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**A COALITION OF THE WILLING FOR  
A COMMON EU DEFENCE:  
NAVIGATING LEGAL LANDSCAPES AND  
OVERCOMING POLICY CHALLENGES**

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## ABSTRACT

The first Trump administration underscored the growing unreliability of the United States as a security provider for Europe, prompting EU countries to accelerate common defence initiatives. This shift was intensified by Russia's invasion of Ukraine, bringing conflict closer to the Union and prompting the EU to accelerate common defence initiatives. Traditionally, the EU has adapted existing instruments to emerging challenges, often creating new, limited-scope tools that could become obsolete once immediate needs subside. Recent discussions on defence cooperation suggest moving beyond the Treaties. However, this paper advocates for a feasible approach within the EU framework, providing a structured and legally coherent basis for defence initiatives. This would facilitate expanding defence cooperation projects and enhance their visibility, ultimately strengthening the EU's security capabilities. A more effective strategy is needed to reinforce existing frameworks, ensuring a robust and adaptable European defence architecture capable of addressing diverse security threats. This paper endorses Permanent Structured Cooperation as the most viable foundation to advance defence collaboration within the Union.

**Keywords:** EU defence, EU common defence, CFSP, CSDP, EU law, coalition of the willing, PESCO

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## **1. Setting the scene: background and challenges for the EU Common Defence Policy**

After the two World Wars, defence emerged as a contentious and sensitive topic for European countries, with initial efforts at cooperation focusing primarily on economic recovery and strength. However, the importance of defence cooperation gradually increased, becoming a key element of European integration over the years.<sup>1</sup> In a world dominated by superpowers, European countries became increasingly aware of the benefits of a united approach to defence.

This recognition was severely tested during the so-called “hour of Europe” when European states were expected to address the Yugoslav crisis independently.<sup>2</sup> However, instead of resolving the conflict on its own, Europe once again found itself dependent on NATO and the US.<sup>3</sup> This reliance was the real proof that European countries were far from achieving strategic autonomy.<sup>4</sup> Eventually, the *illusion* of self-sufficiency in defence disappeared, replaced by the *realisation* of dependence on external allies.

Over the past decade, as the US shifted its political focus inward and the balance of transatlantic relations evolved, some European leaders began advocating more assertively for the pursuit of strategic autonomy. This call for greater autonomy and cooperation has become even more pronounced after February 2022, when Russian aggression sparked a conflict on Europe’s doorstep. Heightened awareness of the growing risk of escalation of the conflict is now driving efforts among EU countries, particularly led by some Member States.<sup>5</sup>

Thus, with a faltering Atlantic alliance and increasingly unstable borders to both the East and the South, the EU has faced a harsh wake-up call regarding its need for autonomous defence capabilities. Since its first proposal in the 1950s, the concept of a European army has remained a ghost in the European Defence framework. Although it regularly resounds in political debates, the idea remains one of the most contentious and unresolved points of European integration, plagued by fragmentation, inefficiency and lack of competitiveness.<sup>6</sup> In his report on the future of European

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<sup>1</sup> Lonardo L, ‘EU Common Foreign and Security Policy after Lisbon. Between Law and Geopolitics’ (Springer, 2023)

<sup>2</sup> Glaurdić, J. ‘*The Hour of Europe: Western Powers and the Breakup of Yugoslavia.*’ (Yale University Press, 2011)

<sup>3</sup> *Ibidem*

<sup>4</sup> Tocci, N. ‘European strategic autonomy: what it is, why we need it, how to achieve it.’ (Istituto Affari Internazionali, 2021)

<sup>5</sup> Moser, C. ‘The impact of the war in Ukraine on the EU’s Common Security and Defence Policy.’ (Max-Planck-Institut, 2024)

<sup>6</sup> Ulrike, F. ‘The never-ending debate of the European Army and why it is unhelpful’. (Heinrich-Böll-Stiftung, 22 January 2024)

competitiveness, Mario Draghi calls for the aggregation and coordination of public spending on defence and insists on prioritising research and development in the sector.<sup>78</sup> However, the report does not address the institutional reforms needed to establish a unified European defence force, a glaring omission that highlights the absence of such a capability in the EU's strategic landscape.

The need to fill this gap is now indisputable. Compared to rising European defence spending,<sup>9</sup> the efficiency gains of military capability are minimal. Although EU Member States together would have around 1.3 million soldiers under their command, they consistently struggle to deploy and adequately equip even small numbers of soldiers.<sup>10</sup> This inefficiency stems from a fragmented system comprising 27 armed forces, 27 procurement authorities and 27 defence industrial markets. In addition to the critical need for improved coordination and resource aggregation, as emphasised in Mario Draghi's report,<sup>11</sup> European military integration must be pushed forward. While it might be misleading to even mention an 'EU army' *per se*, in the current framework,<sup>12</sup> this policy proposal seeks to explore feasible paths to establish a cohesive and operational military coalition in the short to medium term. Such a coalition would initially comprise willing and capable Member States, with the potential for progressive accession of others. This paper envisages using the tools provided by the EU Treaties, to build a framework that allows these countries to collaborate effectively, laying the groundwork for deeper defence integration.

## 2. The Policy Project and its legal feasibility

### 2.A. An overview of the Common Security and Defence Policy under the EU Treaties

Establishing a coordinated military force in Europe is an undoubtedly complex goal, given the foundational premises of the EU. Nevertheless, there are some options for an effective approach to foster efficient and rapid military cooperation in response to emerging military challenges. Before examining these options, it is essential to first outline how defence cooperation works within the EU. Officially established in 2009 by the Treaty of Lisbon, the Common Security and Defence Policy ('CSDP') operates as part of the broader Common Foreign and Security Policy ('CFSP'). This area of EU policy retains distinctly intergovernmental cooperation features.<sup>13</sup> Both the CFSP and the CSDP derive their legal basis from Title V of the TEU. While Articles 23-46 TEU broadly address the CFSP, the final four provisions, Articles 42-46 TEU, specifically relate to the CSDP.

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<sup>7</sup> Draghi, M. 'The future of European competitiveness'. (*European Commission*, 2024)

<sup>8</sup> *Ibidem* p. 60-61.

<sup>9</sup> Member States' defence expenditure has reached €326 billion in 2024, which represents 1.9% of EU GDP and has been constantly increasing. Compared to 2021, before Russia's war of aggression against Ukraine, spending has been up by more than 30%. See: European Defence Agency, 'Defence Data 2023-2024', available at: <https://eda.europa.eu/docs/default-source/brochures/1eda---defence-data-23-24---web---v3.pdf>.

<sup>10</sup> Ulrike, F. 'The never-ending debate of the European Army and why it is unhelpful'. (*Heinrich-Böll-Stiftung*, 22 January 2024)

<sup>11</sup> Draghi, M. 'The future of European competitiveness'. (*European Commission*, 2024)

<sup>12</sup> Ulrike, F. 'The never-ending debate of the European Army and why it is unhelpful'. (*Heinrich-Böll-Stiftung*, 22 January 2024)

<sup>13</sup> Koutrakos, P., 'The EU Common Security and Defence Policy' (*Oxford University Press*, 2013).

From a procedural point of view, the CFSP differs significantly from the other TFEU policies.<sup>14</sup> Member States, in the form of the Council, wield considerable influence, with their positions outweighing those of the European Parliament and the European Commission.<sup>15</sup> Furthermore, the ordinary legislative procedure does not apply to the CFSP, as only special procedures are used for decision-making.<sup>16</sup>

As regards the institutional framework, the European Council has the decision-making power to identify the Union's strategic interests and objectives. It does so via the instrument of *decisions*, which must be adopted unanimously. Another key institutional role is that of the High Representative of the Union for Foreign Affairs and Security Policy. Although the name was changed after the failed proposal for an EU Constitution,<sup>17</sup> the role is akin that of a Foreign Affairs Minister, responsible for ensuring coherence within the European Union External Action Service and representing the EU as a key global and international actor.

Although the CSDP is an integral part of the CFSP, it is worth noting some intrinsic peculiarities of the latter. First, the CSDP is exclusively focused on defence and security matters. Furthermore, it is characterised by a greater rigidity in the application of the unanimity rule for the adoption of acts by the European Council and the Council. In the CFSP, this rule includes some exceptions, such as the one provided for in Article 31(2) TEU that allows for qualified majority voting (QMV) at the Council when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives; however, these exceptions do not extend to decisions with military or defence implications.<sup>18</sup>

In this context, both the CFSP and the CSDP could be considered among the most contentious fields of cooperation within the EU. This is an important clarification for the ongoing discussion: establishing strategies for a common EU defense will encounter several difficulties linked to their concrete implementation. Notably, within the CFSP, related competences are named in parallel. This means that when the Union exercises its CFSP competences, Member States are not precluded from taking national actions. Such national actions could undermine the coherence of military responses, which is vital for a strong defence policy, especially when aiming to establish a common military vanguard.

However, the most significant shortcoming of the CFSP lies in the enduring requirement for unanimity in the Council. An examination of the provisions of the CFSP and the CSDP shows that unanimity is predominantly employed for procedures relating to defence. Article 24(1) TEU introduces the CFSP and states in general that, in the absence of provisions to the contrary, all matters shall be defined and implemented by the European Council and the Council acting unanimously.<sup>19</sup> The same applies to defence; when announcing the objective of a common defence, Article 42(2) TEU explicitly refers to its establishment by the European Council acting unanimously,

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<sup>14</sup> Eckes, C. (2015), 'The CFSP and Other EU Policies: A Difference in Nature?'. *European Foreign Affairs Review*, 20(4), 535 – 552.

<sup>15</sup> *Ibidem*, p. 539;

<sup>16</sup> Article 24(1) Consolidated version of the Treaty on European Union [2012] OJ C326/13;

<sup>17</sup> Koutrakos, P., 'The EU Common Security and Defence Policy' (*Oxford University Press*, 2013), p. 40.

<sup>18</sup> Paladini, L. 'La cooperazione strutturata permanente dell'Unione europea: disciplina, prassi e ruolo nell'integrazione in materia di difesa comune' (*DPCE Online*, 2019), p. 1907.

<sup>19</sup> Article 24(1) Consolidated version of the Treaty on European Union (2012) OJ C326/13.

with all related decisions requiring unanimity.<sup>20</sup> Finally, within the framework of Permanent Structured Cooperation (PESCO), all decisions of the Council must also be taken with unanimous consent of its members, as stipulated in Article 46(6) TEU.<sup>21</sup>

In addition to the general functioning of the CFSP and the CSDP as foreseen by the Treaties, it is important to mention some key structures and mechanisms of defence cooperation to understand the current status of the EU in this field of integration. Given the tense geopolitical climate that European borders have faced in recent years, the EU has started to act. Since 2017, the EU has established the Military Planning and Conduct Capability (MPCC), which serves as the military-strategic headquarters in Brussels, responsible for the operational planning and conducting of the EU CSDP non-executive military training missions. The European Peace Facility (EPF) was introduced in 2021 to enhance the EU's capacity to provide security and military equipment to its partners. In 2022, the EU launched the Strategic Compass, an EU security and defence strategy aimed at guiding and coordinating European defence actions.

All in all, EU defence is a sensitive area of cooperation, characterised by procedures burdened by unanimity and heavily dependent on the consent of Member States. While structures for defense coordination and allocation of strategic resource already exist at a supranational level, a common, centralised military structure that can be efficiently deployed when needed is still lacking. Therefore, the following sections will outline viable policy options for establishing a common military coalition among those Member States that are willing to pursue this goal.

## **2.B. An EU military 'coalition of the willing': what are the viable options and their related advantages and disadvantages?**

### **2.B.1. Enhanced cooperation (Articles 326 et ss. TFEU and 20 TEU)**

Amongst the strategies for forming a military coalition of willing countries, a viable option is the use of enhanced cooperation, as outlined in Articles 326-334 of the TFEU and Article 20 of the TEU. Introduced by the Treaty of Amsterdam,<sup>22</sup> enhanced cooperation serves as a tool for differentiated integration, enabling certain Member States to pursue secondary legislation projects at a faster pace than others.<sup>23</sup> This flexibility makes it a potential avenue for activating a military vanguard among those Member States willing to participate.<sup>24</sup>

Specifically, Article 20 TEU provides the constitutional framework for enhanced cooperation, while the relevant provisions of the TFEU address its procedural aspects. Enhanced cooperation can be established within the framework of the EU's non-exclusive competences and cannot be used to extend the Union's competences. To activate enhanced cooperation, a minimum of nine Member States must submit a request. Once established, this mechanism allows participating Member

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<sup>20</sup> Article 42(2) Consolidated version of the Treaty on European Union (2012) OJ C326/13.

<sup>21</sup> Article 46(6) Consolidated version of the Treaty on European Union (2012) OJ C326/13.

<sup>22</sup> Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, OJ C 340, 10.11.1997.

<sup>23</sup> Bottner, R., 'The instrument of enhanced cooperation: pitfalls and possibilities for differentiated integration' (*European Papers*, 2022).

<sup>24</sup> Cremona, M., 'Enhanced cooperation and the common foreign and security and defence policies of the EU' (*European University Institute*, 2009).

States to issue legally binding directives through EU institutions, specifically tailored to their smaller group.

However, it is important to emphasise that enhanced cooperation is considered a ‘last resort’ mechanism. Authorisation for its use can only be granted when it has been determined that “the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole”.<sup>25</sup> Requests for enhanced cooperation in the CFSP must be addressed to the Council and communicated to both the High Representative and the Commission. Additionally, the European Parliament should be kept informed of such requests, and the decision to proceed with enhanced cooperation requires unanimous approval from the Council.

While enhanced cooperation has been successfully used for initiatives such as the financial transaction tax and the establishment of the European Public Prosecutor’s Office (EPPO),<sup>26</sup> it does not appear to be the most effective way to advance the CSDP and has yet to be used for this purpose.<sup>27</sup> As noted, the activation of enhanced cooperation is subject to several constraints, particularly in the area of common defence. The minimum requirement of nine participating Member States, the necessary unanimous approval in the Council, and the ‘last resort’ nature of this mechanism constitute significant disincentives and considerable obstacles to its implementation.

### **2.B.2. A new project within the Permanent Structured Cooperation (PESCO)**

Another potentially effective framework for advancing a military vanguard within the European Union is the permanent structured cooperation mechanism, which operates under the umbrella of the CSDP.<sup>28</sup> As part of the broader CFSP, PESCO was formally set up in 2017 with Decision 2017/2315,<sup>29</sup> and is designed to facilitate deeper cooperation between EU Member States in developing joint defence capabilities that would be beyond the scope of countries operating alone.<sup>30</sup> Furthermore, PESCO is legally binding, which makes it virtually enforceable compared to other more flexible mechanisms, thereby strengthening the commitments made by participating countries.<sup>31</sup> In this context, it should be noted that the implementation of the current PESCO has, so far, been limited to cooperation in the industrial sector under Article 1.a of Protocol 10 on PESCO.<sup>32</sup> Therefore, Article 1.b of that Protocol, concerning the establishment of a multinational force between Member States, remains unimplemented to date; the proposal for a military

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<sup>25</sup> Article 20(2) Consolidated version of the Treaty on European Union (2012) OJ C326/13.

<sup>26</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’), OJ L 283, 31.10.2017.

<sup>27</sup> Cremona, M., ‘Enhanced cooperation and the common foreign and security and defence policies of the EU’ (*European University Institute*, 2009).

<sup>28</sup> Fiott, D., Missiroli, A., & Tardy, T. ‘Permanent Structured Cooperation: What’s in a Name?’ (*EU Institute for Security Studies*, 2017).

<sup>29</sup> 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.

<sup>30</sup> Nováky, N., ‘The EU’s Permanent Structured Cooperation in defence: Keeping Sleeping Beauty from snoozing’ (*Wilfried Martens Centre for European Studies*, 2018).

<sup>31</sup> Cózar, M., B. ‘Bring back the spirit of PESCO!’ (*Egomont Institute*, 2023).

<sup>32</sup> Consolidated version of the Treaty on European Union - PROTOCOLS - Protocol (No 10) on permanent structured cooperation established by Article 42 of the Treaty on European Union, OJ C 115, 9.5.2008



vanguard of Member States, which forms the foundation of this paper, arises from this lack of implementation.

PESCO is anchored in three provisions of the TEU: Article 42(6), Article 46 and Protocol 10 annexed to the Treaties.<sup>33</sup> Participation in PESCO is voluntary, thus allowing for a differentiated level of involvement among Member States and avoiding undermining other Treaty provisions related to security and defence cooperation.<sup>34</sup> For instance, Article 42(2) TEU, which requires unanimity in Council decisions regarding CSDP, remains unchanged.

Whilst it has been reasonably suggested that the EuroCorps treaty could fall under PESCO's framework, it is important to understand the extent to which this framework could be viable to cover a military vanguard of a group of countries.<sup>35</sup> From this perspective, PESCO seems well-suited for this purpose due to its flexibility and the possibility of differentiated cooperation. It allows states with varying preferences and capabilities to engage at different levels.<sup>36</sup> According to Article 5 of Decision 2017/2315, new cooperation projects are periodically proposed, approved and integrated into the PESCO framework by interested Member States participating in PESCO, with each project coordinated by one or more participating countries.

It is crucial to note that any initiative and new project under this framework still requires approval of the Council by unanimity, a caveat inherent to the CSDP structure that virtually limits the autonomy of a coalition of willing states within the EU.<sup>37</sup> Specifically, Article 5 of Decision 2017/2315 stipulates that the approval of new PESCO projects depends on proposals from participating Member States willing to cooperate on specific initiatives. These proposals are then evaluated and assessed by the High Representative in accordance with the relevant decisions made by the Council as outlined in Article 4(2) of Decision 2017/2315 which refers to Article 46(6) TEU mandating that all Council decisions and recommendations within the PESCO framework must be adopted unanimously. In short, unanimous approval by the Council is necessary to move any PESCO project forward.

However, projects under PESCO require the cooperation of committed countries only, which means that the approval of general projects does not further bind Member States engaged in other projects. Moreover, the use of political leverage could serve as a positive strategy to gain the support of reluctant countries, potentially resolving any disputes or hesitations about pursuing this path. Therefore, while the requirement for unanimous Council approval for new PESCO projects may seem like a significant hurdle, it can be seen merely as a procedural step that allows interested Member States to proceed with their project without repercussions on those that are not involved.

Aside from the potential challenges of unanimity, this option is not without its problems, which need to be carefully considered. Currently, PESCO faces several shortcomings that hinder its overall

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<sup>33</sup> Article 42 and Article 46 Consolidated version of the Treaty on European Union (2012) OJ C326/13. Consolidated version of the Treaty on European Union - PROTOCOLS - Protocol (No 10) on permanent structured cooperation established by Article 42 of the Treaty on European Union, OJ C 115, 9.5.2008

<sup>34</sup>Paladini, L. 'La cooperazione strutturata permanente dell'Unione europea: disciplina, prassi e ruolo nell'integrazione in materia di difesa comune' (*DPCE Online*, 2019)

<sup>35</sup> Miglio, A., Perotto, G. 'Una via per l'integrazione dell'Eurocorpo nel quadro giuridico dell'Unione europea' (*Centro Studi sul Federalismo*, 2021).

<sup>36</sup> *Ibidem*

<sup>37</sup> Cózar Murillo, B. 'Bring back the spirit of PESCO!' (*Egmont Institute*, 2023).

effectiveness as a cooperation instrument. Similar to other initiatives, Member States often launch several projects that can become dysfunctional due to non-compliance.<sup>38</sup>

PESCO operates as a Member State-led cooperation tool, placing responsibility for project execution on individual nations. This approach frequently leads to inefficiencies, as there is no dedicated body to oversee implementation. Responsibility for each project falls to the lead country, which can exacerbate inefficiencies and hinder progress. Historical precedents, such as the European Capabilities Action Programme of the 1990s, have demonstrated the limitations of the lead nation model, ultimately necessitating the creation of the European Defence Agency as a guiding entity.<sup>39</sup>

In addition, while PESCO's regulation clearly outlines the consequences of non-fulfilled commitments and projects by contributing countries, the subsequent enforcement and implementation remain weak. Although participation in PESCO is voluntary, it is crucial that Member States honour their commitments. Strengthening enforcement mechanisms would increase accountability and build trust among participating nations. Moreover, PESCO suffers from bureaucratic rigidity, resulting in slow processes that impede timely action. Implementing a continuous, rather than a cyclical, review process would facilitate the identification of capability gaps and allow new projects to be launched within months rather than years. This proactive approach would help address the common delays in defense readiness. To address these shortcomings, a possible solution is to establish a centralised and specialised entity that would make PESCO agency-led, ensuring more streamlined processes and improved outcomes.

All things considered, the possibility of approving a military vanguard project within the already existing PESCO remains a valid option to provide a structured and functioning framework for such a vanguard. As part of an already established and robust project, this option would effectively fulfill the short-to-medium-term time requirements outlined in this paper.

### **2.B.3. A 'new' PESCO**

A third possible way forward, which has not yet been widely discussed in the literature, concerns the creation of a new PESCO. This way forward would not simply entail the approval of a new project within the existing PESCO framework, but would propose the establishment of a separate PESCO, specifically designed for efficient and coordinated military cooperation among Member States that are truly committed to rapidly progressing towards a common military force.

One of the main advantages of this option is that, under Article 46(2) TEU, the approval for creating a new PESCO requires only a qualified majority in the Council, following prior consultation with the High Representative for the CFSP. This would allow a rather easy circumvention of the unanimity clause. Furthermore, establishing a new PESCO would allow collaboration only between those states that have a strong desire to cooperate, unlike the current PESCO, which includes all Member States, often resulting in defections and lack of commitment. Consequently, the functioning of a

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<sup>38</sup> Witney, N. 'Spirit of ambition: The Ukraine war and European defence integration' (*European Council of Foreign Relations*, 2023).

Biscop, S. 'European Defence: Give PESCO a Chance. Survival' (*Egmont Institute*, 2018)

<sup>39</sup> Witney, N. 'Strategic Sovereignty: Building Europeans' Capacity to Defend Themselves' (*European Council on Foreign Relations*, 2019)

new PESCO would likely be quicker and more efficient, as it would consist solely of highly motivated Member States dedicated to forming a military deployment force. Additionally, this framework would provide an effective filter for the inclusion of new interested Member States. According to Article 46(3) TEU, the entry of new states into PESCO requires qualified majority voting in the Council but is limited to the Member States already participating. This means that those willing to continue the military coalition within the new PESCO can carefully assess the motivation and commitment of new states wishing to join.

However, a potential drawback of this route concerns the feasibility of its implementation. Specifically, a question arises whether it is possible to create a new PESCO that operates parallel to the existing and functional PESCO. This concern stems from the fact that this option has not been previously considered at any level, and the relevant treaty provisions have traditionally been interpreted in a specific manner. Nonetheless, willing countries, in agreement with the Commission, could interpret the Treaties to accommodate their objectives. This interpretation could evolve into a concrete policy if there is no opposition.

At first glance, this new approach and the interpretation of the Articles regarding the creation of PESCO might seem far-fetched. However, the language used in the provisions of the Treaties relating to PESCO is not dissimilar to that in the Articles on enhanced cooperation. Indeed, Article 20 TEU explicitly refers to the establishment of “enhanced cooperation” among Member States; in practice, more than five enhanced cooperations have been activated. Thus, it is argued that a similar approach could apply to the creation of a new PESCO, should Member States wish to pursue it. The reference in Article 42(6) TEU to a single PESCO should not be interpreted as an impediment to the development of a new form of military cooperation between Member States willing to proceed.

An objection that might arise from this comparison between the two provisions is that enhanced cooperation was conceived to cover various sectors from the outset, giving it a more horizontal and pluralistic nature. However, the wording in both cases serves as a relevant connecting point, lending credibility to the proposal for a new PESCO.

#### **2.B.4. Treaty reform**

The options discussed operate within the framework of the treaties and make use of instruments already available to Member States, but the broader issue remains the path towards treaty reform. This has been central to EU debates, particularly in defence, where increasing the powers of the High Representative, expanding the application of the QMV in key areas of the CFSP, and stronger parliamentary oversight are recurrent discussions on reform.

Although the Treaties are the result of multiple modifications over the years, the mechanisms for reform and amendment are still rigid and rigorous.<sup>40</sup> Article 48 TEU outlines three main revision mechanisms: an ordinary revision procedure and two simplified revision procedures.<sup>41</sup>

The ordinary revision procedure is governed by paragraphs 1-5 of Article 48 TEU and concerns fundamental amendments to the Treaties, i.e. those that affect the competence of the EU.<sup>42</sup> It

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<sup>40</sup> Kotanidis, S., ‘How the EU Treaties Are Modified’ (*European Parliamentary Research Service*, 2022).

<sup>41</sup> Article 48 Consolidated version of the Treaty on European Union (2012) OJ C326/13.

<sup>42</sup> Paras. 1-5, Article 48, Consolidated version of the Treaty on European Union [2012] OJ C326/13.

allows the Member States, the European Parliament and the European Commission to propose amendments to the Council of the European Union. The Council of the European Union then submits the proposal to the European Council, and the national Parliaments are notified.<sup>43</sup> By a simple majority vote, the European Council decides whether to examine the proposal and may convene a Convention of representatives of the national parliaments, the heads of state or government of the Member States, the European Parliament and the Commission who should examine the proposed amendments in detail and then adopt a consensual recommendation to a conference of representatives of the governments of the Member States.<sup>44</sup> Subsequently, a final decision is made by the aforementioned conference of representatives of the governments of Member States and the amendments enter into force only after ratification.<sup>45</sup>

The simplified revision procedures, listed in paragraphs 6 and 7 of Article 48 TEU, allow for amendments without a Convention of intergovernmental representatives but cannot extend the EU's competencies.<sup>46</sup> The first simplified revision procedure pertains to the EU's internal policies and actions, Part III of the TFEU.

The two general *passerelle* clauses are the second type of simplified revision procedures; they allow changes to Council decision-making rules without changing EU competencies.<sup>47</sup> One allows a shift from unanimity to QMV, except for military and defence matters.<sup>48</sup> The other *passerelle* clause allows the use of the ordinary legislative procedure instead of the special one. However, national parliaments can block these changes and prevent the general *passerelle* clauses from being activated.<sup>49</sup>

To conclude, albeit unsure and lengthy, a treaty reform is possible. While reforming the CFSP is undoubtedly a priority for many, it would also trigger broader institutional debates and, given the complexity of the amendment procedures, change would be slow and challenging. Therefore, to establish a European defence vanguard taking into account the current political landscape, it must be said that achieving the necessary consensus to amend the EU's defence rules seems unrealistic in the short term.

## 2.C. Preferred options and related strategy

### 2.C.1. Preferred options

In the previous section, this paper outlined the options currently available for activating a European defense force in the short to medium term, highlighting their strengths and weaknesses. This section identifies two of these options as the most feasible and explains the rationale for this selection.

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<sup>43</sup> The Council of the European Union is the body of representatives of each EU member state and negotiates and adopts legislation. The European Council is the body of Heads of State or Government of the EU countries, the presidents of the European Council and the European Commission, it defines the EU's general political direction and priorities.

Article 48(2) Consolidated version of the Treaty on European Union (2012) OJ C326/13.

<sup>44</sup> Article 48(3) Consolidated version of the Treaty on European Union (2012) OJ C326/13.

<sup>45</sup> Article 48(4) Consolidated version of the Treaty on European Union (2012) OJ C326/13.

<sup>46</sup> Article 48(6-7) Consolidated version of the Treaty on European Union (2012) OJ C326/13.

<sup>47</sup> Article 48(7) Consolidated version of the Treaty on European Union (2012) OJ C326/13.

<sup>48</sup> *Ibidem*

<sup>49</sup> *Ibidem*

As noted, treaty reform would be a lengthy process, while establishing enhanced cooperation presents numerous procedural obstacles that could be more easily avoided through the PESCO framework. Therefore, this paper argues that the two most viable options for advancing this proposal are either the approval of a new PESCO project or the creation of a new parallel PESCO.

As regards the first preferred option, the rationale lies in the flexibility afforded by the PESCO instrument, which allows for the regular integration of projects involving participating Member States interested in promoting specific initiatives. In this context, the aim of a proposed PESCO project would be to establish a military coalition within a single integrated military operational structure. This structure would complement the individual military forces of Member States, enabling collaborative operations on matters of EU security and defense. Procedurally, as mentioned earlier, the approval of this specific PESCO project would involve several critical steps, including scrutiny by the High Representative and a unanimous decision by the Council. As previously assessed, while unanimity may pose some challenges, it should not be overly problematic. Even if not all Member States support the establishment of a joint military force, their vote would merely facilitate the continuation of the project for interested states, without requiring the cooperation of those that are not involved. Therefore, this paper contends that unanimous approval of a PESCO project aimed at forming a military coalition of willing Member States should not be viewed as excessively burdensome and remains a desirable option.

Alternatively, the second option advocated in this paper is the creation of a new PESCO. This approach not only addresses the same challenges as the first option but also mitigates its weaknesses related to unanimity and implementation capacity. Although the requirement for unanimous approval of a new PESCO project could be a potential barrier, it remains in place. Any state could hinder the project's progress if it chose to do so. In contrast, establishing a new PESCO completely circumvents this issue, requiring only a qualified majority in the Council, as previously explained. Furthermore, this new PESCO would be composed exclusively of Member States genuinely committed to engaging in defence cooperation, as discussed in the previous section. Unlike the current PESCO, which includes all Member States and could slow down the progress and implementation of new projects, an *ad hoc* PESCO formed as a “coalition of the willing” would consist only of countries motivated to progress, thus simplifying the decision-making and implementation processes.

It is essential to note that this proposal is presented as an alternative due to its reliance on an interpretation of the Treaties that has not yet been explicitly confirmed. Therefore, while this paper posits that it is a strategically viable option, it is prudent to offer another option.

That said, it is worth considering which Member States might be the most enthusiastic and committed to taking this project forward. According to recent polls conducted in conjunction with the 2024 European Parliament elections,<sup>50</sup> several Member States appear to prioritise the establishment of a common defence structure. Strong support for this initiative is evident in Germany, Finland, Poland, and Portugal, while France under President Macron has consistently expressed its commitment to achieving credible European strategic autonomy.

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<sup>50</sup> Ipsos survey for *Euronews*, ‘A European election survey three months ahead of the June 2024 European elections’ (March 2024).

In light of these preferred options, this paper identifies two practical issues that merit further examination in the following sections. The first issue concerns the governance of the project, while the second concerns its financial credibility and feasibility.

### 2.C.2. Governance

As regards PESCO governance, the approach varies significantly depending on which of the two preferred options is considered. The current governance structure of PESCO operates on two levels. On one hand, the Council acts as the main body responsible for guiding policy direction and decision-making, while ensuring that Member States fulfill their commitments.<sup>51</sup> On the other hand, at the project level, participating Member States manage their respective projects, under the supervision of the Council.<sup>52</sup>

In addition, the European Defence Agency and the European External Action Service, in conjunction with the EU Military Staff, fulfill secretariat functions, acting as a central point of reference for all Member States and institutions involved in this cooperation mechanism.<sup>53</sup>

As previously highlighted when discussing the shortcomings of the current PESCO framework, there are strong arguments for integrating an implementing body into the structure. However, this responsibility should not fall on the Member States implementing the projects or the Council itself; rather, it should be assigned to a third impartial body.<sup>54</sup> In this context, the Military Staff and the High Representative could be designated to oversee and implement these functions.

If the Member States' military vanguard takes the form of a new PESCO project, its governance structure would remain aligned with the existing PESCO framework, incorporating its internal governance mechanisms and operational functions. In contrast, if the preferred option envisages the establishment of an entirely new PESCO, the situation changes radically. Creating a novel form of permanent structured cooperation aimed at forming a military "coalition of the willing" raises critical questions of democratic control and legitimacy. However, similar to the processes that facilitated the establishment of the current PESCO and the creation of *ad hoc* structures designed to ensure democratic oversight and confer legitimacy to its mandate, these principles should also apply to the new PESCO framework.

A newly established PESCO could adopt a comparable structural model, which would include a decision-making body representing all participating countries and a separate entity tasked with oversight and implementation functions. At the same time, if the intention is to build on already existing elements, the CFSP could be considered. For example, this new multinational framework could be supported by the Political and Security Committee in the form of an implementation body. If such a decision were taken, the constitutive document of the new PESCO would have to regulate the specificities. However, this time participating states would have the opportunity to design a

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<sup>51</sup> 'Permanent Structured Cooperation - PESCO Deepening Defence Cooperation Among EU Member States' (EEAS, 2021).

<sup>52</sup> *Ibidem*

<sup>53</sup> 'Implementation and governance of Permanent Structured Cooperation (PESCO)' (European Parliament, 2020)

<sup>54</sup> See: Part II B.2.

governance framework tailored to the specific needs of the new cooperation initiative, thus ensuring both effective management and adequate democratic control.

### 2.C.3. Financial Credibility

A final consideration that this paper cannot ignore is the financial credibility of the project. Even if certain Member States are sufficiently motivated to establish one of the aforementioned options, it remains an undeniable reality that they are already directing significant portions of their public finances towards common defence projects. While the efficiency and the outcomes of these investments may be subject to debate, the fact remains that substantial financial resources have already been committed.

Accordingly, this paper argues that the most credible approach to establishing a military vanguard of committed Member States would be to leverage European funding instruments. Strengthening common defence is a key pillar of the second Von der Leyen Commission, which strongly supports the creation of a true European Defence Union.<sup>55</sup> Achieving this objective, along with the other ambitious initiative put forward by the current Commission, necessitates substantial financial investment,<sup>56</sup> the feasibility of which is directly linked to the EU's capacity to secure adequate funding.<sup>57</sup>

Existing literature has consistently emphasised that the only credible means of financing these efforts is through debt issuance at the European level.<sup>58</sup> In this sense, two possible paths emerge: either replicating the Next Generation EU model, or classifying debt issuances as 'own resources' under Article 311 TFEU for the financing of the European budget.<sup>59</sup> The first approach would require the adoption of a revised EU Own Resources Decision to support the servicing of the newly issued debt, which, in turn, would be allocated to finance a predefined expenditure programme.<sup>60</sup> However, the practicality of this option is debatable. According to Article 311 TFEU, 'own resources' constitute the primary instrument for financing the EU budget, and financing expenditures through 'other revenues' could challenge this primacy.<sup>61</sup> Although key proponents, such as Italy - represented by Paolo Gentiloni and former Prime Minister Mario Draghi - and France under President Macron, support joint borrowing,<sup>62</sup> Germany's Federal Constitutional Court has taken a firm stance, asserting that joint EU debt, as used during the pandemic, should remain an

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<sup>55</sup> Statement at the European Parliament Plenary by President Ursula von der Leyen, candidate for a second mandate 2024-2029, July 18 2024.

<sup>56</sup> The European Central Bank has estimated that for the green transition, digitisation and the strengthening of its military defence, the EU will need around EUR 5.4 trillion of additional investments in the period 2025-2031, i.e. almost EUR 800 billion per year of new investments. Including innovation and research projects, the total is in the order of 1000 billion per year, see: Bouabdallah, O. and others 'Mind the gap: Europe's strategic investment needs and how to support them' (*The ECB blog*, 2024).

<sup>57</sup> Giavazzi, F. 'Il sentiero stretto dell'Ursula bis- Il discorso della presidente della Commissione europea: le proposte e i problemi' (*Corriere della Sera*, 2024).

<sup>58</sup> *Ibidem*.

<sup>59</sup> Grund, S. and Steinach, A., 'European Union Debt Financing: leeway and barriers from a legal perspective' (*Bruegel Working Paper Series Issue*, 2023).

<sup>60</sup> Majocchi, A. (2024), 'Finanziare con debito la produzione dei beni pubblici europei'. Centro Studi sul Federalismo, Commento n. 303.

<sup>61</sup> Grund, S. and Steinach, A., 'European Union Debt Financing: leeway and barriers from a legal perspective' (*Bruegel Working Paper Series Issue*, 2023).

<sup>62</sup> Simon, F. 'What next?' EU's Gentiloni gets ball rolling on future of pandemic recovery fund' (*Euractiv*, 2024).



exceptional measure and not be used to finance political initiatives.<sup>63</sup> The second option seems more feasible and would involve amending Article 2 of the Own Resources Decision,<sup>64</sup> to include debt issuance as a new category of own resources.<sup>65</sup> It is important to note, however, that such an amendment would require unanimous approval by the Council under Article 311 TFEU. Regardless of the approach chosen, achieving the necessary political consensus is both essential and challenging. It is crucial to acknowledge that without recourse to common debt financing, not only would the present proposal be unattainable, but other key initiatives supported by the Von der Leyen Commission would also be at risk of failure.<sup>66</sup>

It is precisely in this direction that the REARM Europe project proposed by the Commission in March 2025 seems to be heading.<sup>67</sup> In particular, the plan aims to mobilise around €800 billion over the next four years, the majority of which will come from an increase in national defence spending by the Member States.<sup>68</sup> According to the Commission's proposal, the remaining €150 billion would come from a new defence instrument, which would allow the Commission to borrow from capital markets to issue bonds and lend to Member States. Therefore, between the two possible forms of debt issuance, Von der Leyen's second mandate seems to be aimed at replicating the experience of Next Generation EU,<sup>69</sup> despite the shortcomings previously highlighted in this regard. In any case, these recent developments are a clear confirmation that the only viable option to reinforce Europe's defence capability is through debt financing. Accordingly, this paper strongly suggests channeling this investment into one of the two options that have been offered as optimal in the short to medium term for a military vanguard of Member States.

Finally, regarding the specific initiative of a military vanguard composed of selected Member States, concerns may arise regarding the legitimacy of using an EU investment mechanism to finance a project that only involves a subset of countries. In this regard, financial legitimacy should be assessed under the principle of European public goods. This concept encompasses policies and initiatives that generate greater value for European citizens when conducted at the EU level rather than at the national level.<sup>70</sup> A military vanguard, despite involving only a limited number of Member States, undoubtedly qualifies as a European public good, as its coordinated and structured efforts could provide European citizens with significantly greater security and protection benefits than would be achieved through fragmented national initiatives. Therefore, this paper proposes that a military vanguard of committed Member States should be legitimately financed through common debt instruments at the European level.

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<sup>63</sup> Judgment of 6 December 2022 - 2 BvR 547/21, 2 BvR 798/21.

<sup>64</sup> Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom, OJ L 424, 15.12.2020.

<sup>65</sup> Grund, S. and Steinach, A., 'European Union Debt Financing: leeway and barriers from a legal perspective' (*Bruegel Working Paper Series Issue*, 2023).

<sup>66</sup> Giavazzi, F. 'Il sentiero stretto dell'Ursula bis- Il discorso della presidente della Commissione europea: le proposte e i problemi', (*Corriere della Sera*, 18 July 2024).

<sup>67</sup> Press statement by President von der Leyen on the defence package, 4 March 2025.

<sup>68</sup> *Ibidem*

<sup>69</sup> Soler, P. 'How can the EU unlock up to €800bn for its 'rearmament plan?' (*Euronews*, 2025).

<sup>70</sup> Fuest, C. and J. Pisani-Ferry, 'A Primer on Developing European Public Goods' (*European Network for Economic and Fiscal Policy Research*, 2019).



### 3. Conclusions and recommendations

This paper has attempted to offer viable options for the establishment of a military vanguard of Member States in the short to medium term. Each proposed option has been analysed in terms of its advantages and potential challenges. Based on this critical assessment, the options of enhanced cooperation and treaty reform have been discarded due to their procedural, formal, and temporal constraints, which render them unsuitable for the intended timeframe.

In this context, two avenues have been identified as the most feasible: the approval of a new PESCO project or the creation of an entirely new PESCO framework. The selection of these two options is mainly driven by procedural considerations. In the first case, while the launch of a new PESCO project requires unanimity in the Council, this paper has demonstrated that this requirement is merely an apparent caveat, as unanimity is only needed for project approval and does not require the participation of non-interested Member States. In the second case, only a qualified majority in the Council is required, thus circumventing the unanimity constraint. Consequently, given the expected timeframe for the establishment of a military vanguard, these two options appear to be the most pragmatic.

However, as even the preferred options are not without challenges, the paper makes specific recommendations. Should a new PESCO project be approved, it is recommended that its establishment be accompanied by a review of the enforcement and implementation mechanisms governing PESCO projects. This would prevent Member States' commitments from remaining largely symbolic and would ensure meaningful participation. Conversely, if the creation of a new PESCO framework is pursued, it is recommended to develop an appropriate governance structure that guarantees robust oversight and democratic legitimacy. In both cases, it is strongly recommended to ensure financing through common debt instruments. Given the substantial defence expenditures already incurred by Member States, this paper argues that common debt is the only financing method that can ensure the financial credibility of the project.

If these recommendations are complied with for either of the two options, the establishment of a military vanguard by committed Member States can be regarded as an achievable goal within the short to medium term.

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