

## IN-DEPTH ANALYSIS

# The Lisbon Treaty's provisions on CFSP/CSDP State of implementation

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### ABSTRACT

Since the Treaty of Lisbon entered into force in December 2009, major efforts have been made to implement the new institutional set-up it created: the EU has acquired legal personality, the post of Vice-President of the Commission / High Representative for Foreign Affairs and Security Policy has been created, the European External Action Service has been operationalised, and the EU Delegations around the world have boosted the EU's presence and increased diplomatic and policy outreach. The European Parliament has also acquired a greater role thanks to the Lisbon Treaty, particularly in the fields of foreign policy oversight and budgetary scrutiny. Nevertheless, many provisions of the Lisbon Treaty, designed to provide a boost to foreign, security and defence policies, remain non-implemented owing to a lack of political support stemming from the fears of some EU Member States of the creation of a 'two-speed Europe' and loss of control over these fields in favour of the EU institutions.

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# 1 New institutional setup

## 1.1 EU legal personality

The Treaty of Lisbon gave the European Union legal personality, enabling it to play a greater role in many foreign policy fields.

The Treaty on European Union (TEU), in its Article 47, conferred legal personality on the Union. This enabled it to conclude international agreements and join international organisations. It also did away with the previously existing pillar structure, in order to streamline the structural set-up, strengthen coherence and enhance effectiveness of EU action.

### 1.1.1 International agreements

Having acquired legal personality, the EU was able to strengthen its role in negotiating and concluding international agreements.

Having acquired legal personality through the TEU, the EU was able to enjoy enhanced competences in negotiating and concluding international agreements. Article 216 of the Treaty on the Functioning of the European Union (TFEU) makes a distinction between agreements on matters in which the EU has exclusive competences (thus being able to negotiate alone) and agreements on matters in which the EU shares competences with its Member States (with both the EU and the Member States being involved in the process). The European Parliament must give its consent for most types of international agreement, including all fields where the ordinary legislative procedure applies, as well as association agreements.<sup>1</sup> Due to encouraging progress in the implementation of these new provisions, Parliament has also progressively deepened its level of engagement in monitoring negotiations and implementation of international agreements (for more details on Parliament's role and practices in this field, please refer to section 1.5 of this briefing).

### 1.1.2 Membership in international organisations

While full membership of the EU in international organisations is limited to those policy fields in which it has exclusive competences, following the entry into force of the Treaty of Lisbon its status and influence in the UN received a significant boost.

At the time of writing, full membership of the EU in international organisations remains the exception rather than the rule, with its status in international organisations reflecting both the internal allocation of competences (*vis-à-vis* the EU Member States) and practical arrangements negotiated/obtained between the EU and the international organisation in question. The EU is a full member of international organisations in areas where it has an exclusive competence (for example, in the WTO and in most international fisheries organisations), while in other cases (most notably the UN), following the entry into force of the Lisbon Treaty, it has obtained an enhanced observer status, allowing it to participate more actively in the work of the UN bodies, agencies and programmes, most notably the UN General Assembly (UNGA). The adoption of resolution 65/276 on the modalities of EU participation in the work of the General Assembly on 3

<sup>1</sup> The European Parliament must be consulted in all other cases on international agreements, except those having the CFSP as their sole legal basis.

The EU is also a member of intergovernmental groupings such as the G20.

May 2011 aimed at enabling the EU to enhance its effectiveness by clearly defining the modalities of its participation in the UN and its work. This enhanced observer status in international forums allows the EU institutions to increase their visibility in those forums, help set institutional agendas and more effectively pursue the EU's policy interests. Full membership of the EU in the UN would require an amendment of the UN Charter. The EU is also a full member of the G20, representing both the Union as a whole and those of its Member States which are not G20 members in their own right.

## 1.2 The High Representative for Foreign Affairs and Security Policy

The Treaty of Lisbon created the post of High Representative for Foreign Affairs and Security Policy, which the two incumbents thus far have turned into an active and visible face of the EU's diplomacy.

The rationale for creating the double-hatted post of the High Representative / Vice-President of the European Commission (Article 18 TEU) was to ensure effective leadership on matters relating to the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), and to enhance overall coherence on external action. The first HR/VP, Catherine Ashton, took some significant steps towards fulfilment of the obligations the new function implied, chairing the Foreign Affairs Councils, facilitating the creation of the European External Action Service (EEAS), and actively pursuing a range of diplomatic dossiers (most notably, the Iran nuclear file and the Kosovo/Serbia negotiations), thus acting as the face of the EU's diplomacy abroad. Nevertheless, the former HR / VP has at times been criticised for not being active enough on the CSDP front (not attending Defence Councils in person), and for not liaising with the EP often enough (particularly by Parliament itself).

The tenure of the current HR/VP, Federica Mogherini, has so far been marked by encouraging initial progress on the commitments made by her regarding both the CFSP and the CSDP, including mapping strategic changes in the geopolitical environment of the European Union, laying the foundations for a more effective institutional understanding and response to hybrid threats, implementing the recommendations of the EEAS mid-term review regarding restructuring the service to make it more effective, and strengthening the CSDP by ensuring adequate capabilities and improved linking to other policy and financial instruments. The HR/VP has also taken some concrete steps towards linking the so-called 'nexus topics' (i.e. topics falling under both the external and the internal competences of the Union, including cybersecurity, migration, counter-terrorism and climate change), notably by forging closer inter-institutional cooperation (including within the External Relations/RELEX commissioners' group), and energetically pursuing her role as Commission Vice- President. HR/VP Mogherini has been actively pursuing the key recommendations stemming from the EEAS mid-term review, most recently leading to the further restructuring of the EEAS establishment plan in order to trim the size of the EEAS top management, which has widely been seen as overblown.

## 1.3 The European External Action Service

The EEAS was established following the entry into force of the TEU, launched on 1 December 2010, and envisioned to serve as the diplomatic service of the EU, under the authority of the HR/VP. The key challenge in the early stages of its creation was to develop a cohesive institutional culture (to be forged by staff brought together from parts of the Council and the Commission or delegated from the national capitals). With significant numbers of senior staff, the EEAS has been hampered by the lack of geographic and gender balance among its staff and by a perceived misallocation of human resources and expertise (i.e. not reflecting EU strategic priority areas). Some of these initial problems have now been addressed, catalysed by a mid-term review launched by the former HR/VP, Catherine Ashton.<sup>2</sup>

The European External Action Service was created to support the High Representative in that figure's multitude of foreign policy tasks. Much progress has been achieved to date, as evidenced by the feedback from key stakeholders received during the mid-term review of 2013-2014. There is, though, still room for further improvement on a number of issues.

The EP has been a staunch supporter of the EEAS since its inception. It has actively participated in the 2013-2014 mid-term review, with AFET producing a thematic report on that occasion, under the rapporteurship of Elmar Brok and Roberto Gualtieri, which was adopted by the plenary in April 2013. This report offers a comprehensive set of recommendations on organisational and political aspects of the overall functioning of the service. To date, some progress has been made on the recommendations: both geographic and gender balance have been improved (while discrepancies still remain particularly on the level of senior posts), the quality of cooperation between the EEAS and the Commission has also been improved, and senior-level appointments (e.g. of the heads of EU delegations) are now closely scrutinised by the European Parliament, with the emphasis on the merit of the candidates. What continues to remain problematic is an imbalance between national diplomats and EU officials in some parts of the service (with national diplomats being over-represented in management positions and head of delegation positions). While the cooperation between the EP and the EEAS has been good, some outstanding issues continue to hamper the inter-institutional relationship (e.g. inadequate access to political reporting, particularly in the case of the delegations, cumbersome procedures regarding access to confidential information on CFSP/CSDP matters, etc.).

## 1.4 The EU delegations

The post-Lisbon transformation of the former Commission delegations into EU delegations was accompanied by a large-scale institutional shift, merging once-distinct personnel structures (from the Commission, the Council and the Member States) and altering working methods, reporting

<sup>2</sup> The mid-term review process was launched by HR/VP Ashton in order to receive feedback from the key institutional stakeholders on the initial progress made by the service and the outstanding challenges faced by it.

channels and organisational cultures. While the process has not been friction-free, the new structure has streamlined the organisation of geographic and thematic portfolios. Multiple reporting tracks have, however, been preserved: delegation staff today report to both the EEAS and to the Commission's DG DEVCO, although this impedes the speed and effectiveness of the service. Yet the EU delegations have continued their work and progressively raised their profile despite the Service's organisational difficulties.

Following the entry into force of the Treaty of Lisbon, the former Commission delegations have become the EU Delegations, performing a wide range of foreign policy functions. They are considered by many as a 'success story' of the EEAS and of the Treaty of Lisbon more broadly.

Today, more than 130 EU delegations and offices operate around the world (in nearly every UN member state), with over half of EEAS personnel being deployed to the delegations. After the shift from 'Commission delegations' to 'EU delegations' with the Lisbon Treaty, the delegations were gradually upgraded and entrusted with various new functions, including coordinating, representing and reporting. In some instances, budget cuts in the Member States have meant that Member State diplomats share quarters with the EU delegations. The EU delegations currently coordinate between the Member States' national embassies and speak for the EU as a whole. They are considered by many to be among the EEAS's principal 'success stories', and they received positive feedback across the board in the mid-term review. The EP has benefited from the delegations' post-Lisbon 'upgrade', while remaining aware of the outstanding issues to be resolved.

With the growing profile and visibility of the delegations comes the expectation that they will provide certain direct services to EU citizens, playing a limited, consular-type role. The EP has supported this change and has organised a workshop examining various ways to achieve this, even given the delegations' limited staff and financial resources. Parliament has subsequently raised the issue on various occasions in exchanges with EEAS senior officials<sup>3</sup>. The EP has also supported efforts to create synergies between the EU delegations and EU Member States' diplomatic services, both in terms of practical arrangements (sharing quarters) and in terms of sharing information to avoid duplication. While the delegations' coordination efforts have sometimes been hampered by national sensitivities, the EP has consistently pointed to the importance of the delegations' role in coordinating EU policy on the ground. The EP has been benefiting from the substantial logistical and other support provided by the EU delegations on the occasion of visits of parliamentary committees and EP delegations to third countries.

<sup>3</sup> European Parliament, DG External Policies, Policy Department, 'Workshop Summary: The Role of the European External Action Service in Consular Protection and Services for EU Citizens,' January 2013, [http://www.europarl.europa.eu/RegData/etudes/workshop/join/2013/433808/EX-PO-AFET\\_AT\(2013\)433808\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/workshop/join/2013/433808/EX-PO-AFET_AT(2013)433808_EN.pdf).

## 1.5 The new role of the European Parliament in CFSP/CSDP matters

The European Parliament has been significantly strengthened by the Treaty of Lisbon, including in the field of foreign policy, increasing its role and impact as regards foreign policy scrutiny, input and budgetary powers.

The European Parliament has been seen as a beneficiary of the Treaty of Lisbon, including its provisions related to CFSP/CSDP matters. Since the Treaty's entry into force, the EP has striven to secure an adequate interpretation of the relevant Treaty provisions, prompting the former HR/VP Catherine Ashton to issue, in 2010, a document known as the declaration of political accountability, which enumerates a number of concrete measures, foreseen as catalysers for implementation of the relevant provisions. Article 36 TEU obliges the High Representative to regularly consult Parliament on the principal aspects and choices of the CFSP and to inform Parliament on the evolution of policies, requiring that the EP's views be 'duly taken into consideration'<sup>4</sup>. Parliament holds twice-yearly debates on the state of play of the CFSP and CSDP, on the basis of annual progress reports on the implementation of the two policies, and asks questions and makes recommendations to the Council or the High Representative. The EP's right to be informed and consulted on the CFSP/CSDP has been further strengthened by the above-mentioned declaration of political accountability of 2010, which inter alia provides for the following measures to be implemented:

- Enhancing the status of the 'Joint Consultation Meetings' (JCMs), which allow a designated group of MEPs to meet representatives of the Council's Political and Security Committee (PSC), the EEAS and the Commission in order to discuss planned and ongoing civilian CSDP missions;
- Affirming the right of Parliament's 'special committee' to have access to confidential information related to CFSP and CSDP matters. This right is based on an inter-institutional agreement of 2002;
- Permitting exchanges of views with the Heads of Mission, Heads of Delegation and other senior EU officials during parliamentary committee meetings and hearings;
- Mandating the High Representative to appear before Parliament at least twice a year in order to report on the current state of affairs of the CFSP/CSDP and to answer questions.

In addition to the above-mentioned mechanisms, which have since been implemented, Parliament also exercises its authority through the budgetary procedure. As one half of the EU budgetary authority, Parliament must approve the annual CFSP budget. It has also helped to shape the external financing instruments through a process of trilateral negotiations with the Council and the Commission, and a currently ongoing 'strategic dialogue'.

<sup>4</sup> This provision requires the HR/VP to take into account all such requests and recommendations on the part of the EP, providing structured and justified feedback (in an appropriate form and on an appropriate level) in each case.



The inter-institutional division of labour established in the aftermath of the Treaty of Lisbon has arguably brought more institutional transparency and coherence, particularly by giving Parliament the right (as stipulated in Articles 207 and 218 TFEU) to be properly informed over the entire duration of negotiations on their progress, thereby facilitating the consent procedure (which comes at the end stage, after the negotiations are concluded). To date Parliament has been striving to establish some internal and inter-institutional best practices, so as to facilitate its meaningful involvement in the process. To this end, it has negotiated and signed an inter-institutional framework agreement with the Commission, which formalises modalities for inter-institutional cooperation in such cases. While progress has been made on the path of ensuring Parliament's proper involvement in international agreements, further efforts are needed to enhance and systematise inter-institutional cooperation, drawing on existing best practices. While the degree of implementation of the Lisbon Treaty provisions regarding the powers of Parliament and the obligations of other institutions and structures towards it should be seen in a positive light, there remain a number of issues whose implementation is still pending. One of these is the issue of streamlining the existing procedures on access to classified information on CFSP/CSDP matters, which implies the need to conclude the negotiations on revising the 2002 CFSP inter-institutional agreement with regard to this area. The current HR/VP expressed her commitment to achieving this goal at her confirmation hearing in Parliament. She also promised to improve the system for deputising contacts with Parliament, to facilitate Parliament's role in international agreements, and to help find a suitable arrangement for sharing political reporting with Parliament. In her capacity as Commission Vice-President, Ms Mogherini committed to fully implement the framework agreements between Parliament and the Commission, in order to ensure a proper follow-up to the EP's positions and a timely response to its resolutions and requests (pursuant to Article 225 TEU).

## 2 New procedures and mechanisms

While the Treaty of Lisbon provides for numerous mechanisms with the potential to significantly strengthen the EU's role in foreign policy, as things stand most of them have not been implemented, essentially owing to lack of political will.

Apart from creating a whole new institutional landscape on the CFSP/CSDP front, the Treaty of Lisbon has also introduced a number of potentially significant procedures and mechanisms to streamline decision-making in this field, also giving the EU and its Member States much-needed flexibility. As things stand, the majority of these procedures and mechanisms have not so far been used, as they are considered too politically controversial by some Member States (who view them as potential tools to tilt the power balance between the EU and the Member States too much in favour of the former, or as potentially leading to a 'two-speed Europe').

### 2.1 Extension of QMV in CFSP matters (the 'passerelle clause')

While the Treaty of Lisbon maintained unanimity as a general rule for decision-making in the CFSP framework, there are a few cases in which

qualified majority voting (QMV) can be used. Article 31 TEU provides four exceptions where the Council can act by QMV, namely:

1. 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;
2. when adopting a decision defining a Union action or position on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative;
3. when adopting any decision implementing a decision defining a Union action or position;
4. when appointing a special representative pursuant to Article 33 TEU.

While the Treaty of Lisbon foresaw various cases where qualified majority voting could be extended, the Member States continue to stick to the unanimity rule.

The Treaty also introduced a special bridging clause ('passerelle' clause - Article 31.3 TEU), whereby the European Council may authorise the Council to act by QMV in cases other than those mentioned above. While these provisions have a significant potential to help catalyse CFSP action on sensitive political issues (thus far often enough paralysed by the unanimity requirement), in practice the Council has not used this procedure to switch to QMV. Instead, it has favoured the political consensus reached through unanimity (often resulting in the lowest common denominator). In addition to the exceptions foreseen by Article 31.2 TEU, QMV is also allowed in a limited number of other cases, most notably for the establishment and financing of a start-up fund for military and defence operations (Article 41.3 TEU). The Treaty also provides for QMV to be used in decisions related to the European Defence Agency (EDA), on basis of Article 45.2 TEU, which stipulates that the Council, acting by a qualified majority, adopts decisions related to the Agency's statute, seat and operational rules.

To date, none of the above-mentioned provisions have been used, as the Member States have preferred to maintain the unanimity use in practice, thereby adding the start-up fund to a long list of Lisbon provisions which have not been implemented. Unanimity has also been maintained in all EDA-related decisions so far.

## 2.2 Establishment of a common defence policy

The establishment of a common defence policy, foreseen by Article 42.2 TEU, still seems remote, with achievement of this political objective entailing overcoming a number of obstacles, primarily political in nature. The key impediments to achieving this policy include: the lack of a proper system of command and control of for CSDP military operations (a permanent headquarters is lacking); inflexible financial rules; failure by EU Member States to create a start-up fund to expedite the deployment of CSDP military operations, and their lack of success in revising the Athena mechanism; and the lack of operationalisation of key tools foreseen by the Treaty of Lisbon to boost security and defence including, particularly, the

Despite efforts to boost the security and defence policy through improving the existing crisis management procedures, making financing mechanisms more flexible and boosting defence capabilities in Europe, the establishment of a common defence policy remains a distant prospect.

Permanent Structured Cooperation. On a broader strategy level, a perceived disconnect between the CSDP and other EU policies is frequently mentioned as a serious impediment to the CSDP'S functioning. These factors are further aggravated by the precarious state of the EU defence sector, with uncontrolled defence budget cuts leading to irreversible loss of capabilities in many EU Member States, coupled with the lack of progress in strengthening Europe's technological and industrial base (the abovementioned elements will be further discussed in the following sections of this briefing).

Attainment in full of the comprehensive approach is seen as one of the key prerequisites for the establishment of common defence policy. This would require linking the CSDP to other tools and policies which the EU has at its disposal in a much more effective way than is currently the case (this would include linking to development policy, industrial policy, regional policy, etc.) The two recent encouraging developments on the level of strategy are, on the one hand, the currently ongoing exercise by the HR/VP and the EEAS aimed at revising the EU's global strategy for the CFSP, and, on the other, the discussion of the possibility of drafting a European White Paper on Defence (debated at the informal meeting of EU defence ministers held in Luxembourg on 4 September 2015). This idea, seen as complementary to the global strategy for the CFSP, would encompass a common industrial, technological and capability strategy. It could result in the publication of a series of documents in 2016 describing Europe's interests and opportunities, the risks and threats facing Europe, and possible military objectives and remedies which could address the current weaknesses of CSDP decision-making mechanisms and crisis management instruments, including the failure to make use of potentially helpful procedures and mechanisms foreseen by the Lisbon Treaty (this is discussed in the following sections of this briefing). Progress towards establishing a common defence policy would depend on political commitment to fulfilling the above goals. The HR/VP has already received ample support from a political majority within the European Parliament in her bid to play the role of active facilitator of this task. Equally, this ambitious agenda is being/will be pursued by the current (Luxembourg) and incoming (Netherlands) Presidencies.

## 2.3 Permanent Structured Cooperation (PESCO)

One of the potentially most significant instruments related to security and defence provided by the TEU is the system of Permanent Structured Cooperation (PESCO) proposed in that treaty's Article 46. This system has not been implemented to date owing to the political reservations of some of the EU Member States (who fear it would lead to the creation of a European army and would thus bring on the fragmentation of the EU or a 'two-speed Europe'). It remains the case that Article 46 TEU, combined with the thematic protocol, foresees a mechanism allowing those Member States willing and able to do so to enter into binding commitments in the field of defence, with the European Defence Agency (EDA) playing a key

The non-implementation to date of the proposed system of Permanent Structured Cooperation can be explained by reluctance on the part of some EU Member States, who fear it would lead to a 'two-speed Europe', with the possible creation of a European army.

role in coordinating the participating Member States' efforts.

The implementation of PESCO could lead to a significant strengthening of the CSDP, and more broadly of the European defence system, enabling the most ambitious EU Member States to cooperate more closely using the EU's institutions, instruments and budgets and to deploy faster, more numerous and better equipped troops within the context of the CSDP, but also within other frameworks including the UN, NATO, and the OSCE. On the EDA coordination front, moderate progress has been achieved thus far as regards the pooling and sharing aspects (for more details, see section 2.8 of this briefing). Nevertheless, this has been done without deploying the PESCO mechanism (which, according to some, would require the establishment of more permanent and binding capability generation procedures).<sup>5</sup>

## 2.4 Enhanced cooperation

As in the case of the extension of qualified majority voting with regard to CFSP matters, enhanced cooperation has not yet been used in this field, with the Member States preferring to retain unanimity for foreign policy decisions.

The enhanced cooperation mechanism (Article 20.2 TEU) has been used in areas other than the CFSP since the Treaty of Amsterdam, and is considered a useful way to break a deadlock in EU decision-making. In the TEU, enhanced cooperation is considered a measure of last resort, applicable only if the Council determines that a desirable objective cannot be achieved by the Union as a whole 'within a reasonable period', allowing a minimum of nine Member States to proceed with a decision pertaining to an area of the EU's non-exclusive (i.e. shared) competences. Enhanced cooperation is open to all Member States willing to participate, and in the past few years has been used in a number of non-CFSP-related fields and issues, ranging from patents to divorce law. It has not to date been used for CFSP matters. The TEU specifies that any use of enhanced cooperation should serve to further the objectives of the Union and to protect and serve its interests.

## 2.5 Flexibility mechanism

Article 44 TEU provides yet another potentially useful, but thus far unused flexibility provision, which could be applied in the fields of the CFSP and CSDP. According to this article, the Council may entrust the implementation of CSDP tasks to a group (minimum two) of Member States which are willing and have the necessary capability to undertake such a task.

Article 44 TEU is usually interpreted as an enabling tool for deploying flexible and speedy action in the field of the CFSP and CSDP, conducive to furthering the EU's rapid response capabilities. Drawing on the already existing competences of the EU, it does not entail creating a new category

<sup>5</sup> For more details, see: <http://www.iss.europa.eu/publications/detail/article/permanent-structured-cooperation-in-defence-of-the-obvious/>.

While the flexibility mechanism foreseen under Article 44 TEU has potential to streamline the existing crisis management procedures and expedite mission deployment, it has not been used to date.

of EU operation. Any EU action carried out under Article 44 would still require unanimity among the Member States, but the planning and conduct of the operation would be carried out by the implementing states themselves (under the political control of the Political and Security Committee). Invoking Article 44 would thus provide greater flexibility on the participation front and would be likely to expedite the speed of deployment. There have been some initial discussions within the Council regarding the conditions and modalities of using this provision, but Article 44 has not been used to date.

## 2.6 Mutual assistance and solidarity clause

While the Treaty of Lisbon further develops the concept of mutual assistance in a dedicated clause, there continue to exist various political interpretations as to what this clause actually entails.

Article 42.7 TEU (the mutual assistance clause) stipulates that in cases of an armed aggression on its territory, the attacked EU Member State can invoke this clause to request aid and assistance from the other Member States, which would then be under the obligation to assist 'by all the means in their power', in accordance with the UN Charter and in line with their NATO commitments (particularly Article 5 of the Atlantic Charter). The article also contains a clause stating that the abovementioned provisions shall not prejudice the 'specific character of the security and defence policy of certain Member States' (for example, the neutral status of some Member States). The concept of mutual assistance precedes the Treaty of Lisbon and has its origin in the Western European Union, or more precisely, in the Treaty of Brussels of 1954 (which had a provision for a mutual defence obligation). In the Treaty of Lisbon though, mutual assistance does not only imply mutual defence: it entails both civilian and military assistance from the other EU Member States. It is different from the solidarity clause (which will be discussed below and pertains to cases of both natural and man-made disasters, including terrorism, implying a leading role for the EU and particularly the HR/VP). To date, no EU Member State has ever invoked the mutual assistance clause (equally, no European NATO member has ever invoked NATO's Article 5, although the US did invoke that article following the 9/11 attacks).<sup>6</sup> Nevertheless, intense political and legal debates have taken place in both institutional contexts, seeking to further clarify the scope and conditions for the possible invoking of these provisions, how they could be complementary to each other, and what specific coordination mechanisms should be put in place (and what role, if any, for the internal part of the CSDP structures and mechanisms could be foreseen). The European Parliament has also repeatedly asked for clarification on this issue in its annual reports on the CFSP and CSDP.

Article 222 TFEU (the solidarity clause) states that both the EU and its

<sup>6</sup> The NATO's operation known as 'Active Endeavour' (patrolling the Mediterranean and monitoring shipping to help deter, defend, disrupt and protect against terrorist activity) evolved out of NATO's response to the 9/11 attacks against the US, and has been referred to as 'initially an Article 5 operation.' For more, see [http://www.nato.int/cps/en/natolive/topics\\_7932.htm](http://www.nato.int/cps/en/natolive/topics_7932.htm).

The scope of the solidarity clause has recently been further defined in the Council decision of 24 June 2014, which clarifies the tasks and duties of the EU structures and Member States.

Member States must act jointly in a spirit of solidarity if an EU Member State becomes the object of a terrorist attack or a natural or a man-made disaster. This clause implies the use of both civilian and military structures (including CSDP structures inside the EU that could be used in an internal operational context, among them the crisis management structures within the EEAS, including the military staff, and CSDP support structures such as the EU Satellite Centre in Torrejón (Spain), civil protection and counter-terrorism). Similarly to the mutual assistance clause, it may be triggered by an EU Member State which is the object of a terrorist attack or disaster. While no EU Member State has invoked the solidarity clause to date, some progress was made on paper when the Council, in a decision of 24 June 2014, clarified the arrangements for its implementation. The Council decision stated that it is for the Council to oversee the implementation of the solidarity clause, but at the same time outlined a broad mandate for action at EU level, including a coordinating role for the HR/VP in identifying all relevant EU instruments to be deployed, determining the military capabilities that could be deployed (under the guidance of the military staff), and regularly advising the Council and reporting on implementation progress. The same decision also foresaw a role for the Presidency of the Council and a right of initiative for the Commission in its areas of competence.<sup>7</sup>

## 2.7 Flexibility of financial rules

Article 41 TEU empowers the Council to adopt a decision establishing specific procedures for guaranteeing rapid access to appropriations in the EU budget for the urgent financing of initiatives in the framework of the CFSP/CSDP, and in particular for preparatory activities for all actions mentioned in Articles 42.1 and 43 TEU (essentially, relating to both civilian and military CSDP matters and the expanded Petersberg tasks, enumerated under point 2.5 of this briefing), always after consulting the European Parliament. Should these preparatory actions not to be charged to the EU budget, they should be financed by a start-up fund made up of Member States' contributions. The start-up fund<sup>8</sup> has not been established to date, and the current financial regulation is regarded as quite inflexible regarding CFSP/CSDP expenditure, with lengthy procedures frequently delaying deployments of CSDP missions and operations.

While some attempts have been made by the Member States to find alternative ways to address these problems, allowing for more CSDP expenditure to be covered by the EU budget, they have to date not been able to achieve their goal. The recent attempt to revise the Athena mechanism (through which the Member States cover expenses related to

<sup>7</sup> For more details, see <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0415&from=EN>.

<sup>8</sup> The start-up fund, to be funded by the EU Member States, is envisioned to fund EU military operations, expediting the pace of their deployment.

While some attempts have been made to make the financial rules more flexible following the entry into force of the Lisbon Treaty, these rules are still characterised by slowness and rigidity, thus hampering the overall functioning of the CFSP/CSDP.

CSDP military operations), by expanding the list of items that could be 'fully' or 'partially' funded from the EU budget, has produced only some minor tweaks to the existing lists. The current financial regulation, which lays down the modalities and procedures for disbursement of EU funds for civilian CSDP missions is widely perceived as overly rigid and complex, leading to delays and bottlenecks and hampering the smooth functioning of the missions.<sup>9</sup>

More progress has been made on means of paving the way for the possible future funding of CSDP research from the EU budget, both through the ongoing thematic pilot project and via possible future preparatory action. The latter is considered to be a potential game-changer, and, possibly, an effective tool for promoting CSDP-related research. It is to be launched in 2017 or later<sup>10</sup>, and is expected to promote EU-funded, defence-related research within the multiannual financial framework. In order to identify the priorities, and reflecting the practical arrangements, for future preparatory actions, a high-level group of eminent personalities has been formed- This group is chaired by Elżbieta Bieńkowska, the Commissioner for the Internal Market, Industry, Entrepreneurship and SMEs. It met for the first time on 30 March 2015.<sup>11</sup>

In order to explore possible ways to enhance support for CSDP-related research, the EP has pushed for the inclusion of a thematic pilot project in the 2015 EU budget<sup>12</sup> (in the framework of its involvement in the budgetary procedure). This pilot project is an instrument foreseen by Article 54 of the EU financial regulation, with a maximum duration of two years and to be funded up to a maximum of around EUR 2 million.<sup>13</sup> The pilot project is intended to focus in particular on finding the right governance structure for the future management of joint research projects, and to lay the thematic ground for preparatory action. It was approved by the European Parliament and the European Council in December 2014. This approval means that for the first time, EU funds were transferred to the European Defence Agency in support of research on military requirements.

<sup>9</sup> Parliament has frequently raised this issue. Through both formal and informal communication channels with the institutions and structures implicated in the process (including the Commission, the Council and the EEAS).

<sup>10</sup> <https://www.eda.europa.eu/info-hub/news/2014/11/25/first-eda-commission-workshop-on-the-preparatory-action-for-csdp-related-research>

<sup>11</sup> 'Commissioner Bieńkowska launches high-level group on defence research', 30 March 2015.

<sup>12</sup> The Committee on Budgets approved the budget for 2016 of the pilot project for CSDP research on 29 September 2015.

<sup>13</sup> The exact figure is EUR 2 047 702: see the adopted budget table, retrievable at <http://eur-lex.europa.eu/budget/data/LBL/2015/en/SEC03.pdf>.

## 2.8 Definition of a common European capabilities and armament policy

While some progress has been made on developing joint European defence capabilities under the umbrella of the European Defence Agency, most provisions and initiatives in line with the Treaty of Lisbon for developing European capabilities and armament policy continue to remain non-implemented.

While the common European capabilities and armament policy (provided for by Article 42.3 TEU) has not materialised to date, there are some positive elements which should be highlighted, including the track record of the joint project carried under the umbrella of the European Defence Agency (EDA). Since its inception, the EDA has been active in implementing a number of joint pooling and sharing projects (despite its limited budget and political constraints), continued to oversee implementation of the pooling and sharing projects, and provided policy guidance with regard to issues such as the future framework for transparency and information sharing in defence planning. The EDA currently conducts 59 pooling and sharing projects which were chosen following the Ghent process in 2011. Since the European Council of December 2013, the EDA has been supporting four flagship programmes endorsed by the Heads of State, with the participation of all Member States. These include: Air-to-Air Refuelling<sup>14</sup>, Remotely Piloted Aircraft Systems<sup>15</sup>, Governmental Satellite Communication,<sup>16</sup> and Cyber Defence<sup>17</sup>.

Since December 2013, the main policy initiative taken by the EDA has been to review the [Capability Development Plan \(CDP\)](#) adopted in 2008. This review aimed to examine future security scenarios and make recommendations regarding the capabilities of the national armies of the Member States, with an updated set of priority actions and domains<sup>18</sup>. This policy framework aims to provide a coherent basis for defence cooperation in Europe, through in-service support, disposal and decommissioning and complementing the [Code of Conduct on Pooling and Sharing](#), whose main objective is to mainstream cooperation into national defence planning. Overall though, the level of cooperation and enthusiasm among the Member States on these issues continues to be intermittent at best, with the level of mutual trust still being relatively low, despite the common recognition of the key capabilities currently missing and worth investing in (including cybersecurity, drones, intelligence surveillance technology, etc.)

Similarly, only very limited progress has been achieved in the field of strengthening Europe's defence technological and industrial base (EDTIB). Full and correct implementation and application of the two defence directives of 2009<sup>19</sup> is still to be achieved. The aim here would be to facilitate opening of the market for subcontractors from all over Europe,

<sup>14</sup> <https://www.eda.europa.eu/our-work/projects-search/air-to-air-refueling>

<sup>15</sup> <http://www.eda.europa.eu/our-work/projects-search/remotely-piloted-aircraft-systems---rpas>

<sup>16</sup> [http://www.eda.europa.eu/our-work/projects-search/governmental-satellite-communications-\(govsatcom\)](http://www.eda.europa.eu/our-work/projects-search/governmental-satellite-communications-(govsatcom))

<sup>17</sup> [https://www.eda.europa.eu/docs/default-source/eda-factsheets/2015-02-10-factsheet\\_cyber-defence](https://www.eda.europa.eu/docs/default-source/eda-factsheets/2015-02-10-factsheet_cyber-defence)

<sup>18</sup> [https://www.eda.europa.eu/docs/default-source/eda-magazine/edmissue7\\_web](https://www.eda.europa.eu/docs/default-source/eda-magazine/edmissue7_web)



The post-Lisbon efforts to strengthen Europe's defence technological and industrial base have produced only limited results.

thus ensuring economies of scale and allowing a better circulation of defence products. The role of SMEs in the defence supply chain still needs to be strengthened: the Commission has recently undertaken (following the June 2015 summit) to investigate the possibilities for additional measures to open up supply chains to SMEs from all Member States. A roadmap for a comprehensive EU-wide security of supply regime is still to be drawn up by the Commission, in conjunction with the HR/VP and the EDA. On this front, only limited progress has been made, with no EU-wide regime for security of supply existing to date and work on government-to-government sales and the asset control regime not having advanced as planned since December 2013.

### 3 Possible future orientations and ways forward

The progress of implementation of Lisbon Treaty provisions on CFSP/CSDP has been uneven.

To date, the progress of implementation of the Lisbon Treaty provisions on CFSP/CSDP can only be called uneven. Arguably, more progress has been done on the CFSP than on the CSDP, as CFSP has been energised by the creation of the post of High Representative for Foreign Affairs and Security Policy within the European External Action Service and by the EU Delegations worldwide. The European Parliament has also made the most of the Lisbon Treaty's provisions and has cemented its role in the field of CFSP/CSDP scrutiny and budgetary oversight. Parliament has become an important partner for the EEAS, creating new channels of collaboration foreseen in the 2010 Declaration of Political Accountability. While there is always room for progress on a number of issues, best practices in inter-institutional cooperation (in fields such as monitoring negotiations and implementation of international agreements) demonstrate that the European Parliament's stature has been significantly enhanced through Lisbon Treaty provisions.

While some progress has been achieved on the CFSP, the development of the CSDP has lagged behind, largely due to a lack of political will among EU Member States.

For the CSDP, on the other hand, progress has been limited at best. Most of the key Lisbon Treaty provisions allowing for flexibility and enhanced cooperation amongst willing and able EU Member States have not been used. (These provisions include Permanent Structured Cooperation, the extension of qualified majority voting, enhanced cooperation and flexibility mechanisms.) This can be largely explained by the lack of political will amongst some EU Member States, who fear relinquishing control over this policy area and/or creating a 'two-speed Europe' (in which they are among the slower). Despite various attempts at reform, financing rules (especially those related to the military operations) remain rigid and non-conducive to an effective and speedy deployment of troops abroad.

While the political apprehensions of some of the Member States are unlikely to fade away soon, the strategy of creating budgetary incentives to catalyse greater inter-governmental cooperation is worth pursuing.

Some argue that this political problem, resulting in a lack of unity on key policy issues amongst the EU Member States, is unlikely to be overcome in the years to come. However, the deteriorating situation in the EU's neighbourhoods and the US's desire to reduce its security and defence presence and engagement in Europe, coupled with the lingering effects of the financial crisis (defence budget cuts, lack of investment in core capabilities, etc.) in the EU have led to political efforts to revitalise the

common security and defence agenda.

Current efforts to develop EU strategies can also play a helpful role in this regard.

It remains to be seen whether the EU's current approach – which provides financial and logistical incentives for enhanced thematic cooperation amongst Member States in fields such as EU budget support for CSDP research, particularly on dual-use projects – will result in better cooperation among EU Member States. On-going strategic developments, including drafting a global strategy on CFSP, and the more distant prospect of developing an EU White Book on Defence could be seen as welcome steps in the right direction. They may create more unity amongst EU Member States by helping policy goals to converge and a common strategic culture to develop. Nevertheless, strategy alone will not suffice if it is not backed with concrete plans on how to convert it into action.