7 or NATO's Article 5 depends on the situation at hand. Due to US membership, NATO is well adapted to deal with traditional (large-scale) military threats and can mobilise considerable assets within a short timeframe. In the case of more complex security threats, the EU's Article 42.7 can facilitate a cross-sectoral response. This does not mean that the articles are mutually exclusive. They can also be activated simultaneously to bring about a coordinated EU-NATO response. The EU can for example work in partnership with NATO in border management, cyber security, strategic communication, and assistance to improve the resilience of societies and security sectors both within and outside the EU. All these various security responses are the outcome of a broader understanding of collective defence to which the EU is well positioned to respond and to deter.

The EU's mutual assistance clause also has to be differentiated from the solidarity clause. The latter article's implementation arrangements have greatly curbed its applicability and thereby limited the article's relevance. The arrangements exclude assistance outside the territory of the attacked member state and prohibit actions following the article's invocation from having any defence implications. Furthermore, the arrangements greatly raise the threshold for invoking the clause by requiring an invoking member state to have exploited all existing means and tools at national and EU level and to admit that the crisis 'clearly overwhelms' its response capabilities. Member states, especially the larger ones, will be reluctant to do so. Article 42.7's flexibility brings added value here. As the French invocation testifies, the mutual assistance clause can also be invoked in response to non-traditional security threats. Article 42.7 can thus complement the solidarity clause in cases where greater flexibility or a wider geographic scope is required.

## Bringing in the institutions

Besides its relation to other solidarity commitments, clarification is also needed on the role of the EU's institutions in an Article 42.7 situation. Although the mutual assistance clause makes no specific reference to the institutions and France chose not to involve them, this does not preclude their future involvement. Even if the bilateral approach is maintained in future invocations, the cross-sectoral nature of security threats demands coordination with EU actors and instruments. This is also necessary when taking into account that smaller member states than France can make use of the Article in the future. They might not be able, as France was, to conduct the various bilateral negotiations and coordinate the resulting responses, particularly not when dealing with aggression simultaneously.

For the EU side, the HR/VP therefore needs to clarify the procedures to be followed, and while the member states remain in the lead, a facilitating and coordinating role for EU institutions should be developed. Preferably an umbrella framework is used that brings

together all relevant actors and instruments. The Integrated Political Crisis Response (IPCR) arrangements provide a useful instrument in this regard (see Box 1). By using these arrangements, the member states would stay in the lead of the decision-making process while simultaneously involving the institutions in a coordinative and facilitative role. The arrangements thereby safeguard Article 42.7's flexibility while providing much-needed coordination.

### **Box 1 The IPCR arrangements**

The IPCR arrangements, which were introduced as a successor to the Crisis Coordination Arrangements, would allow the Council to have the possibility to take a coordinating role in an Article 42.7 situation and facilitate the complementarity of action between member states and institutions. The arrangements would enable the Council, with the Presidency in the lead, to identify the instruments available at member state and EU level and to coordinate actions by member states and institutions in the case of the invocation of the mutual assistance clause. The arrangements thereby provide the coordination capacity that smaller member states might lack when they have to organise the national crisis response simultaneously.

While the arrangements allow the member states to stay in the lead, they would include the institutions in a coordinative and supportive role. The institutions support the member states in the creation of situational awareness through the production of Integrated Situational Awareness and Analysis (ISAA) reports by the Commission and the EEAS and facilitate information exchange between member states through the IPCR web platform. Furthermore, the institutions facilitate coordination by providing support to the Council Presidency and by operating a 24/7 crisis centre, the Commission's Emergency Response Coordination Centre (ERCC).

Finally, the IPCR arrangements are flexible and scalable, and thereby enable a tailor-made approach to the crisis at hand. The Council Presidency can decide to use the arrangements for situational awareness only (in information-sharing mode) or to facilitate decision-making at Coreper, Council or even European Council level (in full mode). In the latter case, the arrangements allow the Presidency to organise informal roundtables through which relevant stakeholders can be brought together to prepare proposals for action. The roundtables can range from high to working level, and can also bring in external experts and stakeholders.



## The way forward

To ensure a credible and effective EU response after a future invocation of the mutual assistance clause, better coordination is needed between the actors involved at member state and European level. Within the EU, complementarity of action between member states and institutions is required to ensure a smooth functioning of the IPCR arrangements. This calls for (making better use of) joint training and exercises to strengthen mutual trust, enhance preparedness levels and bring about a small, inter-institutional core that is used to working together and can rapidly respond if and when the IPCR arrangements are activated.

As the EU will take up more responsibility for territorial security, better coordination between the EU and NATO is also needed to ensure complementarity between the two organisations. A coordinated EU-NATO response to hybrid challenges is required and comparative advantages should be maximised. This is not only relevant when both articles are invoked simultaneously, but also when the provisions are activated separately, as there is a large overlap in membership between the two organisations. The EU's plans for a Hybrid Fusion Cell at the EEAS which should assess indicators and early warnings of hybrid threat activity are a first step towards increased EU-NATO coordination on what can become a territorial security issue. The EU-NATO Joint Declaration of July 2016<sup>19</sup> is a promising step in solving the deadlock that has kept the two institutions from working together for years. However, as long as the underlying problem of the 'different memberships' is not resolved, the question remains how extensive this cooperation can become.

The role of the EU as a territorial security provider should furthermore be reflected in an updated level of ambition for the CSDP and translated into corresponding capabilities. Two key enabling capabilities are of special relevance here. Firstly, the EU's capacity for early warning, situational awareness and intelligence gathering needs to be strengthened. Cross-border threats require cross-border cooperation and intelligence sharing. Therefore, cooperation between national intelligence agencies and the EU's Intelligence and Situation Centre (EU INTCEN) needs to be intensified. A mechanism to facilitate structural information-sharing and a joint analysis of shared intelligence should be introduced.

Secondly, as the EU has a role to play in providing more traditional territorial defence where NATO cannot (if the attacked member state is not a member of NATO or if the attacks takes place outside the North Atlantic area), its planning capacity needs to be strengthened to ensure an adequate level of preparedness and enable a rapid response.

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19 *Joint Declaration by the president of the European Council, the president of the European Commission and the Secretary General of NATO, Warsaw, 8 July 2016.*

The existing Civilian Planning and Conduct Capability (CPCC) therefore needs to be mirrored with a permanent military operational headquarters. This Military Planning and Conduct Capability (MPCC) would enable the EU to manage operations, be it for crisis management purposes or for defending Europe, without being dependent on national or NATO command centres.

The first ever invocation of the EU's mutual assistance demonstrates that the EU is a broad security organisation that has a role to play in territorial security as well. Yet the clause and its consequences for the EU's changed responsibilities will have to be clarified and actively asserted. This is even more urgent and relevant with the United Kingdom leaving the EU. Such a clarification would not only strengthen the mutual assistance clause, but could bring the whole CSDP back into the realm of high politics, thereby giving a fresh impetus to the future development of the CSDP.

# Conclusions and recommendations

In hindsight, the European Convention and the resulting Lisbon Treaty were ahead of their time, particularly in the area of security and defence. It is now more urgent than ever that the EU delivers as a security provider in an increasingly complex and insecure environment. Dusting off the relevant clauses from the Treaty can help. The articles can be instrumental in circumventing some of the CSDP's bottlenecks by offering more political and operational flexibility and increase the potential for attaining more relevant capabilities and a broadening of the CSDP's purpose to fit today's security challenges. Most important is the notion that also without the United Kingdom, a multi-speed EU on the CSDP is needed. Although all member states share the assessment that a more credible role for the EU in security and defence requires more cooperation, not all of them are willing to act on it. Therefore, flexible formats of groups of countries that choose to work together more closely or on a faster time scale is inescapable.

Most recently, the 2016 German White Book on defence also called for using all the options which the Treaty of Lisbon has available in the defence sector, particularly highlighting the need for permanent structured cooperation. The German government as well as other member states have previously reminded us of the potential of the Treaty. As this Report reiterates, it is not the lack of potential that the Treaty offers that has left the relevant Articles mostly dormant. Although the Articles regulating PESCO, flexible conduct and the command of operations and mutual assistance are ambiguous concerning some points, they leave sufficient leeway for willing member states to breathe life into them. The problem seems to be, as so often is the case, that there is a lack of political will, insufficient political courage, bad timing and a lack of leadership. France has taken a considerable step in forcing other member states to show their hand when invoking Art. 42.7. The implications for the nature of the EU's role as a security provider have not fully crystallised and need further implementation. This Report has looked into the potential of the various relevant articles against the background of the current needs to strengthen the CSDP. Further research is needed to uncover what it will take to align the interests of key member states to such an extent that they can muster sufficient political will, courage and leadership for tapping into the Lisbon Treaty's full potential.

This Report has analysed to what extent, and in which way, the treaty provisions could be employed to spearhead the CSDP. It delivers the following list of conclusions and recommendations:

## Permanent Structured Cooperation

- Permanent Structured Cooperation (Arts. 46, 42.6 and Protocol 10) comes with binding commitments and top-down coordination which are indispensable for the effectiveness of core groups, and can benefit from EU institutional support. But the binding nature of these commitments make them more difficult for member states to agree upon;
- Creating PESCO-*esque* groups outside the Treaty might be easier to establish since this circumvents the Protocol criteria and leaves the member states with more flexibility. However, such a group still needs to have binding agreements and top-down coordination just like PESCO in order to be effective, otherwise it is 'just' another voluntary grouping with very limited results;
- What matters is not whether cooperation is launched inside or outside the Treaty, because some legally binding framework will eventually be necessary whichever route is chosen. What really counts is the depth of the cooperation;
- The now generic criteria in the Protocol need to be quantified. The threshold should not be set so high that only a very few can join; the aim is to stimulate those that are willing to undertake the necessary effort. Criteria should not just focus on input (how much is spent), but also on output (what is it spent on and is that being used). As with the criteria for the Euro, not all criteria need to be fulfilled at the moment of entry.

## Implementing missions and operations by a group of member states

- Art. 44 allows member states to have greater control over the implementation of the operation, depending on Council interpretation, and may provide member states with an extra incentive to contribute. Depending on implementation, Art. 44 may allow for swifter planning and force-generation processes which would benefit rapid reaction;
- Art. 44 also adds to the flexibility and rapid reaction of the CSDP by creating the possibility to 'Europeanise' an operation that was initially launched outside of the CSDP framework by member states;
- To ensure effective application, in particular with rapid reaction, the modalities of Art. 44 should be clarified and its implementation well prepared, for instance by including scenario-based discussions, in the Council and the EEAS
- Article 44 can have particular synergy with groups of member states that already engage in more intensive defence cooperation such as PESCO, EU Battlegroups or clusters of cooperation like the Visegrad Group or the German-Netherlands bilateral cooperation. By engaging in regular interaction at political and working levels, joint exercises, standardisation and the streamlining of procedures, these groups can boast more rapid planning processes and parliamentary decision-making and can have higher interoperability of forces, thereby improving force generation and force composition.

## The mutual assistance clause

- The invocation of the mutual assistance clause (Art. 42.7) broadens the EU role to include defence of EU territory and adds an extra option for a collective response in a complex security environment, next to NATO's Art. 5 and the EU's solidarity clause (Art. 222 TFEU);
- To ensure a credible and effective EU response after the invocation of the mutual assistance clause, the EU institutions should develop a facilitating and coordinating role, while EU member states remain in the lead;
- The Integrated Political Crisis Response (IPCR) arrangements are potentially a useful umbrella framework for coordinating the actors involved in Art. 42.7 at the level of the member states and institutions;
- The role of the EU as a territorial security provider should be reflected in an updated level of ambition for the CSDP and corresponding capabilities. Firstly, the EU's capacity for early warning, situational awareness and intelligence gathering needs to be strengthened. Secondly, the CSDP needs a planning and conduct capacity in the shape of a permanent a Military Planning and Conduct Capability (MPCC).