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Retrospective and prospects of the legal framework for European Integration in security and defence

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■ **Abstract.** The study addressed the historical background and development of the regulatory framework for European defence policy, starting with the Treaty of Brussels in 1948, and the establishment of the Western Union and the Western European Union. Based on the analysis of such documents as the Maastricht, Amsterdam and Nice Treaties, the mechanisms of defence cooperation within the EU and its main goals, primarily the strengthening of strategic autonomy, were determined. The study also analysed the Berlin-Plus agreement, which established mechanisms for cooperation between the EU and NATO, while promoting the development of independent European defence and security capabilities. The key role of the Lisbon Treaty in formulating the foundations of the EU's Common Security and Defence Policy was identified. The importance and prospects of implementing Article 42(7) of the Treaty, which enshrines the principle of mutual assistance of member states in the event of an armed attack, as well as permanent structured cooperation for deeper defence integration, was highlighted. These provisions increase the EU's strategic autonomy and consolidate European defence cooperation, defining it as an important component of the EU's Common Foreign and Security Policy. The relevance of further improving the EU legal framework in response to new threats was determined, in particular, due to Russian aggression in Ukraine, as well as growing tensions in other regions. The need to strengthen legal mechanisms that will ensure more effective decision-making processes within the EU CSDP and strengthen security cooperation among member states was emphasised. The research relevance is determined by the possibility of using its results as a theoretical basis for the development of the EU's common defence policy and further integration in the security sector in the context of current geopolitical challenges

■ **Keywords:** Western European Union; Brussels Treaty; Lisbon Treaty; common security and defence policy; European defence integration

■ Introduction

Current trends in international relations are pushing the European Union (EU) towards greater integration in the security and defence sector. Firstly, the greatest threat is the expansionist policy of Russia, particularly its military aggression against Ukraine, which has been going on for more than 10 years. In addition, the activities of terrorist groups with centres both in Europe and in neighbouring regions remain a

significant security challenge. Several factors, including the re-election of US President D. Trump, increase the uncertainty of the future security architecture in Europe, prompting EU countries to develop a common vision of their defence and strengthen cooperation in this area to achieve the EU's strategic autonomy. This issue is equally important for Ukraine, whose foreign policy priority is to become a member

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of the EU, which is enshrined in the Constitution¹. At the same time, the central task remains the restoration and protection of state sovereignty and territorial integrity in the face of Russian aggression, which has been ongoing since 2014. It is necessary to assess how Ukrainian membership in the EU may affect its security and defence capabilities to what extent it will enhance its security and what prospects it will open for the development of the national military-industrial complex. Thus, it is necessary to thoroughly study European integration in the security and defence sector, the potential inherent in its regulatory mechanisms, and the existing challenges on this path.

To determine the current state of European defence integration, it is necessary to analyse the essence of key legal acts in this area, their interconnectedness, strengths and weaknesses, the evolution of their norms, and implementation, as well as problems and obstacles to implementation. The study of the achievements and problems of the legal framework is key to forecasting further directions of development of European integration in the field of security and defence, in the context of new geopolitical challenges.

The legal framework for European defence integration was the subject of a study by S. Keukeleire & T. Delreux (2022), which addressed the EU's foreign policy, including its defence and security dimensions. The researchers emphasise the importance of the Berlin-Plus agreement², the PESCO initiative and Article 42(7) of the Treaty of Lisbon³, which are key elements in the development of the EU's strategic autonomy. S. Clapp (2022) analysed the implementation of the Strategic Compass, a document that defines the EU's priorities in the field of security and defence. In particular, the author emphasised the importance of Article 42(7) of the Lisbon Treaty and the PESCO mechanisms, stressing their potential to enhance the EU's strategic autonomy. E. Perot (2019) investigated the implementation of the idea of collective defence in the normative documents of the European and Euro-Atlantic community. The author compared the relevant provisions of the Washington Treaty of 1949⁴ and the Lisbon Treaty of 2007⁵. The main ideas of a study by J.J. Andersson (2023) concerned joint defence procurement within the EU. The paper assesses the role of the European Defence Agency in coordinating joint projects. V. Szép *et al.* (2021) investigated the legal framework and governance structures for EU defence

activities. The study analysed the key provisions of the Treaty of Lisbon⁶ that governs the EU's Common Security and Defence Policy (CSDP), with a particular focus on Articles 42(7) (mutual defence) and 46 (structured cooperation – PESCO). N. Koval (2018) explored the role of PESCO in strengthening the EU's security capabilities and analysed the prospects for Ukraine within the framework of cooperation with the EU. In particular, the study analysed how PfP can support EU partners, such as Ukraine, in their efforts to strengthen defence capabilities in the context of current challenges, including Russian aggression. A study by M. Stetsiuk (2023) analysed the historical development of European defence integration and the current challenges facing the EU in this area. The author examined the role of the Western European Union (WEU) as the first defence integration mechanism in Europe.

The study aimed to investigate the evolution of the legal framework for European integration in the field of security and defence. To this end, the following tasks were implemented:

1) to analyse the key documents of the Western Union/Western European Union adopted in the late 1940s and early 1990s and identify their impact on further European integration in the field of security and defence;

2) to describe the dynamics of the development of the EU legal framework in the field of security and defence in the late 1980s – 2000s;

3) to identify the achievements and shortcomings of the legal framework of the Common European Security and Defence Policy/CSDP.

■ Materials and Methods

The study was based on the theory of functionalism, which is the study of gradual integration in a particular area through the creation of joint institutions and mechanisms. In particular, the evolution of cooperation in the security sector was traced through the innovations introduced in interstate treaties of the mid-twentieth and first quarter of the twenty-first century. A systemic approach was used to analyse European defence integration as a single system consisting of individual elements and links between them. This was used to comprehensively study the phenomenon, regardless of institutional affiliation (Western Union, WEU, EEC, EU, NATO). The historical method identified key events in the development of European

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-бп?lang=en#Text>.

² EU-NATO Declaration on ESDP. (2002, December). Retrieved from <https://www.nato.int/docu/pr/2002/p02-142e.htm>.

³ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

⁴ North Atlantic Treaty. (1949, April). Retrieved from https://www.nato.int/cps/en/natohq/official_texts_17120.htm.

⁵ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

⁶ *Ibidem*, 2008.

defence integration. The historical retrospective provided a context for understanding the current state of the EU's CSDP. The comparative method was used to identify the advantages and disadvantages of European defence integration compared to Euro-Atlantic integration.

The main source base included several legal documents: The Brussels Treaty¹, Single European Act², Treaty on European Union³, Petersberg Declaration⁴, Treaty of Amsterdam⁵, Franco-British St. Malo Declaration⁶, Cologne European Council Declaration⁷ and Helsinki European Council Declaration⁸, Berlin Plus Agreement⁹, Treaty of Lisbon¹⁰, as well as the Constitution of Ukraine¹¹. The study of the legal documents used in the research described the legal framework, mechanisms and directions of development of European defence integration in greater detail. Additional information was obtained from the official web resources of the EU institutions. Analytical reports and articles by the EU High Representative were used (EU External Action & Borrell, 2021; EU External Action, 2024), as well as materials from periodicals (Times of Malta, 2017).

■ Results and Discussion

European security and defence integration dates to the adoption of the Brussels Treaty¹². In 1948, five Western European countries (the United Kingdom, France, Belgium, the Netherlands and Luxembourg) formed the Western Union as an institution of collective defence in the event of either a threat of aggression from the Soviet Union or revanchist forces coming to power in the former Axis states. The first option was, of course, more plausible in the realities of the beginning of the Cold War. In addition to provisions relating to political and cultural cooperation, the Brussels Treaty contained a clear commitment to the collective defence of the signatory states: "If

one of the signatory states is the object of an armed attack in Europe, the other signatory states will provide the attacked party with all military and other assistance and support within their power".

In 1954, Italy and the Federal Republic of Germany joined the Modified Brussels Treaty¹³, which retained the Article on collective defence. Since then, the Western European Union (WEU) was formed based on the Western Union, which in theory was the first security and defence integration association to include most of the leading Western European countries. In practice, however, the WEU was "in the shadow" of a more powerful defence structure – the North Atlantic Treaty Organisation (NATO), which included not only the signatories to the Brussels Treaty but also the United States and Canada. Therefore, for almost the entire period of its existence, the WEU has not become a fully functioning collective security organisation and has not formed its military structure (Mitriayeva, 2008). Periodic attempts to intensify activities within the WEU were unsuccessful, although the Brussels Treaty remained in force.

At the turn of the 1980s and 1990s, the issue of European defence integration became relevant again. J. Howorth (2020) identifies three main reasons for this:

- 1) after the end of the Cold War, Europe ceased to be the centre of American foreign policy interests;
- 2) Europe has gradually emerged as a global player capable of implementing its security policy;
- 3) the security situation around the united Europe (conflicts in the post-Soviet space and the former Yugoslavia) has seriously deteriorated.

Therefore, an attempt was made to intensify the activities of the Alliance based on the principle of "autonomy" of European forces from US troops, if necessary. A key step in this direction was the agreement between the WEU states concluded in 1992,

¹ The Brussels Treaty. (1948, March). Retrieved from https://www.cvce.eu/en/obj/the_brussels_treaty_17_march_1948-en-3467de5e-9802-4b65-8076-778bc7d164d3.html.

² Single European Act. (1987, February). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11986U/TXT>.

³ Treaty on European Union. (1992, February). Retrieved from https://www.cvce.eu/content/publication/2010/5/3/e92737d6-7557-4ea1-9ca5-123368a7fb88/publishable_en.pdf.

⁴ Petersberg Declaration Made by the WEU Council of Ministers. (1992, June). Retrieved from https://www.cvce.eu/en/obj/petersberg_declaration_made_by_the_weu_council_of_ministers_bonn_19_june_1992-en-16938094-bb79-41ff-951c-f6c7aae8a97a.html.

⁵ Treaty of Amsterdam. (1997, October). Retrieved from <https://treaties.fcd.o.gov.uk/data/Library2/pdf/1999-TS0052.pdf>.

⁶ Franco-British St. Malo Declaration. (1998, December). Retrieved from https://www.cvce.eu/content/publication/2008/3/31/f3cd16fb-fc37-4d52-936f-c8e9bc80f24f/publishable_en.pdf.

⁷ Helsinki European Council. (1999, December). Retrieved from https://www.europarl.europa.eu/summits/hell1_en.htm#b.

⁸ Cologne European Council Declaration. (1999, June). Retrieved from https://www.cvce.eu/content/publication/2003/6/6/ee393bf3-d96f-46b8-8897-15546a0e1c0d/publishable_en.pdf;

⁹ EU-NATO Declaration on ESDP. (2002, December). Retrieved from <https://www.nato.int/docu/pr/2002/p02-142e.htm>.

¹⁰ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

¹¹ Constitution of Ukraine (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254κ/96-bp?lang=en#Text>.

¹² Brussels Treaty. (1948, March). Retrieved from https://www.cvce.eu/en/obj/the_brussels_treaty_17_march_1948-en-3467de5e-9802-4b65-8076-778bc7d164d3.html.

¹³ Modified Brussels Treaty. (1954, October). Retrieved from https://www.cvce.eu/en/obj/modified_brussels_treaty_paris_23_october_1954-en-7d182408-0ff6-432e-b793-0d1065ebe695.html#:~:text=The%20Brussels%20Treaty%20of%201954,accede%20to%20the%20modified%20Treaty.

called the Petersberg Tasks¹. The document stated that, independently of NATO, military units of the WEU member states acting under the direction of the WEU may be used for humanitarian and rescue tasks, peacekeeping tasks, and tasks of combat forces in crisis management, including peacekeeping².

Based on the agreement, several peacekeeping operations were conducted under the auspices of the WEU during the Balkan conflicts of the 1990s, in Mostar (Bosnia and Herzegovina) and Albania (Pagani, 1998). To support the functioning of the WEU, the Eurocorps was established in Strasbourg, which was joined by representatives of five countries (France, Germany, Belgium, the Netherlands, and Luxembourg) in 1992-1996. In addition, the British-Dutch and Spanish-Italian amphibious forces, the Institute for Security Studies, and the satellite and situation centres were launched under the auspices of the EU (Turchenko, 2015). However, these operations were very limited in nature, involving mainly police rather than military forces, and therefore could not fully fulfil the task of establishing peace in the region.

Even this limited autonomous activity of the WEU quickly lost its relevance. Moreover, the issue of the expediency of the organisation's existence was discussed. European security and defence cooperation intensified in the second half of the 1980s and early 1990s within the framework of a completely different integration track. At that time, European political cooperation began to emerge based on economic integration structures (the European Coal and Steel Community, the European Economic Community, and Euratom), culminating in the creation of the European Union. Security issues became part of this political cooperation. For the first time, they were officially enshrined in the Single European Act of 1987³. The document confirmed the readiness of member states to "coordinate more closely their positions on the political and economic aspects of security". The military aspect was still not mentioned in the document.

In five years, political, economic and military aspects of security will become part of European political integration. The basis for this was established in the Maastricht Treaty of 1992⁴, which proclaimed the creation of the European Union. Article J.4 of this document stated: "The common foreign and security policy shall include all matters relating to the security of the Union, including the possible establishment of a common defence policy which may eventually lead to a common defence". The Maastricht Treaty estab-

lished a different definition of the terms "common defence policy" and "common defence". Common defence policy was defined as the first step towards common defence. The Treaty did not contain clear commitments in defence integration. It envisaged the formation of a common defence policy only in an indefinite perspective, as internal contradictions between EU states prevented more specific formulations. As for the issue of common defence, it was described vaguely.

One of the most important was the issue of combining European defence with existing NATO commitments. In addition, Europeans lacked the modern defence technologies available in the United States in several key areas, including intelligence, unmanned systems, space-based capabilities, integrated air and missile defence, and military transport aviation (Grand, 2024). Europe's capabilities were also insufficient to protect its interests outside the continent independently to participate fully in preventing threats such as the proliferation of weapons of mass destruction or in addressing issues such as security in the Middle East and the Persian Gulf.

A striking example of the inability of European countries to conduct large-scale military operations independently was the intervention in Libya in 2011, initiated by France and the United Kingdom. This operation demonstrated that European countries lacked capabilities in the areas of military intelligence and surveillance, smart munitions, transportation, and aerial refuelling. In many cases, it was only the US capabilities that saved the operation from potential failure (Keukeleire & Delreux, 2022). Therefore, European defence integration was impossible until the issue of its compatibility with NATO was resolved. Therefore, European defence integration has long been opposed by countries such as the United Kingdom and Denmark, which have traditionally been the most cooperative with NATO.

The other two additional protocols to the Maastricht Treaty⁵, adopted at the request of the United Kingdom and the Netherlands, stated that the European Union's policy should not interfere with the national defence policies of its member states and should not contradict NATO's policy. The idea of integrating the Western European Union into the future EU was also blocked, even though the Maastricht Treaty contained a provision stating that the WEU was "an integral part of the development of the Union". However, the implementation of this provision

¹ Petersberg Declaration Made by the WEU Council of Ministers. (1992, June). Retrieved from https://www.cvce.eu/en/obj/petersberg_declaration_made_by_the_weu_council_of_ministers_bonn_19_june_1992-en-16938094-bb79-41ff-951c-f6c7aae8a97a.html.

² Ibidem, 1992.

³ Single European Act. (1987, February). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11986U/TXT>.

⁴ Treaty on European Union. (1992, February). Retrieved from https://www.cvce.eu/content/publication/2010/5/3/e92737d6-7557-4ea1-9ca5-123368a7fb88/publishable_en.pdf.

⁵ Ibidem, 1992.

was blocked by the UK for a long time. Therefore, during the 1990s, European operations were conducted within the framework of the WEU, not the EU.

In the late 1990s, the discussion of European defence integration started to transition to the level of practical implementation. On the one hand, the Europeans were pushed to do so by the growing and escalating Kosovo crisis. On the other hand, the key obstacle in this process, namely the critical position of the United Kingdom, has disappeared. The British government of T. Blair, who assumed power in May 1997, demonstrated a much greater commitment to deepening European integration. The newly appointed British Foreign Secretary R. Cook announced that relations with the EU should be developed “in a constructive spirit of partnership, not in a barren spirit of opposition” (Mölder, 2018). Due to the change in the British government’s position, in June 1997, the European Council summit adopted the Amsterdam Treaty¹, which specified the future directions of European defence integration. As envisaged, the European Council would have the right to decide on the establishment of a common defence policy and even a common defence in the future.

During the development and negotiation of the treaty, debates on how the activities of the WEU and the EU’s common defence policy would relate to each other arose. Three options were considered: to keep the WEU separate from the EU without any significant changes in their relations, to gradually merge the two organisations, or to include some of the WEU’s powers in the Amsterdam Treaty. In the end, the third option was chosen as the most acceptable to all parties (Pagani, 1998).

Thus, the Amsterdam Treaty² Recorded an important decision in the discussions on the future of the WEU. A decision was made to move away from activating the WEU as a separate institution: the Treaty provided for the possibility of its integration into the EU, subject to a separate decision of the European Council. Moreover, the Amsterdam Treaty incorporated the provisions of the WEU’s Petersberg tasks³. It stated that the common defence policy in the treaty implied the joint implementation of humanitarian, rescue and peacekeeping tasks, as well as combat force tasks for crisis management. At the same time, the Amsterdam Treaty provided for an exception for one of the EU member states – Denmark, whose

government and population were marked by considerable Euroscepticism at the time. A separate protocol to the Amsterdam Treaty⁴ excluded Denmark from European defence integration, in accordance with its own wishes. “Denmark shall not participate in the formulation and implementation of decisions and actions of the Union relating to defence, but shall not prevent the development of closer cooperation between the Member States in this field”, the additional protocol stated.

After the signing of the Amsterdam Treaty, the development of a common defence policy accelerated. The key principles of defence integration were enshrined in the Saint-Malo Declaration⁵, adopted in December 1998 during a meeting between French President Jacques Chirac and British Prime Minister Tony Blair. The declaration stated that the EU “should have the capacity for autonomous action, backed by appropriate military capabilities, decision-making mechanisms for their use and readiness to respond to international crises”.

The idea of the EU’s “strategic autonomy”, as enshrined in the Saint-Malo Declaration⁶, has become the basis for the further development of European defence integration. On the one hand, this does not mean complete independence from the support of NATO allies, especially the United States – transatlantic ties remain fundamental to European security and there is no powerful political force in the EU that would deny this. On the other hand, the idea of “strategic autonomy” includes the ability to act independently in the security sphere when American involvement is not needed or impossible for some reason.

Negotiations with the United States began on the relationship between European defence projects and NATO. In particular, in 1998, just a few days after the Saint-Malo Declaration, US Secretary of State Madeleine Albright announced that the US supported European defence integration if it met several important principles: the continuity of transatlantic ties, no duplication of EU and NATO structures, and no discrimination against non-EU NATO members, such as the US, Canada, and Turkey (Vladu, 2016).

Following these successful steps, the issue of European defence integration was placed on the European agenda. The Amsterdam Treaty⁷ entered into force in 1999 after the ratification process, so the

¹ Treaty of Amsterdam. (1997, October). Retrieved from <https://treaties.fcdo.gov.uk/data/Library2/pdf/1999-TS0052.pdf>.

² Ibidem, 1997.

³ Petersberg Declaration Made by the WEU Council of Ministers (1992, June). Retrieved from https://www.cvce.eu/en/obj/petersberg_declaration_made_by_the_weu_council_of_ministers_bonn_19_june_1992-en-16938094-bb79-41ff-951c-f6c7aae8a97a.html.

⁴ Treaty of Amsterdam. (1997, October). Retrieved from <https://treaties.fcdo.gov.uk/data/Library2/pdf/1999-TS0052.pdf>.

⁵ Franco-British St. Malo Declaration. (1998, December). Retrieved from https://www.cvce.eu/content/publication/2008/3/31/f3cd16fb-fc37-4d52-936f-c8e9bc80f24f/publishable_en.pdf.

⁶ Ibidem, 1998.

⁷ Treaty of Amsterdam. (1997, October). Retrieved from <https://treaties.fcdo.gov.uk/data/Library2/pdf/1999-TS0052.pdf>.

way to defence integration was open. The EU states decided not to delay further steps and announced the launch of a common defence policy in the same year.

Based on the Saint-Malo Declaration¹, the Cologne Declaration² was adopted at the 1999 European Council Summit, which defined the main parameters of integration processes in the security and defence sector. According to the Declaration, a common European Security and Defence Policy (CSDP) was announced as part of the Common Foreign and Security Policy (CFSP). The Declaration declared that the Petersberg Tasks³ should now be carried out within the EU, not the WEU, and the purpose of the WEU would be negated. Subsequently, the WEU institutions were gradually integrated into the EU. The EU Institute for Security Studies (Paris) and the EU Satellite Centre (near Madrid) were transferred to the EU. In 2011, WEU finally ceased to exist. In addition to the conditions set out in the Amsterdam Treaty, the Cologne Declaration also paid important attention to strengthening cooperation between member states in the defence sector, in particular in the areas of intelligence, strategic transport, command and control, and harmonisation of planning. It also envisaged strengthening military-industrial cooperation, in particular concerning arms procurement.

At the end of 1999, the Cologne Declaration⁴ was supplemented by the Helsinki Declaration⁵, which defined the key goals of the CSDP and tasks for the coming years. The EU was to acquire independence in decision-making and military operations under its auspices. The goal was even proclaimed – by 2003, to develop a military force of 50-60,000 soldiers that could be deployed to a crisis area within 60 days and stay there for at least 1 year. This ambitious task was not fulfilled, but other decisions were implemented, including the creation of bodies responsible for security and defence policy. The mechanism for forming contingents of the armed forces was determined. It was emphasised that the decision to send armed forces to participate in the operation is taken by the EU member state independently. The declaration also declared that the EU's security and defence bodies should not duplicate NATO structures.

An important clarification was made in the Treaty of Nice in 2001⁶, which declared the CSDP part of the Common Foreign and Security Policy (CFSP).

Thus, the CSDP was directly subordinated to the European Council, which is an intergovernmental rather than a supranational institution. The role of the supranational institutions – the European Parliament and the European Commission – in defining the CSDP was insignificant. This was intended to allay the fears of certain member states that the EU was seeking to limit their sovereignty in such a sensitive area as national security and defence.

In 2002, relations between the EU and NATO in the field of security and defence were normalised. Representatives of the two international organisations signed a series of documents called the Berlin Plus package. The basis of this package was the EU-NATO Declaration⁷ on European Security and Defence Policy. The document confirmed that NATO remained the basis for the collective security of its members, while NATO committed itself to supporting the European Union, in particular by providing access to planning. It was announced that European countries that were members of NATO, but not the EU, would be fully involved in the CSDP. This meant recognising NATO as the “first among equals” among European security structures (Pieper & Lak, 2019). As noted by S. Keukeleire & T. Delreux (2022), “Berlin Plus was both pragmatic (Europeans did not have the basic equipment and logistics needed for high-intensity military operations on their own) and symbolic (it institutionalised what is essential for many member states and the United States - the relationship between NATO and EU institutions)”.

There are many positive examples of EU-NATO cooperation in the defence sector. For instance, for a long time, an important problem for the armed forces of EU member states was the lack of a fleet of aerial refuelling aircraft. This caused regular problems during the operation in Libya in 2011 (Quintana *et al.*, 2014). Therefore, in 2012, the European Defence Agency initiated the construction of such refuelling aircraft for EU states. Since there were no joint development and procurement mechanisms within the EU at that time, the project was implemented under the auspices of the NATO Support and Procurement Agency. The programme has been successfully implemented: Airbus has built nine refuelling aircraft, and the tenth aircraft is being completed (MMF, 2020; Andersson, 2023).

¹ Franco-British St. Malo Declaration. (1998, December). Retrieved from https://www.cvce.eu/content/publication/2008/3/31/f3cd16fb-fc37-4d52-936f-c8e9bc80f24f/publishable_en.pdf.

² Cologne European Council Declaration. (1999, June). Retrieved from https://www.cvce.eu/content/publication/2003/6/6/ee393bf3-d96f-46b8-8897-15546a0e1c0d/publishable_en.pdf.

³ Petersberg Declaration Made by the WEU Council of Ministers. (1992, June). Retrieved from https://www.cvce.eu/en/obj/petersberg-declaration_made_by_the_weu_council_of_ministers_bonn_19_june_1992-en-16938094-bb79-41ff-951c-f6c7aae8a97a.html.

⁴ Cologne European Council Declaration. (1999, June). Retrieved from https://www.cvce.eu/content/publication/2003/6/6/ee393bf3-d96f-46b8-8897-15546a0e1c0d/publishable_en.pdf.

⁵ Helsinki European Council. (1999, December). Retrieved from https://www.europarl.europa.eu/summits/hel1_en.htm#b.

⁶ Treaty of Nice. (2001, March). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12001C/TXT>.

⁷ EU-NATO Declaration on ESDP. (2002, December). Retrieved from <https://www.nato.int/docu/pr/2002/p02-142e.htm>.

The legal framework for European integration in the security and defence sector was further developed by the Lisbon Treaty¹ (signed in 2007, entered into force in 2009), whose key objective was to unify and reform EU legislation to make European policies and institutions more effective. As the Lisbon Treaty is currently in force, it requires special attention and analysis. Compared to the previous treaties, the Treaty contained a much larger set of provisions related to security and defence integration. These provisions were, on the one hand, more specific and, on the other hand, more ambitious and focused on deeper integration in the future. First of all, the changes affected the name of the policy itself. The Common European Security and Defence Policy (CESDP) was renamed the Common Security and Defence Policy of the European Union (CSDP).

The Lisbon Treaty clarified the institutional nature of the CSDP, as well as the decision-making and implementation procedures within the policy. The EU CSDP was finally integrated into the architecture of the EU's Common Foreign and Security Policy (CFSP) as an integral part of it, as stated in Article 42(1)². The EU High Representative was designated responsible for the implementation of both the CFSP in general and the CSDP in particular. The European Council can take decisions within the framework of the CSDP by consensus, for example, to initiate peacekeeping operations, on the initiative of the High Representative or a Member State.

The Lisbon Treaty retained the key provisions of the WEU's Petersberg Tasks³, while significantly expanding their content. In particular, it states: "The Alliance may use civilian and military means, including joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peacekeeping tasks, and combat force tasks for crisis management, including peacekeeping and post-conflict stabilisation. All of these tasks can contribute to the fight against terrorism, including by supporting third countries in the fight against terrorism on their territory".

However, the treaty extends beyond the previous documents by including several provisions on additional important areas of defence integration. Some of them were already implemented in practice, such as the activities of the European Defence Agency, established in 2004 to better coordinate member states

in the development of national armed forces and capabilities. The Lisbon Treaty⁴ Contains an extensive Article 42.3 on this issue: "Member States undertake to progressively improve their military capabilities. The Defence Research, Development, Procurement and Armaments Agency (hereinafter referred to as the European Defence Agency) shall identify operational requirements, promote measures to meet those requirements, contribute to the identification and... implementation of any measures necessary to strengthen the industrial and technological base of the defence sector, participate in the definition of European capabilities and armaments policy and assist the Council in assessing the improvement of military capabilities". The provision in EU legislation on the European Defence Agency, headed by the EU High Representative, has strengthened the role of the supranational component in European defence integration and contributed to the "Brusselsisation" of this process (Maurer & Wright, 2021).

Many of the provisions of the Lisbon Treaty⁵ defence integration, such as those of the Maastricht Treaty, was adopted for the future. Some of them were implemented after a certain period, while others were not. For instance, the common defence policy already existed at the time of the adoption of the Lisbon Treaty, while the provision on common defence was not implemented because there was no unanimous decision of the European Council. Moreover, the question of what a decision of the European Council to launch a common defence should resemble remains unresolved. Hypothetically, this decision could relate to the transfer of a part of national sovereignty in the military sphere to the EU, in particular, a change in the voting system – from consensus to qualified majority – or the introduction of an obligation for member states to participate in EU operations. In any case, such a decision by the European Council would require ratification by member states (Szép *et al.*, 2021).

Another debatable issue is the mechanisms of such joint defence, given the membership of several neutral and non-aligned states in the EU. The development of security and defence policy and the adoption of the Lisbon Treaty⁶ required neutral and non-aligned countries within the EU (Austria, Ireland, Malta, Cyprus, and by 2023-2024, Sweden and Finland) to decide on issues such as collective defence, participation in rapid reaction forces and

¹ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

² *Ibidem*, 2008.

³ Petersberg Declaration Made by the WEU Council of Ministers. (1992, June). Retrieved from https://www.cvce.eu/en/obj/petersberg_declaration_made_by_the_weu_council_of_ministers_bonn_19_june_1992-en-16938094-bb79-41ff-951c-f6c7aae8a97a.html.

⁴ *Ibidem*, 1992.

⁵ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

⁶ *Ibidem*, 2008.

EU military operations. In this regard, a positive response was given. For instance, Austria adopted a special amendment to its Constitution (Article 23f)¹ after joining the EU, which stipulates that despite its policy of neutrality, the country participates in the EU's Common Foreign and Security Policy, including the Common Defence Policy. Thus, the essence of neutrality in these European countries has been significantly modified and legally limited in recent years (Clapp, 2022).

An important step towards the formation of the EU's common defence was the implementation of the Lisbon Treaty's PESCO² provisions. The provisions of Articles 42(6) and 46 stipulated that member states could initiate more intensive forms of security integration and establish strong commitments to each other if their military capabilities were at a high level. In practice, it was difficult to put these conditions into practice for some time due to the resistance of the United Kingdom, whose conservative governments have traditionally been sceptical about deepening European integration. Only the beginning of Brexit made it possible to create PESCO (Keukeleire & Delreux, 2022). A separate agreement on the formation of PESCO was concluded in 2017. It was signed by 25 of the 27 EU member states. Denmark and Malta did not join. At that time, Denmark did not participate in the CSDP at all. Malta expressed reservations that PESCO could contradict its policy of neutrality (Times of Malta, 2017).

As of 2024, several projects are being implemented under PESCO to promote greater integration in the security and defence sector. For instance, 23 states, led by the Netherlands, have joined the project, which aims to remove bureaucratic and other obstacles to the movement of troops and equipment across the EU, including non-EU countries such as the United States, Canada, and the United Kingdom. Another is the EUFOR Crisis Response Capability (EUFOR CROC) project (Koval, 2018). PESCO projects also cover the development of new conventional weapons, such as ground-launched combat missiles guided by drones (EU External Action & Borrell, 2021). At the same time, there are concerns that structural cooperation not between all but only some states may mean deepening divisions between member states, given the dominance of the "Europe of different speeds" approach (Krzyszowski & Krzymowska, 2019). Ukraine is not currently a member of

PESCO, but some projects, such as the European Medical Command, are already instrumental in the EU's support for Ukraine (Hanaba & Kondratiuk, 2024).

However, the most promising element in the formation of the EU's future common defence is Article 42(7) of the Lisbon Treaty³, which contains provisions on mutual defence: "If a Member State is the victim of armed aggression on its territory, other Member States shall have the obligation to provide assistance and support by all means within their power in accordance with Article 51 of the Charter of the United Nations". The terms of this Article are similar to Article 5 of the North Atlantic Treaty establishing NATO⁴. For instance, Article 5 of the North Atlantic Treaty also states: "each of the parties... will assist the party or parties attacked by taking such action as it deems appropriate, individually or in co-operation with other parties". The key difference is that the Lisbon Treaty does not contain a provision that an attack on one of the countries is an attack on all countries (Smyrnova, 2011).

Moreover, Article 42(7) of the Lisbon Treaty⁵ is highly general and does not provide specific plans and scenarios on what kind of assistance each country can provide. Therefore, this allows different EU member states to interpret the provisions of the Article arbitrarily. For instance, neutral Austria and Ireland say that they are not able to fulfil the terms of this article. Poland and the Baltic states are concerned that the terms of Article 42(7) do not imply American guarantees within NATO, and are therefore also quite sceptical (Clapp, 2022). In particular, Lithuania sees the CSDP as an additional security tool compared to NATO's guarantees, which can be effective only in certain areas where NATO has fewer capabilities (hybrid threats, information operations, economic warfare) (Palavenis, 2019).

Instead, the four largest EU member states – France, Germany, Spain and Italy – actively support the practical implementation of this article. They are also supported by Sweden and Finland, which until recently were not NATO members and are neighbours of aggressive Russia, as well as Greece and Cyprus, which have territorial disputes with NATO member Turkey (Clapp, 2022). Therefore, E. Perot (2019) stated that "in practice, only NATO presents itself as a full-fledged collective defence organisation, while the exact role that the EU is expected to take in this area is unclear. In fact, many citizens and even

¹ Federal Constitutional Law of Austria. (2004, December). Retrieved from https://constitutionnet.org/sites/default/files/Austria%20FULL_%20Constitution.pdf.

² Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

³ Ibidem, 2008.

⁴ North Atlantic Treaty. (1949, April). Retrieved from https://www.nato.int/cps/en/natohq/official_texts_17120.htm.

⁵ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

politicians are likely to ignore the existence of this aspect of the European Union, an organisation that has been perceived mainly as a project of economic and political integration". However, changes in the interpretation and implementation of Article 42(7) towards closer European defence cooperation should not be ruled out in the future.

In practice, Article 42(7) of the Lisbon Treaty¹ was used only once: in 2015, when the terrorist attacks in Paris were committed. Back then, EU countries provided various types of assistance to France, from intelligence sharing to participation in military operations against ISIS in Syria and Iraq. The existence of this Article itself provides the foundation for deepening European defence cooperation. It is the normative basis for supporters of closer integration in this area. For example, in 2015, the German government justified the need for greater German involvement in operations abroad by the activation of Article 42(7) by France (Perot, 2019). Further practical development of the provisions set out in the Article is promising. Experts identify several areas for strengthening cooperation under this provision: first, to develop scenarios for the use of Article 42(7), and second, to conduct training and exercises on the implementation of these scenarios (Clapp, 2022).

Given the sharply negative change in the security environment around the EU due to the beginning of Russian aggression against Ukraine in 2014, including a full-scale invasion in 2022, as well as the deterioration of the situation in the Middle East, the EU's legal framework needs to be further improved. According to EU High Representative Josep Borrell, after the EU has taken steps to address the most urgent needs of Ukraine and its member states, "it is time to move from emergency response to long-term EU readiness" (EU External Action, 2024).

The most important prerequisite for further intensive development of the CSDP towards a defence union is the introduction of the principle of qualified majority voting for relevant decisions, as currently, the position of one country can disrupt the adoption of urgent decisions. For instance, Hungary periodically blocks decisions within the framework of the EU's CSDP, in particular on assistance to Ukraine under the European Peace Instrument. European institutions, including the European Commission and the European Parliament, support the idea of extending the qualified majority principle to voting on human rights, sanctions, and civilian missions (Latici, 2021). Changing the voting procedure requires

amending the Lisbon Treaty², as it only provides for decision-making by consensus.

Another area for reforming the EU CSDP is to strengthen the supranational approach. The Lisbon Treaty mainly assigns tasks to individual member states and their contingents, including the financing of peacekeeping missions. Instead, there should be a greater emphasis on the activities of multinational units led by joint institutions financed by EU funds. Certain steps towards this have been taken since 2017: the Military Planning and Exercise Capability was created, the European Peace Instrument was launched, and the EU Rapid Deployment Force is being prepared (Jakobsson & Sjökvist, 2024). However, these institutions cover a relatively small share of all activities under the EU CSDP and are even smaller compared to the overall military capabilities of EU member states.

Instead, several amendments and additions to the Lisbon Treaty³ can be proposed. Article 41, which deals with the financing of the EU's Common Foreign and Security Policy, should specify that the financing of military or defence operations is carried out not only by member states but also by a common European defence fund created based on contributions from all EU members. Article 42 could provide for the establishment of permanent multinational military contingents under the direct authority of the EU Council and provide for a mechanism for the integration of national military units into such units voluntarily. Article 31 should provide for qualified majority voting, in particular on security and defence issues. Collectively, these amendments will render the EU CSDP more effective and bring the EU closer to strengthening its supranational approach to security and defence.

Thus, the conclusions of S. Keukeleire & T. Delreux (2022) on the importance of PESCO in reducing the EU's dependence on NATO are confirmed by the findings of this study. On the other hand, the authors focus more on the practical implementation of defence projects. In contrast, the present study emphasises the historical analysis and evolution of the agreements, which provides a deeper understanding of the basis of the current legal and political arrangements. With this in mind, the paper confirms the conclusions of V. Szép *et al.* (2021) on the significance of the Lisbon Treaty⁴ for the development of the EU's collective defence and complemented by considerations on how it could be modified to make European defence more effective.

The proposals outlined in the article, in particular on funding, subordination of multinational

¹ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

² *Ibidem*, 2008.

³ *Ibidem*, 2008.

⁴ *Ibidem*, 2008.

contingents and qualified majority voting, are in line with the conclusions of M. Stetsiuk (2024) that the transformation of the EU into a full-fledged defence union “would require significant political changes in the EU itself, up to and including the delegation of part of their sovereign rights by member states to EU institutions”. At the same time, unlike J. Howorth (2020), the author does not consider the need for a new bilateral defence treaty between the US and the EU and the subordination of the CSDP to NATO structures. Instead of forming a new legal framework, the author suggests improving the existing one (Lisbon Treaty, Berlin Plus Agreements) and fully realising its potential.

■ Conclusions

The legal framework for European integration in the security and defence sector has gone through a long evolutionary path since the late 1940s to the present day. It was laid down by the 1948 Treaty of Brussels, which became the basis for the creation of the Western Union. Later, in 1954, the Western European Union was formed as a collective defence organisation based on the updated Brussels Treaty, but its influence remained limited due to the dominant role of NATO. In the 1990s, after the end of the Cold War and given new threats, such as the wars in the Balkans, the issue of European defence autonomy became relevant again, which became the basis for the development of new defence policies.

The beginning of a new stage of European defence integration was marked by the 1992 Petersberg Tasks, which enshrined the functions of the WEU in peacekeeping, humanitarian assistance and crisis management. Later, these tasks were gradually integrated into EU policy as part of the Common Foreign and Security Policy (CFSP). The Treaty of Amsterdam (1997) enshrined these tasks in the EU legal framework, making them part of the Common European Security and Defence Policy (CSDP), which allowed the EU to conduct military operations autonomously from NATO. At the same time, the EU sought to maintain cooperation with NATO to avoid duplication of efforts and to ensure access to NATO

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resources, which was done through a series of agreements grouped under the name Berlin Plus.

The Lisbon Treaty, signed in 2007, was a significant step in the development of European defence integration. It changed its name to the Common Security and Defence Policy (CSDP) and expanded its functions. The Lisbon Treaty defined the CSDP as an integral part of the CFSP. The status of the European Defence Agency was established, which was to ensure cooperation in military procurement, modernisation of the armed forces of the member states and development of the technological base of the defence sector. The most promising provisions of the Lisbon Treaty for further implementation were those on collective assistance and permanent structured cooperation (PESCO).

Despite challenges, such as different visions of common defence among member states, the EU continues to implement the provisions of the CSDP-related legal acts, focusing on increasing autonomy and strategic readiness in the face of modern threats, in particular after the outbreak of the war in Ukraine, which has further strengthened the relevance of security and defence integration. It is promising to shift away from the consensus model of decision-making within the framework of the EU CSDP, as well as to enshrine certain supranational principles in the defence and security spheres in legal documents, which may be the subject of further research. Improving the regulatory framework in this area in terms of harmonising the provisions of individual agreements may be the subject of further research.

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■ Conflict of Interest

None.

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Ретроспектива і перспектива нормативно-правової бази європейської інтеграції у сфері безпеки й оборони

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■ **Анотація.** У статті досліджено історичні передумови та розвиток нормативного забезпечення європейської оборонної політики, починаючи з Брюссельського договору 1948 року, створення Західного Союзу та Західноєвропейського Союзу. На основі аналізу таких важливих документів, як Маастрихтський, Амстердамський і Ніццький договори, визначено механізми оборонної співпраці в межах ЄС та її основні цілі, насамперед посилення стратегічної автономії. Окремо розглянуто угоду «Берлін-плюс», яка забезпечує механізми взаємодії між ЄС та НАТО, водночас сприяючи розвитку незалежних європейських спроможностей у сфері оборони та безпеки. Визначено ключову роль Лісабонського договору у формулюванні засад Спільної політики безпеки й оборони ЄС. Окреслено важливість і перспективність реалізації статті 42(7) договору, яка закріплює принцип взаємної допомоги країн-членів у випадку збройного нападу, а також постійного структурованого співробітництва для поглибленої оборонної інтеграції. Ці положення підвищують стратегічну автономію ЄС і закріплюють європейську оборонну співпрацю, визначаючи її як важливу складову Спільної зовнішньої політики і політики безпеки ЄС. Засвідчено актуальність подальшого вдосконалення правової бази ЄС у відповідь на нові загрози, зокрема агресію Росії в Україні, а також напруження в інших регіонах. Акцентовано на необхідності зміцнення правових механізмів, що забезпечать ефективніші процеси прийняття рішень у межах СПБО ЄС, а також посилять кооперацію в питаннях безпеки серед країн-членів. Практична значущість статті полягає в можливості використати її результати як теоретичний фундамент розбудови спільної оборонної політики ЄС та подальшої інтеграції у сфері безпеки в умовах сучасних геополітичних викликів

■ **Ключові слова:** Західноєвропейський Союз; Брюссельський договір; Лісабонський договір; спільна політика безпеки й оборони; європейська оборонна інтеграція