



INSIGHT

THE RUSSIAN WAR AGAINST UKRAINE AND THE LAW OF THE EUROPEAN UNION

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UKRAINE CONFLICT'S IMPACT ON EUROPEAN DEFENCE AND PERMANENT STRUCTURED COOPERATION (PESCO)

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ABSTRACT: The history of a unified European defence has persistently shaped the European Union's foreign policy, evolving over time. The EU has worked on a robust and coherent Common Foreign and Security Policy (CFSP), particularly boosted by the European Union Global Strategy (EUGS) in 2016, which was issued after external shocks threatened Europe, necessitating strategic priorities to adapt to the evolving geopolitical landscape. This pursuit mirrored the historic "spill-over effect", wherein threats led to coordinated integration. The subsequent development saw the launch of initiatives, including the European Defence Fund (EDF), Coordinated Annual Review on Defence (CARD), and Permanent Structured Cooperation (PESCO) aiming at aligning national defence planning, promoting collaboration, and reinforcing European defence. The Russian military aggression against Ukraine in 2022 triggered a renewed need for integration and cooperation, Member States sought enhanced defence measures, including strengthening PESCO and NATO, and establishing the European Political Community (EPC). In this *Insight*, we will explore how the shifting geopolitical landscape impacts European defence, especially focusing on PESCO, a framework defined in the Treaty of the European Union (TEU) and introduced via the EUGS. After analysing PESCO's structure and key elements, we will assess whether the current situation can drive greater integration and address conflict-related challenges. We will also examine potential future scenarios resulting from these changes.

KEYWORDS: European defence – Common Foreign and Security Policy (CFSP) – Permanent Structured Cooperation (PESCO) – Strategic Compass – conflict in Ukraine – EU defence integration.

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I. CRISES AND THREATS, INCENTIVES FOR A STRONGER EU DEFENCE

Throughout its history, the idea of a common European defence has remained a central and tenacious element that has marked the Union's entire foreign policy, pushing and prodding its evolution right up to the present day.¹

Over the years, the EU has worked diligently to develop an autonomous, solid and consistent Common Foreign and Security Policy (CFSP), with a significant boost provided by the launch of the European Union Global Strategy (EUGS) in 2016. As a matter of fact, the EUGS represented a paradigm shift, driving the formation of a stronger and more coherent CFSP, enabling flexible interactions with international partners, and promoting multilateralism.

I.1. THE INITIATIVES STEMMING FROM THE EUGS

The need for a strategic document, such as the EUGS, that could define new priorities to adapt to the changing geopolitical scenario and prompt a stronger CFSP became evident as various events threatened Europe.

The timing of the EUGS appeared anything but coincidental: numerous external shocks and events were decisive for the development of new EU initiatives, generating a strong demand for intensified activities in the field of security and defence.²

Overall, according to the "spill-over effect" phenomenon, when threats or crises arise, Member States, perceiving the pressure for more integration as a consequence of external shocks, threats, or international competitiveness, seek out coordinated responses

¹ The European Union has attempted to develop an ambitious European Common Defence since the Maastricht Treaty, approved in 1992, evolved first in the creation of the Western European Union, then in the Common Foreign and Security Policy (CFSP) and finally, on the purely operational side, in the Common Security and Defence Policy (CSDP). Ever since, Western European States have always resorted to keeping foreign security and defence policy cooperation separate from the economic integration they started pursuing through the European Economic Communities. For a commentary on the legal and geopolitical aspects, see L. Lonardo, *EU Common Foreign and Security Policy After Lisbon* (Springer 2023) 68.

² Events that shaped the CSDP due to the increasingly unstable geopolitical environment were for instance, the revolutions and protests that swept through the Arab regimes in 2011, the violent collapse of Syria and the rise of the Islamic State, the war in Ukraine in 2014, the terrorist attacks in Europe in 2015-2017, the migration crisis and the Brexit. See N. Tocci, 'The Time for European Defence has Come: Rome Must Step up to the Task' (2017) IAI Commentaries 2. On the impact of Brexit as a factor in the development of CSDP, see, V.L. Van Middelaar, 'Brexit as the European Union's "Machiavellian Moment"' (2018) CMLRev 3; M. Vellano and A. Miglio, *Sicurezza e difesa comune dell'Unione europea* (Wolters Kluwer 2022) 60. Several scholars share this view, such as N. Karampekios, I. Oikonomou and E. Carayannis, *The Emergence of EU Defence Research Policy from Innovation to Militarization* (Springer 2018) 15; D. Fiott, 'The CSDP in 2020: The EU's Legacy and Ambition in Security and Defence' (2020) Institute for Security Studies www.iss.europa.eu 3; M.E. Smith, 'Implementing the Global Strategy Where it Matters Most: The EU's Credibility Deficit and the European Neighbourhood' (2016) *Contemporary Security Policy* 452 ff.

since “regional integration is often seen as a more effective buffer against detrimental or uncertain external developments”.³

Upon deeper investigation, the EU Member States have historically always responded favourably to the spill-over phenomenon: defence initiatives and projects to strengthen the CFSP and the Common Security and Defence Policy (CSDP) have multiplied after 2016, in response to external threats or shocks, leading to a true “renaissance” of European defence.⁴

These initiatives should be understood as integral parts of a “comprehensive defence package”, as they are complementary and mutually reinforcing tools: CARD aims to align and synchronise national defence planning and investment among Member States, helps identify and promote opportunities for collaboration that can be taken forward as PESCO projects or orients additional projects seeking funding under the EDF.⁵

Conversely, PESCO also gives information to CARD to better understand how the participating Member States (pMS) are planning to evolve their defence capabilities towards a more coherent European defence landscape.⁶ Indeed, the initiatives CARD, PESCO and EDF, jointly considered, constitute the pursuit – or, at least, the attempt – of aligning strategic cultures at the European level to fill the gaps of the EU's external action in the defence field.⁷

³ A Niemann, *Explaining decisions in the European Union* (Cambridge University Press 2006) 33 ff.; C Håkansson, ‘The European Commission's New Role in EU Security and Defence Cooperation: The Case of the European Defence Fund’ (2021) *European Security* 592.

⁴ The term “geopolitical renaissance in EU strategic thinking” is from S Blockmans, D Macchiarini Crosson and Z Paikin, ‘The EU's Strategic Compass A guide to Reverse Strategic Shrinkage?’ (2022) CEPS Policy Insights www.ceps.eu.

⁵ It is noted that thanks to the collaboration opportunities identified in the 2020 CARD cycle some PESCO Projects were launched: Main Battle Tanks Simulation and Testing Centre (MBT-SIMTEC); Unmanned Maritime Systems: Medium size Semi-Autonomous Surface Vehicle (M-SASV) and others. However, other opportunities for collaborations between Member States have been identified through the aggregate analysis of CARD 2022 (*inter alia* Unmanned Aerial Systems, Light Multirole Helicopters, Cyber Operations) and await implementation. See European Defence Agency, ‘2022 Coordinated Annual Review on Defence Report’ (November 2022) eda.europa.eu.

⁶ The European defence landscape is defined as the sum of all Member States' defence capability profile, including their military capabilities currently in service, their ongoing programmes and their future oriented plans. It also includes defence research and development and includes the European Defence Technological and Industrial Base (EDTIB). Already the 2020 CARD Report, finds: “As regards resulting defence capabilities, the European defence landscape continues to be fragmented and lacks coherence in several aspects. Existing capabilities are characterised by a very high diversity of types in major equipment and different levels of modernisation and of interoperability, including logistic systems and supply chains. The de-fragmentation of the European defence landscape requires coordinated and continuous efforts among pMS over a long period of time in three major areas which are interlinked: defence spending, defence planning and defence cooperation”. Consult European Defence Agency, ‘2020 CARD Report’ (2020) eda.europa.eu.

⁷ The Strategic Compass emphasises the need for increased cooperation by taking forward collaborative opportunities proposed through CARD. If all the initiatives arising from the Global Strategy were jointly implemented, the discussion of priorities on the basis of the CDP would involve the identification of strategic objectives under the CARD and, consequently, their implementation through PESCO projects to ensure the effectiveness and efficiency of the Union's defence actions. See B Cózar-Murillo, ‘PESCO as a Game-Changer for

1.2. THE SPILL-OVER EFFECT PHENOMENON APPLIED TO THE CURRENT GEOPOLITICAL SITUATION

Nowadays, the spill-over effect can be again witnessed in the current geopolitical situation, which is undeniably and drastically changed after the Russian unjustified and unprovoked military aggression against Ukraine, started on the 24th February 2022. Indeed, the military invasion represents an exogenous threat that has seriously aggravated the security of the EU and its Member States, and, similarly to what happened before 2016, can serve as incentives for closer integration and cooperation but needs the undivided attention of the institutions to reinforce an effective collective defence.

As immediate consequences of the war, Denmark expressed its willingness to join EDA and PESCO,⁸ Malta started considering joining PESCO,⁹ Sweden and Finland asked to be admitted to NATO,¹⁰ and, after the French proposal, a European Political Community (EPC) has been established to allow certain States to join together to stabilise European borders.¹¹

On the strategic side, the Council approved a new document to draw an ambitious plan of action for strengthening the EU's security and defence policy by 2030: the Strategic

Differentiated Integration in CSDP after Brexit' (2022) European Papers www.europeanpapers.eu 1303; J Howorth and A Menon, 'Still Not Pushing Back: Why the European Union is Not Balancing the United States' (2009) *Journal of Conflict Resolution* 727. Indeed, PESCO and CARD can be seen as instruments that facilitate the "Europeanisation" (in the direction of supranationalisation) of CSDP and consolidate it as a "community of practice". R Wong and C Hill, *National and European Foreign Policies: Towards Europeanization* (Routledge 2011); F Bicchi, 'The EU as a Community of Practice: Foreign Policy Communications in the COREU Network' (2011) *Journal of European Public Policy* 1115. One of the aims of the joint application of the initiative is to let pMS acquire more European products and to allow European industries to achieve effective synergies between their technological and production capabilities. Commitment n. 20: "Ensure that the cooperation programmes – which must only benefit entities which demonstrably provide added value on EU territory – and the acquisition strategies adopted by the participating Member States will have a positive impact on the EDTIB".

⁸ As a result of the referendum held on 1 June 2022, it was agreed to abolish the 30-year-old EU defence opt-out, which will allow Denmark to fully participate in the EU CSDP. See EEAS Press Team, 'Denmark: Statement by the High Representative on the Outcome of the Referendum on the Out-put in Defence Matters' (1 June 2022) www.eeas.europa.eu. Moreover, Denmark has also joined PESCO, after lifting its defence opt-out clause.

⁹ Malta justified its refusal to join as a pMS in PESCO by invoking a constitutional clause under which it is committed to neutrality and non-alignment. Nevertheless, the premier hinted at a possible future participation in PESCO. See E Lazarou and AM Friede, 'Permanent Structured Cooperation (PESCO): Beyond Establishment' (9 March 2018) European Parliament Briefing www.europarl.europa.eu 6.

¹⁰ Finland became NATO's newest member on 4th April 2023, upon depositing its instrument of accession. See NATO, 'Finland Joins NATO as 31st Ally' (4 April 2023) www.nato.int.

¹¹ The EPC was first proposed by French President Emmanuel Macron in May 2022, who officially presented this project at the European Council meeting on 23-24 June 2022 www.wayback.archive-it.org. The aim of the initiative, which saw the light of day in 2022, is to create a new space for political, security and energy, transport, and investment cooperation between the member states to cope with the radically changed geo-political scenario after the aggression of Ukraine. For a commentary on the possibility to use the Community in support of Ukraine, see R Petrov, 'How the European Political Community Could Support the Accession of Ukraine to the EU' (22 December 2022) *VerfassungsBlog* verfassungsblog.de.

Compass on 21 March 2022,¹² which was already in preparation and planned, but approved after the war started.

The aim of the Compass is to strengthen the CSDP, but also to protect European citizens, values and interests and to contribute to international peace and security through “a decisive quantum leap to develop a stronger and more capable European Union acting as a guarantor of security”.¹³

Throughout this *Insight*, we will investigate how the changed geopolitical situation is affecting the European defence landscape and initiatives, with a particular focus on PESCO, an innovative tool already outlined in the Treaty of the European Union (TEU) and introduced by the EUGS. After conducting a comprehensive analysis of PESCO's biphasic structure and the main workstrands of the initiative, we will assess whether the current situation can serve as a catalyst for increased integration and tackle the challenges highlighted by the conflict. Additionally, we will explore potential future scenarios arising from these developments.

II. THE PERMANENT STRUCTURED COOPERATION (PESCO)

PESCO is certainly one of the results – perhaps the most fruitful – of the new CFSP resulting from the 2016 Global Strategy.¹⁴

On 11 December 2017, the Council adopted Decision (CFSP) 2017/2315 by which it established PESCO, the list of participants and defined the modalities for the progressive realisation of the objectives and commitments listed in Protocol No. 10.

Prior to its establishment, discussions among Member States arose with regard to the possibility of guaranteeing access to PESCO to all EU States (“inclusive” approach) or only to those that met certain requirements (“elitist” model).¹⁵ In the end, the “inclusive” approach

¹² Council of the European Union, A Strategic Compass for Security and Defence – For a European Union that Protects its Citizens, Values and Interests and Contributes to International Peace and Security, 21 March 2022, No. 7371/11.

¹³ The term “security provider” is used by the Strategic Compass cit. 6. See F Mauro and K Thoma, ‘The Future of EU Defence Research’ (30 March 2016) European Parliament Briefing www.europarl.europa.eu.

¹⁴ As late as June 2016, the High Representative suggested in the EU Global Strategy that “enhanced cooperation between Member States should be explored and could lead to a more structured form of cooperation, exploiting the full potential of the Lisbon Treaty”. The December 2016 European Council responded by tasking the High Representative and Member States to present “elements and options for an inclusive PESCO based on a modular approach and to outline possible projects”. See B Leruth, S Gänzle and J Trondal, ‘Differentiated Integration and Disintegration in the EU After Brexit: Risks Versus Opportunities’ (2019) *JcomMarSt* 1383; S Blockmans and D Macchiariini Crosson, ‘PESCO: A Force for Positive Integration in EU Defence’ (2021) *European Foreign Affairs Review* 90.

¹⁵ This is largely the result of a German push for inclusiveness, which has prevailed over the French desire for a higher level of ambition. F Santopinto, ‘Le traité de Lisbonne et la défense européenne Bataille diplomatique sur fond de Coopération structurée permanente’ (4 November 2009) GRIP www.grip.org 7; G Amato and R Gualtieri, *Prove di Europa unita. Le istituzioni europee di fronte alla crisi* (Astrid 2013) 156 ff.; S Blockmans, D Macchiariini Crosson, ‘PESCO’ cit. 91.

prevailed with the PESCO founding Decision¹⁶ establishing a flexible solution for the development of the Eurozone of defence to allow a group of “willing and able” States to form a vanguard in the defence sector and to strengthen collaboration in the area of armaments, harmonise security apparatus, share resources and coordinate logistics and training.¹⁷

The main objective of PESCO at its inception was to strengthen the EU's defence capacity by pooling the resources needed to develop armaments in a synergetic and cooperative manner, thus reducing gaps between the various national defence systems, while leaving full national sovereignty over military capabilities unaffected.¹⁸

PESCO provides for a bipartite commitment: on the one hand, the 20 binding commitments that pMS have to fulfil in order to harmonise national defences and strengthen cooperation¹⁹ and, on the other hand, the projects developed within the cooperation itself in order to progress in the common defence.

¹⁶ PESCO “should be open to all Member States who are willing to make the necessary binding commitments [...]” according to the European Council Conclusions No. 9178/17 of 18 May 2017 on Security and Defence in the Context of the EU Global Strategy, 7-8. Decision 2017/2315/CFSP of the Council of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States.

¹⁷ As specified in Annex I to the Decision establishing PESCO, “The goal of an ‘ambitious’ PESCO underlines the need for all member states participating in PESCO to conform to a common list of objectives and commitments.

Member States must be able to provide armed forces capable of forming, on a national basis or as a component of multinational force groups, combat units targeted at the missions envisaged, capable of undertaking missions mentioned in Article 43 of the Treaty on European Union, within a period of 5 to 30 days, in particular in response to requests from the United Nations, and sustainable for an initial period of 30 days extendable to at least 120 days” (art. 1(b) of Protocol No. 10).

¹⁸ In addition to this, the decision to establish cooperation was also dictated by the need to ensure greater security for European citizens, counteracting internal and external security threats. See Resolution of the European Parliament of 13 December 2017 on the annual report on the implementation of the Common Security and Defence Policy, point 11. A Marrone, N Pirozzi and P Sartori, ‘PESCO: An Ice in the Hand for European Defence’ (21 marzo 2017) IAI Commentaries www.iai.it; S Blockmans (ed.), *Differentiated Integration in the EU from the Inside Looking Out* (CEPS 2014) 70 ff.

¹⁹ Specifically, art. 2 of Protocol No. 10, annexed to the TFEU, enumerates the commitments, subdivided into five different areas to distinct priorities: (a) “to cooperate, since the entry into force of the Lisbon Treaty, with a view to achieving agreed targets on the level of defence investment expenditure, and to regularly review these targets in the light of the security environment and the Union's international responsibilities” (defence investment expenditure); (b) “approximate, as far as possible, their defence equipment, in particular by harmonising the identification of military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by promoting cooperation in the fields of training and logistics” (harmonisation of defence equipment); (c) “take concrete steps to enhance the readiness, interoperability, flexibility and deployability of their forces, in particular by identifying common force projection objectives, including, as appropriate, by reviewing their national decision-making procedures” (enhanced interoperability of forces); (d) “cooperate to ensure that they take the necessary steps to fill, including through multinational approaches and without prejudice to their commitments in the North Atlantic Treaty Organisation, the gaps identified in the framework of the “Capability Development Mechanism” (cooperation with other organisations); (e) “to participate, as appropriate, in the development of joint or European large-scale equipment programmes within the framework of the European Defence Agency” (participation in the EDA).

Participating Member States (pMS), in order to demonstrate the effective pursuit of the 20 more binding commitments, must produce "National Implementation Plans" (NIPs) in which they outline how they will achieve the more specific objectives²⁰ and are then reviewed by the PESCO Secretariat (PESEC).²¹

This annual assessment guarantees, at least formally, the binding nature of the commitments: although participation in PESCO is voluntary, upon accession, these commitments become binding and, should a country fail to comply with these constraints, it could be suspended from the initiative itself.²²

The other strand of commitment within PESCO involves the submission and participation in projects designed to pursue the objectives set out in art. 1 of Protocol No. 10.

Although adherence to the latter is voluntary, it is expressly stipulated in the more binding commitments that each pMS in PESCO must join at least one PESCO project:²³ an indissoluble direct link has thus been created between the two strands of cooperation, making them coherent and interconnected.

Before the start of the conflict, the number of PESCO projects approved by the Council stood at 61 – among four waves: March 2018,²⁴ November 2018,²⁵ November 2019²⁶ and November 2021.²⁷

If the commitment of the pMS in both levels of implementation remains constant, or even exponential, PESCO could be the concrete instrument leading to a common defence

²⁰ See Decision 2315/2017/CFSP of Council of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States, art. 3(2): "For this purpose, participating Member States shall review and, where appropriate, update annually their national implementation plans in which they shall set out how they will achieve the most binding commitments, specifying how they will achieve the more specific objectives to be set for each phase. The updated National Implementation Plans shall be communicated annually to the European External Action Service (EEAS) and the European Defence Agency (EDA) and shall be made available to all participating Member States".

²¹ PESEC is composed of the European Defence Agency (EDA), the European External Action Service (EEAS) and the European Union Military Staff (EUMS) under the authority of the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission (HR/VP). See Decision 2315/2017/CFSP cit. on the national implementation plan of Annex III – Governance, art. 4(1).

²² Art. 46(4) TEU: "If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation, the Council may adopt a decision suspending the participation of the Member State concerned".

²³ Among the ambitious and binding commitments listed in the Annex to Decision 2017/2315 is, in Commitment No. 17, each pMS must "participate in at least one project under PESCO that develops or provides capabilities identified as strategically relevant by Member States".

²⁴ By Decision 2017/2315/CFSP cit. the first 17 projects were approved.

²⁵ By Decision 2018/1797/CFSP of the Council of 19 November 2018 amending and updating Decision (CFSP) 2018/340 establishing the list of projects to be developed in the framework of PESCO, an additional 17.

²⁶ By Decision 2019/1909/CFSP of the Council of 12 November 2019 amending and updating Decision (CFSP) 2018/340 establishing the list of projects to be developed in the framework of PESCO, an additional 13.

²⁷ Finally, with Decision 2021/2008/CFSP of Council of 16 November 2021 amending and updating Decision (CFSP) 2018/340 establishing the list of projects to be developed in the framework of PESCO the last 14.

and a coherent common force package covering the whole spectrum, complementary to NATO.²⁸

III. CONSEQUENCES OF THE CONFLICT ON PESCO

III.1. CONSEQUENCES ON THE MORE BINDING COMMITMENTS

The pMS' contributions to the fulfilment of the 20 more binding commitments appear to be affected by the new geopolitical situation across all five areas: spending, planning, operational dimension, addressing capability shortfalls and strengthening the European Defence Technological and Industrial Base (EDTIB).

The most visible response stemming from the ongoing war in Ukraine is on the first PESCO commitment: a defence spending increase is stated not only for the current year, but with further increases forecast in 2024-2025, in line with the Versailles Declaration of 10 and 11 March 2022,²⁹ the Strategic Compass and recent NATO summits.³⁰

As shown in the 2020 and 2022 CARD Reports, an increase of defence expenditure was observed in almost all pMS³¹ and these additional funds will improve readiness and close long-standing capability gaps.³²

Indeed, the conflict has prompted European countries to reassess their defence capabilities and invest more in military modernisation, as reflected in the increased defence spending to bolster armed forces, acquire advanced weaponry, and enhance cyber and hybrid warfare capabilities to counter potential adversaries.³³

²⁸ According to Annex I to the Decision establishing PESCO, it "could be an element leading to a common defence when the European Council, acting unanimously, has so decided (see Article 42(2) TEU)".

²⁹ The Versailles Declaration advocates the need for the European Union to assume greater responsibility for European security, emphasising the urgency of further decisive steps towards the construction of European sovereignty, the reduction of dependencies and the development of a new growth and investment model for 2030. See European Council, Informal Meeting of Heads of State or Government Versailles Declaration, 10 and 11 March 2022, 3.

³⁰ NATO summit meetings provide periodic opportunities for the Heads of State and Government of NATO member countries to discuss important issues facing the Alliance and provide strategic direction for its activities. See also B Cózar-Murillo, 'PESCO as a Game-Changer for Differentiated Integration in CSDP after Brexit' cit. 1313.

³¹ The defence expenditure of pMS grew significantly to €214 bn in 2021 (+6%) and it is estimated to further grow by up to €70 bn by 2025. In 2021, defence investment reached 24% of total defence expenditure, or €52 bn (up from 22% in 2019). See EDA, 2022 Coordinated Annual Review on Defence Report cit. 2.

³² *Ibid.* 1: "The changing security environment will have an enduring yet incremental impact on the EU defence landscape. The most visible responses from participating Member States (pMS) are defence spending increases. Although not fully allocated yet, additional funds will improve readiness and close longstanding capability gaps".

³³ The return of high intensity conflict and increased territorial threat requires a conversion of the defence industrial ecosystem in the EU to ensure security of supply and an expansion of manufacturing capabilities where necessary. Furthermore, when it comes to disruptive technologies having the potential

Nevertheless, the budget increase should be paired with a higher cooperation among the pMS, since decisions taken in isolation, without considering their medium to long-term impact on the EU defence landscape, could lead to even more incoherence and fragmentation.³⁴

All in all, it remains to be seen whether pMS will follow a coordinated approach which would ensure greater efficiency and interoperability of armed forces and avoid further fragmentation.³⁵

In relation to commitments aimed at strengthening the EDTIB, pMS invest in enabling their national industries to take part in cross-border cooperation within the EU, particularly under the support of the EU co-funding (such as EDF) and in the development of collaborative projects that contribute to fostering its competitiveness, efficiency and innovation.³⁶

Following the tasking of the 2022 Versailles Summit declaration to work to address urgent gaps,³⁷ pMS seem to point in the right direction: the recently launched joint procurement activities within EDA, confirm that the pMS are increasingly exploring EU options to address urgent needs and recognising the value of cooperation over individual efforts.³⁸

to radically change the future battlefield (e.g. AI, Quantum) and future equipment, the described root causes risk affecting EDTIB competitiveness in the long term, and its ability to develop advanced capabilities (e.g. hypersonic systems, collaborative combat). Communication COM(2000) 24 final from the Commission on the Defence Investment Gaps Analysis and Way Forward.

³⁴ EDA, 2022 CARD Report cit. 3 www.eda.europa.eu: "The budget increase could represent both an opportunity and a challenge. On one hand, rising budgets provide more room to cooperate on acquiring or developing new capabilities. On the other hand, decisions could be taken in isolation without considering their medium to long-term impact on the EU defence landscape".

³⁵ Limited defence budgets, spent on a plethora of small-scale capabilities, result in disproportionately high spending on "overheads" (and unnecessary intra-European duplication) and, consequently, less spending on deployable capabilities and actual operations. In the EU there are 150 types of different forms of equipment, therefore, the European armed forces have little in common and their interoperability is guaranteed only by NATO. The final objective is therefore to reduce the types of complex weapons systems currently in use in Europe to around thirty through the acquisition of a homogeneous arsenal within the categories of weapons systems and a centralized acquisition process. V Amos Dossi, 'La coopération d'armement PESCO: potentiel et failles en Politique de sécurité' (2019) *Analyses du Center for Security Studies (CSS) 2*; W J Lewicki, 'Innovative Project Management: EU Common Defence Policy' (2018) *Marketing and Management of Innovations 334*; A Azzoni, 'Tre strade per attuare la difesa comune europea' (20 giugno 2022) *IAI Commentaries* www.affarinternazionali.it.

³⁶ Report of the High Representative of the Union for Foreign Affairs and Security Policy to the Council: Annual Report on the Status of PESCO Implementation, 12112/23, 25 July 2023, 15. Document partially accessible to the public published on data.consilium.europa.eu.

³⁷ Informal meeting of the Heads of State or Government, Versailles Declaration 10 and 11 March 2022 cit. See Fn. 3, annex "Scoping EU Defence Investment Gaps" www.europa.eu.

³⁸ Report of the High Representative, 12112/23 cit. 7. Following the adoption of the Joint Communication on Defence Investment Gaps on 18 May, the EU swiftly set up a Defence Joint Procurement Task Force bringing together the European External Action Service (EEAS), the EDA, and the Directorate-General for Defence Industry and Space and the Secretariat-General of the European Commission. The Task Force consulted all Member States and engaged with those most interested to collect and aggregate their most

It appears that pMS are mostly fostering joint procurement with swift, coordinated, and decisive common actions. However, when addressing urgent defence needs, several pMS have taken unilateral decisions to acquire at large scale outside the EU. The recent Russian war against Ukraine has further reinforced a trend towards more off-the-shelf procurement from non-EU suppliers, potentially leading to an increased fragmentation of the European defence landscape.³⁹

Efforts to develop a more coordinated and synergistic use of tools provided at EU level to achieve tangible objectives are yet to be undertaken by EU institutions and pMS.⁴⁰

III.2. CONSEQUENCES ON THE PROJECTS

During the first initial phase of PESCO, it was evident that the initiative showed adaptability and effectiveness as a cooperation framework, with visible progress.⁴¹

As a matter of fact, PESCO projects are prompting collaboration among pMS and are already producing concrete deliverables that enhance pMS capabilities in areas such as cyber, unmanned systems, chemical, biological, radiological and nuclear surveillance, and medical services. Some of these capabilities, such as those delivered by the PESCO projects, European Medical Command and Cyber Rapid Response Teams, have already been

critical and urgent procurement needs and explore potential interest for future joint procurement projects. Considering the urgent need to procure 155mm artillery ammunition for Ukraine, EDA has identified a fast-track solution specifically for 155mm calibre. The fast-track solution entails a negotiated procedure with European industry without tendering, based on extreme urgency. Member States pay and can be reimbursed via the European Peace Facility (EPF), the EU's off-budget instrument in support of the EU's Common Foreign and Security Policy (CFSP). See EDA, *Eda Brings Together 25 Countries for Common Procurement of Ammunition* (20 March 2023) eda.europa.eu.

³⁹ See EDA, 2022 CARD Report cit. 4. Mostly, to replenish pMS' stocks, improve combat readiness of existing forces and reinforce their endurance, in the short-term. Member States tend to procure from their national defence industry or outside off-the-shelf if there is no national solution, in particular if there is time pressure related to urgent operational requirements or budget implementation.

⁴⁰ Member States often opt for off-the-shelf procurement when no national solution is available or when faced with time constraints related to urgent operational requirements or budget implementation. The recent Russian war against Ukraine has further reinforced this trend, potentially leading to increased fragmentation and reliance on non-EU sources. See Communication COM(2022) 24 final cit.

⁴¹ See extract of PESCO Projects Progress Report: "Today, more than half of PESCO projects have achieved some concrete deliverables. According to the annual Projects Progress Report, many of the 60 ongoing PESCO projects are advancing according to plan. Progress has been recorded across domains with 21 projects moving forward in their development life cycle". Available at *PESCO, Development, Delivery and Determination: PESCO Forging Ahead* www.pesco.europa.eu and PESCO Projects Progress Report, 9378/21, 2 June 2021, document partially accessible to the public: "11 projects are progressing according to their plans. For 33 projects changes were reported regarding their roadmaps. 1 project had tested and technically confirmed its full operational capability to be formally declared by the project members" data.consilium.europa.eu.

used or activated in support of EU CSDP missions and operations (EUMAM Ukraine⁴² and EUTM Mozambique⁴³) or EU partners, including Ukraine.⁴⁴

Approximately one year after the outbreak of war, on 23rd May 2023, 11 new PESCO Projects were approved and 3 were closed, leaving 68 projects ongoing.⁴⁵ Some of the new PESCO projects aim at delivering critical capabilities with a more operational focus, enhancing the pMS' ability to address conventional threats and delivering next generation capabilities.

Russia's war of aggression against Ukraine showed the need for effective logistics and a secure, quick movement of large-scale military force and equipment, also highlighted in the Strategic Compass, where it was confirmed the "urgent need" to considerably improve the military mobility of European armed forces, both inside and outside the Union.⁴⁶

The pMS are trying to facilitate cross-border military transport in Europe, including enhanced host nation support, in the wake of the PESCO project "Military Mobility" (MilMob), developed within NATO and defined as the "Schengen of Defence",⁴⁷ whose objective is to facilitate the cross-border movement of troops, services and goods by harmonising rules and procedures between pMS.

In line with the Strategic Compass, the Action Plan on Military Mobility 2.0 reflects this sense of urgency and highlights the role of relevant PESCO projects to achieve a well-connected military mobility network.⁴⁸

⁴² The EU Military Assistance Mission in support of Ukraine (EUMAM Ukraine) is aimed at strengthening the capacity of the Ukrainian Armed Forces to defend Ukraine's territorial integrity within its internationally recognised borders and to deter and respond to possible future military offensives by Russia and other potential aggressors. See the website EUMAM at www.eeas.europa.eu.

⁴³ EUTM Mozambique has a non-executive mandate to provide training and support to the Mozambican armed forces to protect the civilian population and restore security in the Cabo Delgado province. See the website EUTM at www.eeas.europa.eu.

⁴⁴ Report of the High Representative 12112/23 cit. 8. See the new projects at www.pesco.europa.eu.

⁴⁵ Decision 2023/995/CFSP of the Council of 22 May 2023 amending and updating Decision (CFSP) 2018/340 establishing the list of projects to be developed under PESCO. It has to be noticed that the EU decided to change the timing of the adoption of new projects from November to spring, in an attempt to align with the planning cycles of the pMS. See B Cózar Murillo, 'Bring Back the Spirit of PESCO!' (2023) Egmont Policy Brief 3.

⁴⁶ Report of the High Representative 12112/23 cit. 5, Strategic Compass 7371/22 cit. 18.

⁴⁷ S Blockmans and D Macchiarini Crosson, 'PESCO: A Force for Positive Integration in EU Defence' cit. 93. This project serves as a political-strategic platform where progress and issues arising from these efforts are discussed. See the Military Mobility section at www.pesco.europa.eu.

⁴⁸ Report of the High Representative 12112/23 cit. 5. Building on the progress made since the military mobility initiative was launched in 2017, this new Action Plan opens the next chapter of work on military mobility for the period 2022-2026. Enlarged in scope and proposing additional measures, it will contribute to a well-connected military mobility network, with shorter reaction times and capable, secure, sustainable and resilient transport infrastructure and capabilities. See Communication COM(2022) 48 final from the Commission of 10 November 2022 on military mobility 2.0 Brussels.

In conclusion, even though PESCO projects might not yet fully address strategic shortcomings of the Union,⁴⁹ PESCO is receiving by its projects give a more operational dimension. Evidenced by the launching of new projects and the positive development of several existing ones, PESCO is valuable in the event of a crisis, as it improves the speed pMS can react to it collaboratively.

IV. PESCO: AN INNOVATIVE AND USEFUL TOOL, NOT YET UNLEASHED TO THE FULL POTENTIAL

The overall perception of a more dangerous security environment, today with the case of a revanchist Russia, is what primarily fuels the present impetus in defence that EU Member States are experiencing, leading to a significant strengthening of European defence initiatives.

The most evident influences of the war on the European defence can be seen clearly through the lenses of PESCO: transversal, concrete consequences can be identified not only in the trend of the pMS in the fulfilment of the more binding commitments, in which it's clear the defence spending increase, the importance of collaborative opportunities, the improvement of EDTIB and joint procurement, but also through the quality of PESCO Projects which were improved or approved after the war of aggression against Ukraine.

As an example, to reverse the trend of investing largely nationally when closing capability gaps, pMS are trying to exploit the resources available to prioritise European collaborative solutions to allow a more coordinated and effective response. In this context, as already mentioned, the recently launched joint procurement activities such as the collaborative procurement of ammunition within EDA and the EU funding tools could further promote a European collaborative approach to address strategic shortcomings of the Union.⁵⁰

Nevertheless, in the framework of PESCO, it is vital that the pre-eminence of the pMS' interest to fortify the European defence industry and to bolster the EU's strategic autonomy is ensured over industries' ambitions, and that projects prove to be truly strategic. Indeed, Member States' engagement in projects aimed at addressing identified EU capability development priorities seems contingent upon ad-hoc considerations, aligning national industrial interests and priorities with the availability of EU funding.⁵¹

⁴⁹ Projects conducted outside the operational framework of PESCO could potentially have led to the same results. The author attributes the slow progress of PESCO to the "absence of a clear purpose". He argues that the non-binding nature of the CSDP and lack of precision in Member States' objectives through PESCO are not helping. S Biscop, 'L'Europe de la défense: donnons une chance à "PESCO" in *Défense* (No. 191 2018) 25. S Biscop, 'European Defence and PESCO: Don't Waste the Chance' (12 May 2020) Egmont www.egmontinstitute.be.

⁵⁰ Report of the High Representative 12112/23 cit. 9.

⁵¹ In general, Member States tend to prioritise cooperation only when it aligns with their national plans, benefits their domestic industries, or strengthens strategic partnerships. Many Member States view

All in all, analysing the bipartite structure that characterises PESCO, we cannot fail to note the lack of incisiveness of certain projects that have arisen within this initiative⁵² as well as binding commitments that appear demanding for the pMS, which are far from achieving their goals by 2025.⁵³

Yet, as we have already noted, the remote and residual possibility of suspending a pMS from PESCO denotes little deterrence and does not represent an effective prompt for a concrete turnaround on the part of pMS, which seem to focus rather on their own national objectives.⁵⁴

Hence, the resurgence of high-intensity conflicts in Europe necessitates a concrete endeavour to create more effective, efficient, and interoperable military forces, to tackle the challenges highlighted by the conflict and the long-term necessities. While further steps are required, the PESCO framework remains a crucial and comprehensive approach to address present requirements and prepare for future scenarios.

European collaborative approaches as more time-consuming and intricate, leading them to often choose national solutions or non-EU suppliers instead. See EDA, 2022 CARD Report cit. 6, 8.

⁵² Although some PESCO projects go in the right direction, they do not cover the current EU capability gaps, so PESCO projects that are significant enough to receive financial support from Member States and the EU should be given priority, even if this means abandoning less ambitious projects. In order to ensure that PESCO reaches a certain level despite the financial challenges, coordination between pMS and EU institutions to prioritise projects according to the most serious capability gaps may prove to be a way forward. L Béraud-Sudreau, Y-S Efstathiou and C Hannigan, 'Keeping the Momentum in European Defence Collaboration: An Early Assessment of PESCO Implementation' (14 May 2019) IISS www.iiss.org 13. Recommendation 2021/C 464/02 of the Council of 16 November 2021 assessing the progress made by the participating Member States to fulfil commitments undertaken in the framework of permanent structured cooperation (PESCO), paras 13-14: "Although a significant number of PESCO projects are expected to produce concrete results by the end of 2025, [...] some of them may face difficulties in achieving the expected results by that deadline. [...] Should project members find that there are projects that are unable to deliver the expected results, these projects should be revitalised or closed in order to ensure the relevance, effectiveness and credibility of all PESCO projects".

⁵³ *Ibid.* Recommendation 2021/C 464/02 para. 6 ff.: "[...] it is recommended that the participating Member States provide, for all areas of commitment, more detailed indications and relevant declarations, with particular attention to the development of specific forward-looking plans on how they envisage contributing to the fulfilment of the more binding commitments and the more precise targets. [...] Participating Member States are encouraged to go beyond the current level of fulfilment of commitments related to the industrial dimension of the defence sector. [...] Participating Member States are strongly encouraged to increase, within their means and capabilities, their contributions to the operational aspects of PESCO".

⁵⁴ Instead of using PESCO as a tool to achieve a common EU objective, member states instrumentalise it to promote their own projects. Rather than questioning what to do about PESCO, the member states seem to be mainly interested in the funding related to it and stemming from the EDF. See S Biscop, 'European Defence and PESCO' cit. 7. On the topic, regarding how the EDF is focused on industrial rather than defence policy, and where competition prevails, an author writes that to avoid this partiality it would be necessary a neutral actor such as the PESCO Secretariat. B Cózar Murillo, 'Bring Back the Spirit of PESCO!' cit.

