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## Chapter VII

# Some reflections on anticipatory governance in EU defence

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**SUMMARY:** I. INTRODUCTION. II. CONCEPTUAL FRAMEWORK. III. UNPACKING THE ANTICIPATORY FACET OF EU DEFENCE. 1. *On the governance particularities of EU defence.* 2. *Strategic foresight.* 3. *Military capabilities.* IV. MAIN FINDINGS AND CONCLUSIONS. BIBLIOGRAPHY.

### I. INTRODUCTION

Traditionally, the European Union (EU) has not been associated with defence matters. It tended to be seen as 'an economic giant, political dwarf and military earthworm'<sup>1</sup> – or, to put it in more flattering terms, as a

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1. Expression first used in 1991 by Mark Eyskens, then Belgium's Foreign Minister, and recalled in an interview in 2010. Mark Eyskens and Étienne Deschamps, 'Interview(s) Conducted in Brussels', [http://www.cvce.eu/obj/transcription\\_of\\_the\\_interview\\_with\\_mark\\_eykens\\_brussels\\_30\\_march\\_and\\_30\\_april\\_2010-en-14f721e6-47e0-4f40-84de-692f062b78b7.html](http://www.cvce.eu/obj/transcription_of_the_interview_with_mark_eykens_brussels_30_march_and_30_april_2010-en-14f721e6-47e0-4f40-84de-692f062b78b7.html).

'civilian power'<sup>2</sup> or a 'normative power'<sup>3</sup> that remained at a safe distance from military matters. Yet, this perception of the EU is not entirely accurate. While it is true that both defence decision-making prerogatives and military capacities remain formally in the hands of national governments, the EU's defence dimension has progressively expanded since 1999, when the Common Security and Defence Policy (CSDP) was established at the Cologne European Council under the impression of the Kosovo war<sup>4</sup>. Indeed, over the last two decades, Member States have not only put in place security and defence structures to steer and implement, for instance, joint extraterritorial defence activities<sup>5</sup>, but they have also engaged in joint defence (industrial) projects. Despite these operational and institutional advances, the EU is still very far from being a military heavyweight: When push comes to shove, NATO remains the primary forum for European defence, as the ongoing war in Ukraine illustrates<sup>6</sup>.

Against this backdrop, Russia's aggression against Ukraine in early 2022 acts as a catalyst for defence integration at the EU level, which had already picked up some speed in the past five years. Suffice to mention in this context the launch of Permanent Structured Cooperation (PESCO) in 2017<sup>7</sup>. But faced with the EU's defence shortcomings that became apparent in the face of the ongoing conflict in Ukraine, Member States have pledged to boost significantly their defence capacities and to increase massively defence spending at the national level<sup>8</sup>. And, as a matter of fact, Member States have already considerably augmented their defence spending after

2. François Duchêne, 'Europe's Role in World Peace', *Europe Tomorrow: Sixteen Europeans Look Ahead* (Fontana 1972); Hedley Bull, 'Civilian Power Europe: A Contradiction in Terms?' (1982) 21 *Journal of Common Market Studies* 149.
3. Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) 40 *Journal of Common Market Studies* 235.
4. Presidency Conclusions of the Cologne European Council (2–4 June 1999), Annex III: Presidency Report on Strengthening of the common European policy on security and defence.
5. For an overview of these activities, see Ana E Juncos, 'Civilian CSDP Missions: "The Good, the Bad and the Ugly"' in Steven Blockmans and Panos Koutrakos (eds), *Research Handbook on the EU's Common Foreign and Security Policy* (Edward Elgar 2018); Panos Koutrakos, *The EU Common Security and Defence Policy* (Oxford University Press 2013) 101–182.
6. On this topic, see Hylke Dijkstra, 'The War in Ukraine and Studying the EU as a Security Actor', *JOINT Brief No. 15* (2022); Max Bergmann and others, 'Transforming European Defence', *CSIS BRIEFS* (2022).
7. Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States [2017] OJ L 331/57.
8. Informal meeting of the Heads of State or Government, Versailles Declaration, 10 and 11 March 2022.

years of clear underspending<sup>9</sup>. What is more, we witness a remarkable integration motivation regarding defence issues, of which Denmark's democratically legitimated renunciation to its security and defence opt-out is probably the most obvious manifestation<sup>10</sup>.

In parallel, the European Commission (Commission) is expanding its footprint in defence matters, in particular when it comes to defence industrial cooperation and defence procurement. Indicative hereof is the creation of a Commission Directorate General for Defence Industry and Space (DG DEFIS) in 2019, the launch of the European Defence Fund (EDF) in 2021<sup>11</sup>, and the Commission's recent recommendations on how to remedy current EU defence shortcomings<sup>12</sup>. Another indication for the further integration of European defence is the legislative proposal by the Commission on joint defence procurement<sup>13</sup>. This, in turn, means that the supranational grip on EU defence increases<sup>14</sup>, which is moreover a true game changer as security and defence integration at the European level has so far unfolded in small steps with little risk under the intergovernmental umbrella of the CSDP – in normative, procedural, and institutional terms<sup>15</sup>.

All of these developments indicate that EU defence is at a turning point: Relegated to a niche topic for years, defence dossiers now rank very

9. An overview of announced increases of national defence spending across Europe can be found here (dated April 2022): Nicole Koenig, 'Putin's War and the Strategic Compass. A Quantum Leap for the EU's Security and Defence Policy?', *Policy Brief* (Jacques Delors Centre (Hertie School) 2022). Regarding the defence underspending and its impact on the capabilities of EU defence, see Bergmann and others (n 6) 2–3.
10. Carolyn Moser, 'The War in Ukraine and Its Repercussions on Europe's "Security and Defence Constitution"' (*constitutionnet*, 22 September 2022), <https://constitutionnet.org/news/war-in-ukraine-repercussions-europe>.
11. Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 OJ L 170/149.
12. JOIN(2022) 24 final (15 May 2022), 'Defence Investment Gaps Analysis and Way Forward'.
13. COM(2022) 349 final (19 July 2022), 'Proposal for a Regulation on establishing the European defence industry Reinforcement through common Procurement Act (EDIRPA)'.
14. Steven Blockmans, 'The EU's Modular Approach to Defence Integration: An Inclusive, Ambitious and Legally Binding PESCO?' (2018) 55 *Common Market Law Review* 1785; Pierre Haroche, 'Supranationalism Strikes Back: A Neofunctionalist Account of the European Defence Fund' (2019) 26 *Journal of European Public Policy* 853.
15. Carolyn Moser, *Accountability in EU Security and Defence. The Law and Practice of Peacebuilding* (Oxford University Press 2020) 39. For a detailed description of the integration history and delegation process regarding EU security and defence, see Hylke Dijkstra, *Policy-Making in EU Security and Defence: An Institutional Perspective* (Palgrave Macmillan 2013) 47–77.

high on the agenda of both European leaders and citizens<sup>16</sup>. Importantly, though, this change happens *in reaction* to external events. While this dynamic is not novel – the integration DNA of EU defence is one of reactive integration to cope with endogenous threats and challenges<sup>17</sup> – it raises important governance questions. Chiefly, one can ask how much room there is for prospective thinking in this rather crisis-driven policy-making mode. The aim of more EU defence integration is, obviously, to safeguard peace and stability in Europe and the world in present and in future times. Defence does hence always have an anticipatory element. But does anticipation necessarily imply or ensure that policy-shaping and policy-making in EU defence is also intergenerational in nature, in the sense that it does not turn a blind eye to the potential security and defence interests of future generations of EU citizens?

This contribution sets out to answer precisely this question. It zooms into the two constitutive limbs of defence, that is (a) strategic foresight and (b) managing military capabilities. Strategic foresight, on the one hand, provides the overall conceptual framework within which defence unfolds. It sketches out (potential) security and defence risks and challenges and outlines a range of scenarios for the future. Military capabilities, on the other hand, relate to the availability of suitable assets to meet the demand of different strategic scenarios. Both aspects taken together allow current and future generations to deal with peace and security realities appropriately.

## II. CONCEPTUAL FRAMEWORK

Now, the key question is what amounts to ‘appropriate’ defence (today and in the future) actually. Answers to this question range from preventing war from happening at all to being military ready for going to war, and also include the idea of defence as a means of deterrence. We do not wish to take sides in this heated debate about the purpose and limits of defence. Rather, this contribution concentrates on governance issues, that is the normative, institutional, and procedural setting and arrangements that shape policy-making and policy-outcomes in relation to EU defence.

This said, there are obviously broader conceptual questions concerning the anticipatory or even intergenerational dimension of

16. On this issue, see Carolyn Moser and Berthold Rittberger, ‘The CJEU and EU (de-) Constitutionalization – Unpacking Jurisprudential Responses’ (2022) *International Journal of Constitutional Law* 21.

17. Moser, *Accountability in EU Security and Defence* (n 15) 38-39.

defence. Why bother about the peace and security of future generations? Isn't it (difficult) enough to ensure peace and security today? And how to operationalise the idea that defence serves both current and future generations?

First, let us turn to the question *why bother?* One fundamental interrogation when it comes to anticipatory policy-making is why one should take future generations into account at all when designing and implementing policies today. There is indeed a vivid debate in the academic literature about whether or not current decision-makers actually must conduct policies in an anticipatory way. We take inspiration from the (growing) corpus of literature about intergenerational justice to position ourselves in this debate<sup>18</sup>. Hence, this contribution is based on the assumption that future generations matter – also in relation to defence issues – because maintaining peace and security is the *sine qua non* condition for future generations to be able to prosper. In particular, we base our understanding of prospective policy-making on an impersonal view of the matter, which allows taking the interests of future generations into account without necessarily making any conclusions about the identity of these future generations<sup>19</sup>.

*What do we owe to whom?* Different scholarly circles have come up with different answers to this question. A look at the climate change literature is helpful, as the relevant sources propose a number of suggestions for universal standards that can be used to determine what is owed to future citizens. These standards include sufficiency, equality, and priority<sup>20</sup>. *Sufficiency* implies that future generations must be left with enough material capital to uphold their governance system; in other words, in line with Rawls' just savings principle, current people need to design policies in such a way as to leave future generations enough resources to run their polity<sup>21</sup>. *Equality*, in turn, means that different generations are entitled to (relatively) equal situations or standards, for

18. For an overview of the debate, see inter alia Lukas Meyer, 'Intergenerational Justice' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Summer Edition, 2021); Joerg Chet Tremmel (ed), *Handbook of Intergenerational Defence* (Edward Elgar 2006); Philippe van Parijs, 'The Disfranchisement of the Elderly, and Other Attempts to Secure Intergenerational Justice' (1999) 27 *Philosophy and Public Affairs* 292.

19. The identity problem was famously discussed in Derek Parfit, *Reasons and Persons* (Oxford University Press 1986).

20. On this subject matter, see Marc Fleurbaey and others, 'The Social Cost of Carbon: Valuing Inequality, Risk, and Population for Climate Policy' (2019) 102 *The Monist* 84.

21. Britta Clark, 'Neutrality, Nature, and Intergenerational Justice' (2021) 30 *Environmental Politics* 307, 314.



instance regarding welfare, the environment, material resources, etc.<sup>22</sup>. The equality standard of intergenerational justice essentially implies that policies need to be designed and implemented in such a way as to ensure that future generations live their lives under comparable (possibly even better, but not worse) circumstances. At this juncture, it is however worth mentioning that the equality metrics of intergenerational justice (individuals belonging to different generations) are not necessarily the same for intragenerational justice (individuals belonging to the same generation)<sup>23</sup>. Finally, the *priority* parameter raises the question of whether some people have – from an intergenerational perspective – priority over others because they are, for instance, nearer to the present day<sup>24</sup>.

Yet, the difficulty with applying most of these standards to the defence context is that they require the use of a stable intergenerational currency. While in relation to climate change issues, this stable intergenerational currency is the carbon budget allocated to each generation, defining the intergenerational currency is less straightforward in relation to defence matters. Is it the – conceptually very imprecise – ability to maintain peace, if necessary also by means of war? Can we equate the intergenerational currency with the yearly share of budgetary resources allocated to defence systems? Is it the number of people (not) dying from warfare every year? What is more, it is unclear how far into the future prospective policy-making stretches. Does it include (peace for) one or maybe two future generations or extend to all descendants of current EU citizens? The answers to these questions are anything but straightforward and underline the intricacy of defining an intergenerational currency for defence. With a view to finding a proxy indicator for the appropriateness of defence policies, we therefore have decided to focus on (a) the strategic foresight and (b) the management of military capacity to assess whether EU defence follows the logic of anticipatory governance.

This ties in with the question of *how to handle uncertainties and risks*. Indeed, intertemporal – and even more so intergenerational – considerations are fraught with the fundamental problem of uncertainty. We do not know what will happen in the future; hence, any policy that is currently pursued might turn out to be redundant or insufficient. While a number of principles have been developed to grapple with the uncertainty problem, there is no easy solution, not least because the definition of what level of risk is acceptable is ultimately a genuinely political decision.

22. Fleurbaey and others (n 20) 94.

23. Clark (n 21) 314.

24. Fleurbaey and others (n 20) 93.

In international (environmental) law, the precautionary principle has already become a guiding yardstick for decision-making in the context of scientific uncertainty. The idea behind the principle is that, whenever there is a potential hazard coupled with the absence of (unequivocal) scientific proof that specific activities would cause environmental harm, these activities are to be avoided and precautionary measures are to be taken<sup>25</sup>. The international actor that has most supported the international legal precautionary principle is the European Union, which, next to enshrining the principle in primary law (in Article 191(2) TFEU) has also adopted secondary legislation and policy documents specifying the contours of the principles in decision-making<sup>26</sup>. We therefore consider that the pillars of the precautionary principle (risk assessment, risk management, and risk mitigation)<sup>27</sup> should also inform the design of the EU's defence policy. We take inspiration from the logic underpinning the precautionary principle, which, according to Manson, is based on three factors: the likely damages, the degree of uncertainty, and the cost of the remedy<sup>28</sup>. He concludes that when a threshold of certainty is passed that a harm will take place, it is judicious to take precautions<sup>29</sup>.

Another important factor when it comes to future uncertainty is one's expectations of future technology. Technological optimists expect that human innovation will be able to solve any problems that may arise, making mitigation a costly and unnecessary policy. If we think that we will develop technical fixes for current problems, the issue of intergenerational policy-making (or justice) becomes somewhat moot<sup>30</sup>. In the defence context, technology is an essential element of both strategic foresight and military capacity as it can both improve but also diminish the ability to respond adequately to (new) threats. Again, as we do not wish to take sides in this debate, we postulate that the logic of the precautionary principle applies to these issues, too. In other words, one needs to handle (the development of) military technology with care to ensure that no defence systems are being developed or produced that could, for instance, unproportionally harm the environment.

25. Meinhard Schröder, 'Precautionary Approach/Principle', *The Max Planck Encyclopedia of Public International Law* (Oxford University Press, last updated 2014).

26. COM(2000) 1 final (2 February 2000), 'Communication from the Commission on the precautionary principle'.

27. Ibid.

28. Neil A Manson, 'Formulating the Precautionary Principle' 24 *Environmental Ethics* 263.

29. Ibid.

30. On this topic, see Nicholas Agar, *The Sceptical Optimist. Why Technology Isn't the Answer to Everything* (Oxford University Press 2015).

Within this conceptual framework, let us now turn to the way in which anticipatory governance takes shape in EU defence.

### III. UNPACKING THE ANTICIPATORY FACET OF EU DEFENCE

Before addressing in more detail the governance arrangements of EU defence and the degree to which these arrangements allow for anticipatory policy-making, it is judicious to provide some background information on the legal, procedural, and institutional particularities of EU defence.

#### 1. ON THE GOVERNANCE PARTICULARITIES OF EU DEFENCE

Traditionally, security policies and even more so defence policies are characterised by executive leadership, weak accountability mechanisms, secrecy, and informality, and are generally conducted at a safe distance from judicial scrutiny or parliamentary control<sup>31</sup>. And the same logic applies formally to security and defence at the EU level<sup>32</sup>.

In the EU's constitutional and institutional framework, security and defence indeed stand out for this policy field is fundamentally intergovernmental in terms of its actors, procedures, and instruments<sup>33</sup>. Accordingly, Member States – not supranational institutions – call the shots in the CSDP realm. National executive actors make strategic and operational choices and are in charge of putting these choices into practice. This intergovernmental governance scheme is encapsulated in Article 24(1) of the Treaty on European Union (TEU), according to which the European Council<sup>34</sup>, the Council of the EU<sup>35</sup> (Council), and the High Representative for EU Foreign Affairs (HR) are the central decision-making and implementation figures in EU security and defence. At the same time, the Commission and the European Parliament (Parliament) are each bestowed with a 'special role', and the jurisdiction of the Court of Justice of the EU (CJEU) over EU foreign policy as well as security and defence matters is significantly limited<sup>36</sup>.

31. Moser and Rittberger (n 16) 12.

32. Moser, *Accountability in EU Security and Defence* (n 15) 42–44.

33. Koutrakos (n 5) 23–55.

34. The European Council is composed of Heads of State and Heads of Government (Article 15(2) TEU).

35. The European Council is composed of national representatives from relevant ministries (Article 16(2) TEU).

36. Moser, *Accountability in EU Security and Defence* (n 15) 179–185. However, recent jurisprudence attenuates this jurisdictional carve-out. See Moser and Rittberger (n 16); Moser, *Accountability in EU Security and Defence* (n 15) 203–221.



What is more, the area of EU security and defence is marked by a low level of law. This holds for both the constitutional law framework set out by the Treaties and the law arising from the implementation of EU defence activities<sup>37</sup>. As far as the constitutional law framework is concerned, Member States have traditionally been reluctant to delegate decision-making and implementation prerogatives to designated EU structures. Therefore, they have proceeded with integration in small steps, with little risks, and according to an intergovernmental blueprint, the result being that codification and institutionalisation were kept at a low-level regarding defence issues<sup>38</sup>. As far as the 'administrative' law of EU defence is concerned, this policy field is marked by a strong tendency for informality. Following the rules of diplomacy, few formal decisions are adopted<sup>39</sup>. Even though there obviously are some acts administrative in nature (for instance in relation to staff management), these account for the smallest share of decisions taken in this realm. While there are signs that there might soon be more (supranational) law in EU defence due to the Commission's increased involvement in this policy field<sup>40</sup>, the breadth and depth of (EU) law in defence are still limited today. The current relative shortage of law, in turn, implies that a thorough assessment of the (anticipatory) governance realities of this policy field must extend to a study of a larger corpus of sources, including policy documents and insights from practice.

What is more, both the particular governance scheme and the limited use of law in EU defence mean that the traditional yardsticks for evaluating governance arrangements are somewhat unsuitable in the defence context. Instead of gauging whether there is (enough) accountability, transparency, openness, etc. in EU defence, we therefore rather need to look at whether and how prospective policy-making informs key pillars of defence, namely strategic foresight and the management of military capabilities.

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37. Moser, *Accountability in EU Security and Defence* (n 15) 71; 179–185.

38. *Ibid.* 39; 179–184.

39. *Ibid.* 71; Daniel Thym, 'The Intergovernmental Constitution of the EU's Foreign, Security & Defence Executive' (2011) 7 *European Constitutional Law Review* 453, 463.

40. On this issue, see Carolyn Moser and Steven Blockmans, 'The Extent of the European Parliament's Competence in Common Security and Defence Policy', *In-depth analysis requested by the SEDE sub-committee of the European Parliament (study PE 702.559)* (European Parliament 2022) 5–6, [https://www.mpil.de/files/pdf6/moser.blockmans-2022\\_ep-competences-in-csdp-ep-study\\_en.pdf](https://www.mpil.de/files/pdf6/moser.blockmans-2022_ep-competences-in-csdp-ep-study_en.pdf); Blockmans (n 14).

## 2. STRATEGIC FORESIGHT

The Russian aggression against Ukraine in early 2022 came as a surprise to most EU citizens and EU leaders. Indeed, the EU was both politically and militarily unprepared to deal with an armed conflict in its neighbourhood. But how come that the EU and its Member States were so utterly unprepared for such a situation? Had people just gotten so used to peace that war seemed completely unrealistic?

We postulate that the core reason for the EU's unpreparedness is that the Union is a polity built for *peace* and designed for *peacetime*. This peace-rationale has an important conceptual implication, namely that there is little room for war in a Union whose telos and self-understanding circles around peace<sup>41</sup>. For many years, the narrative prevailed – in particular within the EU – that the Union was a force for good or a 'normative power'<sup>42</sup> that would influence the course of international relations through its normative clout (instead of its military might)<sup>43</sup>. Only recently have hard power considerations gained prominence in the debate on the EU's role in the world<sup>44</sup>, with several leading EU representatives warning that, if the Union did not want to vanish into international irrelevance, it needed to become more assertive in defending its norms and interests, including by military means<sup>45</sup>. The war in Ukraine has made plain to see

41. Both past and current treaty provisions consecrate peace as the telos of European integration. The 1951 treaty establishing the European Coal and Steel Community – hence the initial legal instrument paving the way for European integration – alludes in the first and second indent of its preamble to the efforts Europeans need to undertake to ensure international peace. Likewise, the 1957 Treaty of Rome affirms in its preamble (ultimate indent) that the pooling of resources is intended to preserve and strengthen peace and liberty – a formulation that has made its way unaltered into the preamble of the currently in force Treaty on the Functioning of the EU (8th indent). And the Treaty on European Union (TEU) defines the promotion of peace as the primary objective of the European Union in its Article 3(1).

42. Manners (n 3).

43. For an analysis of the development of the conceptual framework of CSDP, see Moser, *Accountability in EU Security and Defence* (n 15) 24–29.

44. Carolyn Moser, 'Hard Power Europe?' (2020) 80 *Heidelberg Journal of International Law* 1.

45. Josep Borrell, 'Speech by the High Representative/Vice-President at the Raisina Dialogue' (New Delhi, 19 January 2020), [https://eas.europa.eu/printpdf/73128\\_en](https://eas.europa.eu/printpdf/73128_en); Ursula von der Leyen, 'Opening Speech at the World Economic Forum' (Davos, 20 January 2020), [https://ec.europa.eu/commission/presscorner/api/files/document/print/en/speech\\_20\\_92/SPEECH\\_20\\_92\\_EN.pdf](https://ec.europa.eu/commission/presscorner/api/files/document/print/en/speech_20_92/SPEECH_20_92_EN.pdf); Ursula von der Leyen, 'Speech by the Commission President-Elect at the Paris Peace Forum' (Paris, 12 November 2019), [https://ec.europa.eu/commission/presscorner/api/files/document/print/en/speech\\_19\\_6270/SPEECH\\_19\\_6270\\_EN.pdf](https://ec.europa.eu/commission/presscorner/api/files/document/print/en/speech_19_6270/SPEECH_19_6270_EN.pdf); Josep Borrell, 'Russian Aggression against Ukraine, Speech of the HR/VP at the EP Plenary' (Brussels, 1 March 2022).

that these *realpolitik* warnings were – unfortunately – accurate. But despite the hardening geopolitical circumstances, some EU actors still cling to their (some would say naïve) normative ideals<sup>46</sup>.

It is therefore fair to say that the war in Ukraine is a wakeup call for the Union to eventually adapt to an increasingly harsh geopolitical environment. It considerably accelerates the EU's transition from a predominantly 'civilian power'<sup>47</sup> to a harder power-oriented polity<sup>48</sup>. The shift, however, could already be perceived in the strategic documents guiding the EU's defence activities. It is on these strategic documents that we will focus in the following analysis. Indeed, we use the EU's key strategic documents as a proxy for strategic foresight at the EU level. To this end, and in line with our focus on anticipatory governance, we outline (a) the context, b) the content, and (c) the drafting history of the respective documents to understand to which extent the EU's strategic documents are an expression of prospective policy-making.

Three documents are particularly relevant in this context, all of which were endorsed by the Council (a distinctively intergovernmental body), namely (1) the *European Security Strategy* (ESS) of 2003<sup>49</sup>; (2) the *EU Global Strategy* (EUGS) of 2016<sup>50</sup>; and (3) the *Strategic Compass* of March 2022<sup>51</sup>. We will discuss these three documents in turn.

- (1) The EU's first security strategy, the *European Security Strategy* (ESS), was adopted in 2003<sup>52</sup>. The ESS took shape against the backdrop of 9/11 and the (hyper-) realist approach to international relations and law Washington adopted in reaction to the terrorist attacks. Hence, it is fair to state that the ESS was above all an 'act of self-perception'<sup>53</sup>, by which the EU intended to position itself on the world scene, in particular vis-à-vis the United States. As the document served both as a guidance for future policy developments

46. Case C-44/22 P, KS and KD v Council and Others, Appeal brought on 19 January 2022 by European Commission against the order of the General Court (Ninth Chamber) delivered on 10 November 2021 in Case T-771/20, KS and KD v Council and Others.

47. Duchêne (n 2).

48. For a more detailed account of this development, see Moser, 'Hard Power Europe?' (n 44).

49. A Secure Europe in a Better World: European Security Strategy (ESS), endorsed by the European Council, Brussels, 11–12 December 2004 1–14.

50. Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy (EUGS), presented by the High Representative Federica Mogherini on 28 June 2016.

51. Council, 'A Strategic Compass for the Union', Council Doc. 7371/22 (21 March 2022).

52. ESS (2003) 1-14.

53. Koutrakos (n 5) 80.

and as a narrative intended to reconstruct the rationale for the EU's security and defence dimension<sup>54</sup>, the ESS bore a quite normative flavour at both the conceptual and operational level. Indeed, under the label 'A secure Europe in a better world', the document praised extraterritorial governance reforms and capacity building as 'the best means of strengthening the international order' and made a clear case for crisis management and conflict prevention<sup>55</sup>. The underlying message was that the Union held soft power while hard power remained with its Member States and that the EU was above a soft (or normative) power – and this despite the fact that a series of major threats (above all terrorism) had been identified in the ESS. The ESS hence echoed the depiction of the EU set out by the Laeken Declaration on the Future of Europe (2001), according to which the EU was a force for good that would above all use soft power to pursue its foreign policy objectives<sup>56</sup>. A key implication of this approach was that the ESS was less a manifestation of prospective thinking or strategic foresight, but rather an exercise of wishful thinking on what type of international actor the Union should ideally be. From today's respective, the document therefore reads rather naïve. Still, the ESS marks an important first step in the development of a 'strategic culture' at the EU level.

- (2) When the EU released its second security strategy roughly a decade later in 2016 – the *EU Global Strategy* (EUGS)<sup>57</sup> – the context was quite different: Russia's 2014 annexation of Crimea and the drastic increase in migratory pressures of 2015 were still fresh. The EUGS therefore took a far more realist turn as it made apparent the so far implicit *realpolitik* underpinnings of European foreign policy<sup>58</sup>. Under the maxim of 'principled pragmatism', values and interests were not merely juxtaposed as in previous documents but presented as an indivisible whole<sup>59</sup>.

54. Ibid.; Per M Norheim-Martinsen, *The European Union and Military Force: Governance and Strategy* (Cambridge University Press 2013) 35-40.

55. Norheim-Martinsen (n 54) 47.

56. Presidency Conclusions of the Laeken European Council (14–15 December 2001), Annex I: Laeken Declaration on the Future of the European Union.

57. EUGS (2016).

58. Moser, *Accountability in EU Security and Defence* (n 15); Achilles Skordas, 'The European Union as a Post-National Realist Power' in Steven Blockmans and Panos Koutrakos (eds), *Research Handbook on the EU's Common Foreign and Security Policy* (Edward Elgar 2018) 403–410; Sven Biscop, *European Strategy in the 21st Century. New Future for Old Power* (Routledge 2019) 30–32.

59. EUGS (2016) 8; 13.



In comparison to the Laeken Declaration of 2001 or the ESS, the EUGS stands out in its assertion of interests and its explicit mention of troop deployments (in conformity with UN Charter provisions). The EUGS also employed the concept of strategic autonomy, which enjoyed growing popularity in EU circles<sup>60</sup>, at least before the Russian aggression against Ukraine (when the unique support of NATO became once more obvious). The EU had not yet gone the entire way from a 'normative' to a 'hard' power. The EU's Mutual Assistance Clause set out in Article 42(7) TEU, which had been first invoked by France in reaction to the terrorist attacks in Paris in November 2015, was not mentioned once in the EUGS. In a strategy about EU security (and defence), this is somewhat surprising. But at the time, the biggest identified security challenge remained terrorism (mentioned 29 times) and, importantly, migration (mentioned 26 times). Yet, the EUGS has also proven somewhat erroneous given the fact that it did not at all consider traditional interstate conflicts (such as the ongoing war in Ukraine) as a future defence scenario for which the EU would need to prepare.

- (3) With the third and latest EU strategy document, the *Strategic Compass* of 2022, the EU's security frame of reference was again recalibrated – clearly in favour of *realpolitik* considerations given the very tense geopolitical context. Indeed, the Strategic Compass, which was adopted only four weeks after Russia's aggression against Ukraine, bears far more 'belligerent' traits than its predecessors<sup>61</sup>. The document, inter alia, repeatedly underlines the importance of the EU's Mutual Assistance Clause (Article 42(7) TEU) and stresses the need for a Rapid Deployment Capacity (or force). In terms of threats and challenges, the Compass (quite obviously) identifies

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60. The concept features prominently in the latest annual report of the European Parliament on the implementation of the CSDP. See European Parliament, 'Annual report on the implementation of the common security and defence policy (2019/2135(INI))', A9-0052/2019, presented by rapporteur Arnauld Danjean on 11 December 2019. In addition, many scholars have shown an interest in Europe's strategic autonomy. See, inter alia, Margriet Drent, 'European Strategic Autonomy: Going It Alone?', *Clingendael Policy Brief* (Clingendael 2018); Daniel Fiott, 'Strategic Autonomy: Towards "European Sovereignty" in Defence?', *EUISS Brief. Issue 12/2018* (European Union Institute for Security Studies (EUISS) 2018); Barbara Lippert, Nicolai von Ondarza and Volker Perthes (eds), 'European Strategic Autonomy. Actors, Issues, Conflicts of Interests', *SWP Research Paper 4* (SWP 2019).

61. Johannes Nordin, 'The EU's Strategic Compass: Building Consensus Ahead of Strategy?' (*Institute for Security & Development Policy*, 1 April 2022), <https://www.isdp.eu/the-eus-strategic-compass-building-consensus-ahead-of-strategy/>.



Russia as a major source of risk (the country is mentioned 20 times in the document). In a similar vein, China is unequivocally depicted as a systemic rival. The fact that the Compass openly labels Russia as an opponent and China as a competitor – a boldness that would have been unthinkable a decade ago – is a clear manifestation of the EU's geopolitical coming of age. It is indeed astonishingly frank talk for the traditionally rather cautious EU. Interestingly, the Compass also differs from its predecessors in its drafting history. It is the first strategic document that is based on a thorough threat assessment (analogous to the elaboration of a military doctrine) that grounds on confidential input by national intelligence actors of Member States. In contrast, the ESS and the EUGS were primarily drafted by EU bureaucrats (belonging to the relevant Council structures or, more recently, the European External Action Service) who were supported by security policy experts (in particular academics and think tankers)<sup>62</sup>; a proper (intelligence-based) threat assessment was not conducted at that time. This might also explain why the language and the concepts used have become less normative and more realist over the years.

So what do these successive strategy documents tell us about prospective policy-making in EU defence? We believe that there are three conclusions to be drawn. First, in conceptual and operational terms, we witness a clear shift from normative aspirations to hard power considerations<sup>63</sup>. There is far more talk about interests, an increasing emphasis on military activities and options, and lately even a clear designation of opponents and competitors. One might like this development or not, but it is certainly an expression of the fact of the EU geopolitically growing up. Indeed, this shift obviously also has to do with external circumstances: The EU occupies an increasingly uncomfortable position in a hardening international relations context, and this change is reflected in strategic documents. This development also implies that the EU is becoming more realistic in its assessment of international relations and its role in the world. In terms of anticipatory governance, this is an important step forward: Only a truthful assessment of security and defence realities allows for informed and appropriate policy-making.

Second, we witness an evolution in the identified threats, risks and challenges. This is little surprising as strategic documents are the child of their time (of drafting). Terrorism was the top security and defence priority in the early 2000s, migration (seen as a security challenge) became

62. Indicative of the involvement of externals is, inter alia, this expert publication: Biscop (n 58).

63. For a detailed discussion on this topic, see Moser, 'Hard Power Europe?' (n 44).

relevant around 2015, and nowadays traditional warfare combined with hybrid threats (including disinformation campaigns) rank very high on the list of identified security threats and challenges. This proximity to current events and developments is both a strength and a weakness. It allows for the (common) identification of threats and a joint approach to appropriate measures and therefore helps to steer both policy-making and operational activities. At the same time, the strategy becomes quickly erroneous as world politics change fast. A regular revision or at least an update is therefore important to not lose track of anticipatory policy-making.

Thirdly, the biggest strategic question for the EU – namely how the EU’s defence architecture should look like (in the future) and, more precisely, whether and how it intends to be or become an autonomous international defence actor – has still not been answered<sup>64</sup>. However, this decision has very significant implications for the security and defence of future generations of EU citizens. While there seemed to be some momentum for pushing for an EU defence that would be independent of US military capacities, this is no longer the case in the aftermath of the Russian invasion of Ukraine. Whereas some EU countries (such as France) still favour defence autonomy, others clearly prefer continued US support and involvement, both in operational and defence industrial terms (e.g. Germany, Poland)<sup>65</sup>. Judging from the wording of the Strategic Compass, the latter group seems to have come to dominate the strategic debate at the EU level: Although earlier versions underlined the importance of EU autonomy, the final document gives a lot of weight to NATO, which is repeatedly portrayed as the primary and ultimate (for some unique) forum for European defence. Also, the notion of *strategic* autonomy has been largely replaced by the notion of *decision-making* autonomy (vis-à-vis NATO). But how can the EU take defence decisions autonomously if the implementation chiefly depends on the political agreement and military support of its US ally? As Europeans seem unable to conceptualise or make realistic projections about their defence (without US protection), some experts predict that the strategic choice of how much US involvement there will be in EU defence in the future will eventually not be taken by EU decision-makers, but by US voters<sup>66</sup>. It is evident that the level of US

64. On this issue, see also Nordin (n 61).

65. Carolyn Moser, ‘Ist Berlins verteidigungspolitische Kurskorrektur auch eine “Zeitenwende” für die deutsch-französischen Beziehungen?’ (*Verfassungsblog*, 28 March 2022), <https://verfassungsblog.de/ist-berlins-verteidigungspolitische-kurskorrektur-auch-eine-zeitenwende-fur-die-deutsch-franzosischen-beziehungen/>.

66. This argument has also been made in Nick Witney, ‘The EU’s Strategic Compass: Brand New, Already Obsolete’ (*ECFR*, 31 March 2022), <https://ecfr.eu/article/the-eus-strategic-compass-brand-new-already-obsolete/>.

defence engagement in Europe chiefly depends on who sits in the White House – the Europhobic attitude of the Trump administration should have been a clear warning to Europeans in this regard. As a matter of fact, the prospects for Europeans to continue to benefit massively from US military capacities are not great. It has been known for almost a decade that the strategic priority of the US henceforth lies in the Asia-Pacific-region (the so-called pivot to Asia under President Obama); the current focus of Washington on European security and defence is therefore an exception that is very unlikely to last<sup>67</sup>. Yet, many EU decision-makers still seem to ignore this fact and prefer to postpone the strategic choice on the EU's defence architecture and defence.

In sum, then, we can say that the EU's strategic foresight has definitely made progress, but the biggest stumbling block has still to come, namely the definition of how the EU can ensure EU defence (on its own) in the future. The assessment of how prospective these documents are in nature (content, drafting, etc.) is therefore mitigated. This leads us to the second aspect of anticipatory policy-making in EU defence, namely the management of military capabilities.

### 3. MILITARY CAPABILITIES

The war in Ukraine has once more reminded the EU and its Member States of the sobering reality that they are militarily not able to autonomously defend their territorial integrity and independence. This capabilities gap has, for ages, been a major concern for EU defence<sup>68</sup>. As in the past, NATO – that is the US – needed to step in to offer Europe the necessary security guarantees. That is because the weakest point of EU defence is the manifest lack of military capabilities<sup>69</sup>.

Hence, the peace telos of European integration also has an institutional implication, namely that the security and defence arrangements we find at the EU level along the entire policy cycle are suboptimal<sup>70</sup>. The main reason for this is that Member States have traditionally shown limited resolve to delegate substantial hard power functions to Brussels-based

67. Bergmann and others (n 6); Witney (n 66).

68. For a detailed account of the slow development of capabilities in the CSDP, see Simon Duke, 'Capabilities and CSDP: Resources Political Will or Paper Armies' in Steven Blockmans and Panos Koutrakos (eds), *Research Handbook on the EU's Common Foreign and Security Policy* (Edward Elgar 2018).

69. On this issue, see *ibid.* For a more recent account, see also Bergmann and others (n 6).

70. Dijkstra (n 15) 192; 194–195.

structures<sup>71</sup>. However, more recently, we have seen a cautious trend towards more defence integration. Indicative of this cautious shift is the launch of Permanent Structured Cooperation (PESCO) in 2017<sup>72</sup>, the Versailles pledge of massively increasing defence spending in the years to come<sup>73</sup>, or the adoption of the Strategic Compass in 2022<sup>74</sup>. While this is a true game changer as security and defence integration usually unfolds in small steps with little risk under the intergovernmental umbrella of the CSDP<sup>75</sup>, these modifications have not (yet) enabled the EU to stand up to the harsh security and defence realities of our times. Therefore, NATO remains to date the primary forum and guarantor of European security and defence<sup>76</sup>.

Yet, for some time already, Europeans have tried to change or at least attenuate this US-dependence of their peace and security – not least since the Russian annexation of Crimea in 2014 and the election of Donald Trump to the White House in 2017. Key in this respect is the management of military capabilities through constant modernisation and innovation. What has the EU so far achieved in this dimension of defence? And has the EU (thus far) pursued an anticipatory policy mode?

The answer to this question depends on the different instruments and, importantly, on the involved actors. Without oversimplifying, one could say that the degree to which defence policy-making is anticipatory for the EU as a whole tends to be higher when the Commission is in charge and is, in contrast, less accentuated when the Council (or the European Council) steers the process. This is due to at least two intertwined reasons: First, the Council is an intergovernmental body composed of national representatives who, in particular in the defence realm, tend to focus on *national* defence interests (whatever those might respectively be). The Commission, in turn, is a supranational actor that has a far more European perspective and therefore seems to push *EU* defence topics (i.e. the integration of the EU defence via its industries and procurement) in the process. At this juncture, it is judicious to recall that defence issues at the EU level follow in principle a distinctively intergovernmental governance pattern. In other words, intergovernmental institutions (i.e. the Council and the European Council) are in the lead. The Commission's mandate in

71. Dijkstra (n 15); Koutrakos (n 5).

72. Council Dec. (CFSP) 2017/2315 [2017] OJ L 331/57.

73. Versailles European Council Declaration (2022).

74. Strategic Compass (2022).

75. Moser, *Accountability in EU Security and Defence* (n 15) 39.

76. This point of view is shared by other authors, such as Dijkstra (n 6); Bergmann and others (n 6); Witney (n 66).



this field is still limited to market prerogatives, that is defence industrial issues, including to some degree defence procurement.

Second, there are different legal regimes at play. EU defence in a narrow sense – that is strategic choices and operational activities that unfold under the CSDP – is, as previously described, distinctively intergovernmental in legal, institutional, and procedural terms<sup>77</sup>. Indeed, law-making is executive in nature as decisions are taken by the Council (and the European Council) on the basis of unanimity (Article 31 TEU; Article 42(4) TEU.) and without the implication of the Commission or the European Parliament (Article 24 TEU). In contrast, legislative activity is excluded in the CSDP realm<sup>78</sup>. Illustrative of this governance setup is, inter alia, the European Peace Facility. Yet, when approaching EU defence more broadly – that is when including defence procurement or defence industrial cooperation – the picture looks different. Here, the Commission has become an important policy-making figure via legislative activity under the market heading<sup>79</sup>. The European Defence Fund or the recent proposal for a common defence procurement scheme are but two examples of this development<sup>80</sup>.

Let us exemplify this vacillating pattern of anticipatory governance with two case studies. The first case study will cover the European Peace Facility, while the second will deal with the European Defence Fund.

### (1) The European Peace Facility

The European Peace Facility (EPF) is a funding instrument for specific defence-related activities. The EPF was created in 2021 as a successor mechanism to previous funding mechanisms, namely the Athena Mechanism and the African Peace Facility, to prevent conflict, consolidate peace, and strengthen international security by financing operational actions under the CFSP (Common Security and Defence Policy)<sup>81</sup>. In other words, the EPF provides the necessary resources for EU-led military activities and additional defence-related support initiatives. Via the

77. Please see above at 3.1.

78. Article 31(1) TEU.

79. This finding holds particularly true for the last five years. But the Commission's legislative aspirations (pushing for more supranational defence integration) has already been perceptible before. See Michael Blauburger and Moritz Weiss, '“If You Can't Beat Me, Join Me!” How the Commission Pushed and Pulled Member States into Legislating Defence Procurement' (2013) 20 *Journal of European Public Policy* 1120.

80. Regulation (EU) 2021/697 establishing the EDF; EDIRPA proposal (2022).

81. Art 1(1) Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528 [2021] OJ L102/14.



different operations and support measures the EPF can fund, it can be a valuable instrument for anticipatory policy-making.

In governance terms, the EPF is somewhat peculiar because it is an extrabudgetary financing mechanism – i.e., a financial instrument funded by Member States' annual contributions according to the GDP key and separate from the EU's annual budget. In essence, the EPF helps to finance a range of actions with military and defence implications carried out under the CFSP that cannot be charged to the EU budget according to Article 41(2) TEU. Because the resources come from Member States and not from the EU, the governance structure of the EPF is also intergovernmental: The facility is run under the supervision of a financial committee consisting of representatives of the Member States<sup>82</sup>. The Commission is not part of the policy-circle (decision-making, implementation, or evaluation) and the same applies to the European Parliament.

EPF funds, which amount to nearly €6 billion for the period 2021–27, can be disbursed in two contexts. First, the facility can finance EU military missions and operations under its 'operational pillar' (in line with Articles 42(4) and 43(2) TEU). Second, the EPF can finance both ad hoc and longer term measures and activities to strengthen military and defence capabilities in third countries and to support the military aspects of peace support operations under its 'support action pillar' (in line with Articles 28 and 30 TEU). In particular the second disbursement option – the support of third countries with a view to strengthening their security and preparing for peace – is indicative of prospective policy-making as it implies strategic foresight.

So which measures have so far been taken under this 'support action pillar', which is in principle prone to prospective policy-making? The lion shares of EPF funds – nearly half of it – have been earmarked since February 2022 for the support of the Ukrainian Armed Forces. Indeed, it is under the support pillar of the EPF that EU leaders have decided to help strengthen the capabilities and resilience of the Ukrainian army. The underlying idea is for actors of Member States (ministries) to supply weapons to Kyiv, but for the cost of supplies to be covered (in part) by EPF money. To date, the Council has gradually increased the funds earmarked for assistance to Ukraine and has so far provided €3.1 billion in aid to the country under attack. This amount is significantly higher than any other assistance provided under the EPF and therefore unique. Another distinctive trait and crucial novelty with regard to the EU's support of

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82. Art 11 *ibid.*

the Ukrainian armed forces is that the EPF contributes to financing the purchase and delivery of both non-lethal and *lethal* weapons to Ukraine<sup>83</sup>. This is a first in the history of the EU that had, previously, followed the approach of not delivering lethal arms to conflict parties<sup>84</sup>.

Without judging the choices made, let us assess what the activation of the EPF in the context of the Ukraine war indicates for anticipatory governance. In reality, the support to Ukraine which the EPF helps to fund is essentially reactive (not prospective) in nature. It occurs because Russia invaded our neighbour – an eventuality that no EU strategy document had outlined. One could therefore (critically) say that the EPF assistance measures to Ukraine are the manifestation of lacking prospective decision-making. But one could also argue the other way around. As a matter of fact, the EPF measures adopted in light of the Russian invasion have the potential of reshaping the way in which the EU will design and implement policies in this policy field in the future. Indeed, the EU has undergone a double paradigm shift: It delivers *lethal* arms to a conflict party via an *EU* funding mechanism. We all hope that this type of measure will not become necessary any time soon for another attacked country, but in the event there is a comparable scenario, we now know which path the EU is most likely to follow in the face of such an attack. Accordingly, the Member States will commit more money to the EPF (there are already rumours about this in Brussels) and, potentially, also expand its remit.

Yet, in terms of governance, some have already voiced concerns about the accountability of the EPF whose operational importance seems to increase<sup>85</sup>. As it is an extrabudgetary, purely intergovernmental funding scheme, it does not fall under the supervision of neither the European Parliament nor the European Court of Auditors. It remains to be seen whether institutional adjustments will be made in the future to bring the EPF closer to the supranational policy and governance scheme of the EU.

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83. Council Decision (CFSP) 2022/338 of 28 February 2022 on an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force [2022] OJ L 60/1; Council Decision (CFSP) 2022/339 of 28 February 2022 on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces [2022] OJ L 61/1.

84. Moser, 'The War in Ukraine and Its Repercussions on Europe's "Security and Defence Constitution"' (n 10).

85. On this issue see, for instance, Jelena von Achenbach, 'Zu wenig Politik in der EU-Verteidigungspolitik. Die EU-Waffenlieferungen an die Ukraine aus haushalts- und verfassungsrechtlicher Perspektive' (*Verfassungsblog*, 28 February 2022), <https://verfassungsblog.de/zu-wenig-politik-in-der-eu-verteidigungspolitik/>.

## (2) The European Defence Fund

The European Defence Fund (EDF) was put in place in April 2021 to foster defence industrial cooperation across the EU. The idea is to amplify the efforts of Member States in this field by providing funding to companies and research institutions that cooperate in researching and developing interoperable defence technology and equipment. The ultimate goal of the EDF is to improve the competitiveness of the EU's defence industry and its defence capability<sup>86</sup>. Interestingly, the Commission initially earmarked € 13 billion for the EDF (for the period of 2021–27)<sup>87</sup>; but due to external pressure – in particular the repercussions of Covid-19, but also the lack of interest in defence projects – the EDF's envelope was cut back by the Council and the Parliament to € 8 billion. In hindsight, this was a rather unlucky political choice as defence became one of the top priorities of EU policy-making (and national spending) after the Russian aggression against Ukraine.

In governance terms, the EDF forms part of regular (that is supranational) EU policy-making. As the fruit of a legislative act that was adopted via the ordinary legislative procedure<sup>88</sup>, the EDF falls under the regular EU budget (the so-called Multiannual Financial Framework, MFF). This, in turn, means that the EDF (a) is administered by the Commission via its relatively new Directorate General DEFIS and (b) is subject to parliamentary scrutiny by the European Parliament. For the period 2021-27, the EDF amounts to roughly € 8 billion. Its implementation relies on work programmes that the Commission defines and monitors. Likewise, the Commission is in charge of awarding EDF money<sup>89</sup>. The Commission also annually informs the Parliament and the Council about the state of affairs and shares its progress evaluations with the two other EU institutions<sup>90</sup>. From this brief overview of the EDF and its governance, one can already sense that the Commission is the main actor behind this funding scheme.

Hence, one of the EDF's main consequences is that the Commission has become a key actor in EU defence – something that would have been

86. Regulation (EU) 2021/697 establishing the EDF.

87. See the relevant press release of the Commission, 'EU Budget: Stepping up the EU's Role as a Security and Defence Provider (Press Release of 13 June 2018)', [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_4121](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4121).

88. Regulation (EU) 2021/697 establishing the EDF.

89. The COM does so via implementing acts (Art. 291 TFEU), not delegated acts (art. 290 TFEU), which leaves the EP out of the operational decision-making process of the EDF implementation. See Article 11(2) Regulation (EU) 2021/697 establishing the EDF.

90. Articles 28(3) and 29(4) Regulation (EU) 2021/697 establishing the EDF.

unthinkable of even a decade ago. And so, when Member States agreed to massively increase their defence spending in the Versailles pledge of March 2022 in reaction to the war in Ukraine, they did not rely on the processes or results of their own defence capability review mechanism (Coordinated Annual Review on Defence, CARD<sup>91</sup>)<sup>92</sup> but tasked the Commission with assessing where EU defence had capability shortfalls and would need a financial boost. The conferral of this important task by the European Council to the Commission is indicative of a true revolution in EU defence<sup>93</sup>: It places the Commission in the very centre of EU defence policy-making, right next to the Council and the Member States.

The Commission has already another, potentially game changing legislative project in the pipeline: the EDIRPA (European defence industry reinforcement through common procurement)<sup>94</sup>. EDIRPA follows up on the defence investment gap analysis the Commission was asked to undertake at the Versailles summit<sup>95</sup>. In light of the urgent and critical needs for defence products that result from the war in Ukraine, EDIRPA aims at boosting European defence industrial capacities through common procurement by the Member States. It remains to be seen whether EU defence procurement will (at least in the short term) also include US defence systems. Yet, it is clear that the long-term objective of the Commission is to strengthen the EU defence industry and, consequently, improve EU defence capacity through a certain level of autonomy via intra-EU defence procurement. Whether the Commission will achieve this ambitious goal is uncertain. It is, however, plain to see that, at the time being, the Commission is clearly in the driving seat when it comes to steering European defence integration. It tries to proactively shape policies that help prepare the EU for an increasingly difficult, even belligerent world.

In conclusion it seems that the Commission has replaced the Council as the actor that shapes EU defence integration. What is more, the Commission seems to have a rather clear long-term plan – a truly integrated EU defence industrial market, including procurement – whereas Member States in the Council have far more diverging views and preferences regarding the future of EU defence. This, in turn, increases the chances for anticipatory governance when the Commission is in the driving seat.

91. Council, 'Conclusions on implementing the EU Global Strategy in the area of Security and Defence', Council Doc. 14149/16 (14 November 2016).

92. European Defence Agency, 'CARD report 2020, executive summary' (November 2020).

93. Versailles European Council Declaration (2022) para 11.

94. EDIRPA proposal (2022).

95. Defence Investment Gaps Analysis and Way Forward (2022).



#### IV. MAIN FINDINGS AND CONCLUSIONS

As we have seen, the anticipatory facet of EU defence is on the rise – due to geopolitical circumstances and the increased involvement of the European Commission. Yet, two major stumbling blocks for prospective policy-making regarding EU defence dossiers remain. As far as strategic foresight is concerned, a major issue has not been settled yet: the level of involvement of the US in EU defence. While the Europeans disagree on how much they want to (continue to) rely on their US ally for their security and defence, the US has indicated quite clearly and for several years that their strategic priority is no longer in Europe, but in Asia. It remains to be seen how the US will in the mid- and long-term reduce its military footprint in Europe. But it is for sure that, as this central (strategic) choice regarding EU security and defence remains in the air, prospective policy-making is seriously hampered. In a similar vein, it will be key for the future of EU security and defence whether the EU defence industrial market will be open to US or other third-country products and systems or not. Accordingly, different types of products will be available and, hence, different sorts of cooperation across Member States will take shape and allow (or not) for EU defence autonomy of the next generation(s) of EU citizens. It will therefore be truly fascinating to watch policy developments in this field in the coming decade. There are chances for anticipatory governance in EU defence – provided the Commission continues its efforts and provided the Member States live up to their cooperation and solidarity pledges.

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