

**EUROPE, STRATEGY,
SECURITY
PROGRAMME**

A EUROPEAN ARMY WITHIN WHAT FRAMEWORK?

(3/5)

BY FRÉDÉRIC MAURO

LAWYER AT THE PARIS AND BRUSSELS BARS, ASSOCIATE RESEARCHER AT IRIS

& OLIVIER JEHIN

INDEPENDENT JOURNALIST, CONTRIBUTOR TO THE BRUXELLES 2 (B2) BLOG

APRIL 2019

*Series of five insights published by IRIS and GRIP
on the concept of European army.*

ANALYSIS #3

As envisaged in the Treaty on European Union (TEU), European defence is afflicted by many limitations that are designed to ensure that it cannot encroach on the collective defence set in place within the NATO framework and that it remains in the inter-governmental domain, so as to preserve the decision-making powers of the member states.

The chief limitations are: the fact that this European defence, the “common security and defence policy” (CSDP), is subordinate to foreign policy, the “common foreign and security policy” (CFSP); the fact that there is no institution able to take on the front-of-house role, such as a High Representative for Defence; the fact that its scope is limited to the management of external crises by means of the military missions and operations set out in advance by the Treaty; the unanimity rule and the fact that military operations cannot be paid for out of the European budget.

Given these conditions, the creation of a “European army” at the service of “common defence” would require treaty change or, if that should prove impossible, getting round this by means of separate agreements. Depending on what the state parties may want, we feel that there are three possible alternatives.

AN A MINIMA REVISION OF THE TREATY ON EUROPEAN UNION

To achieve a limited reform that would aim at removing the greatest obstacles to European defence, two changes could be proposed.

The first would allow qualified-majority voting in all areas under the common foreign and security policy (Title V TEU), including the CSDP.

This could be done in two different ways. The easier would be to use what has come to be known as the “bridging clause” under article 48.7 TEU. This article provides that:

“Where the Treaty on the Functioning of the European Union or Title V of this Treaty provides for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by qualified majority in that area or case. This subparagraph shall not apply to decisions with military implications or those in the area of defence.”

The limitation set in place by the final sentence of this subparagraph creates an exception, which repeats verbatim the limitations laid down by article 41.2 concerning the financing of operating expenditure and, like all exceptions, must be interpreted strictly. Certainly, it cannot concern all provisions relating to the CSDP, simply those to do with external

operations (operating expenditure resulting from decisions with military implications) or those that take the form of support to external partners over equipment and training (decisions in the field of defence). For instance, it could be within the bounds of possibility for this bridging clause to be applied to policy decisions made in the framework of the permanent structured cooperation.

In any event, a move to majority voting, which would have to be passed unanimously, is unlikely to be a serious option in the current situation, in which many member states have no desire to move towards greater integration.

If the aim is for decisions in the field of the CSDP to be made by qualified majority, the only practical route would therefore be to proceed by means of a normal revision of the treaties, as provided for by article 48. This would require an inter-governmental conference and possibly a convention to be held, in order to make changes to the treaty.

Here again, it is highly unlikely that the member states will unanimously agree for CSDP decisions to be made by majority voting.

In the same way, there is next to no chance, at this stage of the European integration journey, of them unanimously declaring that they are prepared to move from the CSDP to “common defence” as set out in article 42.2 TEU.

The second desirable a minima change would be to draw a line, once and for all, under article 41 TEU. This article sets out the principle that expenditure in the field of the common security and defence policy is to be borne by the Union budget, except for operating expenditure “arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise”. However, it has been the subject of numerous extensive interpretations, for instance to the effect that it prohibits any military spending by the European Union, which is quite manifestly excessive and incorrect. To get around this obstacle, it should be replaced with: “Expenditure arising from the implementation of this chapter shall be charged to the Union budget.”

A revision of this kind could be carried out only in the framework of a normal revision of the treaty, as provided for by article 48.1 to 5 TEU.

A SWEEPING REFORM OF BOTH EUROPEAN TREATIES

If the member states want to make progress together towards greater integration in the field of defence by giving the Union broader competences in this field, they should start

by revising article 4.2 TEU, which stipulates that “national security remains the sole responsibility of each member state”. With this in mind, the adjective “national” would have to be replaced by the word “homeland”, at the very least. Once this position of principle has been adopted, all kinds of changes are possible, some of which have been under discussion for a very long time.

First on the list would be to end the situation in which the CSDP is subordinate to the CFSP, by appointing a European defence “minister”, to be the public face of European defence, execute decisions in this field and bear responsibility for them.

Nowhere in the world does defence come under the remit of diplomacy. These are two quite separate branches of external action, alongside development aid and trade policy, which are also autonomous.

Furthermore, the experience of a decade has shown that combining the responsibility for both diplomacy and defence is far too much for just one person, namely the High Representative for Foreign Affairs and Security Policy/Vice President of the European Commission (HR/VP).

The creation of a “European minister” or High Representative for defence and security should logically lead to a split from the European External Action Service, where just 23% of the staff deal with defence matters.

Obviously, it would all hinge on which institution this “minister” would come under: Council, the Commission, or both at the same time, like the model of the High Representative/Vice President (HR/VP) that was set in place by the Treaty of Lisbon.

Ten years after the institution of the HR/VP was created, this architecture, which is neither one thing nor the other, has fallen a long way short of proving its worth. In addition to problems with recruiting staff, there are the limitations of the treaties and the narrow-minded diplomatic game-playing of the member states.

It would unquestionably be better to attach the new institution responsible for defence, as well as the one responsible for external policy, to the Commission alone, so that the European Parliament can carry out its checks and balances and to increase the odds of decisions being made in the general European interest.

A second modification of the treaties that could be considered in the framework of an ambitious reform would be to bundle all defence financing instruments together in a specific chapter of the EU budget, so that the share of the budget earmarked for defence can be clearly identified whilst allowing for parliamentary checks and balances on

spending, as well as the controls of the European Court of Auditors. This chapter could initially include the expenditure currently being negotiated under the European Defence Fund (EDF) and the European Peace Facility.

Logically, a change of this kind could be expected to end up making defence into an EU policy in its own right and move it from the TEU to the Treaty on the Functioning of the European Union (TFEU), with all the related consequences, in decision-making terms in particular (qualified majority, comitology). But it could also remain within the framework of the TEU, with a dedicated budget created for it, as is currently the case for the CFSP/CSDP. The question of the EDF would then have to be revisited: either it would remain under the TFEU with a legal basis geared towards industrial policy, or it could come under the TEU with a different legal basis and a clear focus on the development and acquisition of defence capabilities.

Finally, and still in the framework of ambitious treaty reform, it is worth considering the possibility for the EU to acquire its own military capability, as it has done in the domain of space, with the Galileo satellite constellation. These capabilities should focus on the most expensive infrastructure, such as command and control networks, fixed radar or what is known in the military field as force enablers, which are vital to the success of combat operations. These could include aerial reconnaissance aircraft, as is the case within NATO, multi-role tanker aircraft and multi-purpose vessels, such as the French Mistral BPC.

Obviously, a reform of this scale would unavoidably involve the convocation of an inter-governmental conference under the procedure set out in article 48 TEU, and as such, the chances of it succeeding are vanishingly small.

A SPECIFIC AGREEMENT IN THE MARGINS OF THE EUROPEAN TREATIES

A revision of the treaties, even in an *a minima* version, can be assumed to have become a very difficult task since enlargement. In a more ambitious version, revision would require a convention on the same scale as the one set in place to draft the Treaty establishing the Constitution for Europe, which seems unrealistic at this moment in time. In any event, a revision would require the unanimous agreement of twenty-seven and this unanimity seems unreachable, as many states are still refusing at this stage to engage in an integrated and autonomous European defence.

This is why, in the absence of an agreement on treaty change, the only solution would be to conclude a specific treaty between a group of European states wishing to move forward towards common European defence: a Defence Eurogroup.

With this treaty, the signatory parties would undertake to create a common military apparatus at the service of the common defence and, if necessary, to use this tool as a resource to contribute to European Union operations, particularly under article 44 TEU (missions led by a group of member states on behalf of the EU).

To this end, the treaty would at the very least have to provide for a common budget and the broadest possible use of decision-making by qualified majority.

All member states of the European Union that choose not to sign up to this treaty in the first instance will remain free to do so in their own good time, with the ultimate aim of aggregating this agreement to the European treaties.

A European army created within the framework of a Defence Eurogroup of this kind would not have exactly the same missions as the European army that would have been created with the involvement of all EU member states following treaty change. However, it could be its precursor. The only remaining questions are: who will join? And, most importantly of all, what will it consist of? ■

ANALYSIS #3

A EUROPEAN ARMY WITHIN WHAT FRAMEWORK? (3/5)

BY **FRÉDÉRIC MAURO**

LAWYER AT THE PARIS AND BRUSSELS BARS, ASSOCIATE RESEARCHER AT IRIS

& **OLIVIER JEHIN**

INDEPENDENT JOURNALIST, CONTRIBUTOR TO BRUXELLES 2 (B2) BLOG

APRIL 2019

Series of five insights published by IRIS and GRIP on the concept of European army. These texts reflect the opinion of their authors, but do not necessarily reflect the position of IRIS.

EUROPE, STRATEGY, SECURITY PROGRAMME

Under the supervision of Olivier de France, research director at IRIS

defrance@iris-france.org

and Jean-Pierre Maulny, deputy director of IRIS

jpmaulny@iris-france.org

© IRIS

All rights reserved

INSTITUTE FOR INTERNATIONAL AND STRATEGIC AFFAIRS

2 bis rue Mercoeur

75011 PARIS / France

T. + 33 (0) 1 53 27 60 60

contact@iris-france.org

@InstitutIRIS

www.iris-france.org