

TRANSFORMING DEFENCE INTO AN ASSET FOR SAFEGUARDING THE EU'S NORMATIVE CORE

CAROLYN MOSER*

Abstract

In an increasingly perilous international context, the European Union's ability to uphold and promote its normative core and vision depends largely on its capacity to act through an integrated defence policy. This contribution therefore contends that the Union must urgently bolster its defence portfolio. The analysis demonstrates that effective European defence goes beyond the intergovernmental framework of the Common Security and Defence Policy to encompass supranational policy issues such as internal market regulation, industrial policy, infrastructure projects, and research funding. Approaching defence as a cross-cutting policy issue, the article explores the key law and governance challenges and opportunities arising from defence-related integration in terms of decision-making, agenda-setting, funding, policy implementation, and accountability. Ultimately, the contribution emphasizes the necessity of political resolve coupled with legal innovation to overcome institutional inertia and enable EU defence to contribute to safeguarding the Union's values.

1. Defence as a pressing cross-cutting policy issue

The Preamble to the 1951 Treaty establishing the European Coal and Steel Community states that 'world peace can only be safeguarded by creative efforts commensurate with the dangers that threaten it'. The same logic applies to protecting the normative core and vision of the European Union (EU or Union) in an increasingly perilous international context. In a world dominated by power politics, the EU's ability to uphold and promote its values and principles increasingly depends on its capacity to implement an effective, integrated defence policy. This contribution therefore contends

* Head of the independent research group ENSURE at Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany. I would like to thank my colleagues at ENSURE, along with Steven Blockmans and Achilles Skordas, as well as the members of the CML Rev Editorial Board for their constructive feedback.

that the Union must urgently strengthen its defence portfolio to align its capacity to act with its treaty-based objectives.

The term ‘defence portfolio’ emphasizes the need for the Union to utilize multiple instruments across policy strands and engage in *bricolage* to transform defence into an asset for its values.¹ Consequently, this contribution defines defence broadly: it comprises the assets, systems, structures, and policies employed by public entities to protect the polity and its interests against threats and attacks in all areas of operation – land, sea, air, space, and cyber space. It also covers the wider conditions that enable context-adapted defence, including technological innovation, industrial capacity, procurement, investment, and infrastructure necessary for military mobility.

This comprehensive approach to defence, which is increasingly informing EU policy-making and legislation, has two interrelated implications. First, Europeans are lagging behind in nearly all defence areas, and catching up is urgent. Russia’s invasion of Ukraine exposed critical capability shortfalls across Europe, prompting calls for rapid action.² Yet, a shared understanding of the future direction of European defence remains elusive, as four competing schools of thought persist: the Gaullists advocate European autonomy and buying European products; the Atlanticists believe that Europeans cannot do the job alone and therefore prefer buying US equipment; the denialists disregard defence realities; and the Putinists support Russia’s imperialist agenda.³ Consequently, the capability-expectations gap identified by Hill three decades ago remains pertinent,⁴ meaning that proper defence agency is a distant prospect, albeit not an unachievable one.⁵ There is also substantial potential for optimizing cooperation on arms production and procurement across Europe.⁶

1. On the use of *bricolage*, a concept coined by Claude Lévi-Strauss, in the context of European defence integration, see Frédéric Mérand, ‘Bricolage: A Sociological Approach to the Making of CSDP’ in Xymena Kurowska and Fabian Breuer (eds), *Explaining the EU’s Common Security and Defence Policy: Theory in Action* (Palgrave Macmillan UK 2012); Patrick Müller, Peter Slominski and Wolfgang Sagmeister, ‘Supranational Self-Empowerment Through Bricolage: The Role of the European Commission in EU Security and Defence’ (2024) 62 JCMS 1672, doi: 10.1111/jcms.13564.

2. Most notably: Informal Meeting of the Heads of State or Government, Versailles Declaration, 10 and 11 March 2022; A Strategic Compass for the Union, Council Doc 7371/22 (21 March 2022).

3. Charlemagne, ‘Gaullists v Atlanticists v Denialists v Putinists’ (*The Economist*, 30 January 2025).

4. Christopher Hill, ‘The Capability-Expectations Gap, or Conceptualizing Europe’s International Role’ (1993) 31 JCMS 305, doi: 10.1111/j.1468-5965.1993.tb00466.x.

5. Camille Grand, ‘Defending Europe with Less America’ (ECFR, 3 July 2024) <ecfr.eu/publication/defending-europe-with-less-america/> (all websites last visited 13 November 2025).

6. Mario Draghi, ‘The Draghi Report: In-Depth Analysis and Recommendations (Part B)’ (European Commission 2024) 161–165; Enrico Letta, ‘Letta Report: Much More than a Market’ (European Commission 2024) 70–76.

Second, the EU and its Member States must embrace defence as a cross-cutting policy issue. Defence now extends beyond the Union's distinctly intergovernmental and unanimity-based Common Security and Defence Policy (CSDP)⁷ to include supranational policy areas subject to the Community method – such as internal market rules, industrial policies, infrastructure projects, or research funding. Indeed, an effective defence policy necessarily comprises elements beyond operational capacity. Therefore, it is only logical that the Union should be able to address 'ancillary' topics such as armament production, procurement, military mobility, supply chain resilience, or cyber security, alongside the Member States. Hence, to achieve the 'Defence Union' envisaged in the mission letters of several European Commissioners, the Union must constructively combine actions based on different provisions throughout the Treaty on EU (TEU) and the Treaty on the Functioning of the EU (TFEU). Although the Common Foreign and Security Policy (CFSP) and the CSDP are the only substantive Union policies set out in the TEU for political reasons,⁸ and are subject to 'specific rules and procedures' (first subparagraph of Article 24 (1) TEU), this does not preclude the use of TFEU legal bases to support developments in the CSDP realm, provided such actions do not constitute encroachment under Article 40 TEU. In fact, CSDP operational activities frequently intersect with other strands of EU (external) action, such as development cooperation, policing, and migration management.⁹ The evolving security environment indicates increasing overlap between CSDP and internal market activities. Importantly, improving the EU's defence posture through supranational (legislative) activity has to date not resulted in disputes over competences. On the contrary, Member States have even asked the Commission to address this issue and help bridge the capabilities gap.¹⁰

2. Embracing defence as an essential component of the EU's capacity to act

The EU has the (legal) instruments to become a credible defence actor – if it can muster the political will to use them. Primary law establishes the CFSP

7. For a detailed account of the law and governance distinctiveness of the CSDP, see Panos Koutrakos, *The EU Common Security and Defence Policy* (OUP 2013) 22–56.

8. Jean-Claude Piris, *The Lisbon Treaty: A Legal and Political Analysis* (CUP 2010) 260.

9. This overlap has repeatedly engendered interinstitutional friction. Suffice it to mention two CJEU cases brought under the current Treaty framework, namely Case C-658/11 *European Parliament v Council*, EU:C:2014:2025 and Case C-263/14, *European Parliament v Council*, EU:C:2016:435.

10. Para 11, Versailles Declaration (2022).

as a *sui generis* EU competence,¹¹ covering all security matters, including the development of a shared EU defence policy (Article 2(4) TFEU), with the prospect of a common defence (first subparagraph of Article 24(1) TEU). Thus, the scope for defence integration within the Union is remarkably broad, extending up to the initiation of a common defence through a unanimous European Council decision, provided that the neutrality and independent nuclear deterrent of Member States, as well as their obligations under the North Atlantic Treaty Organization (NATO), are respected (Article 42(2) TEU).

Ideally, defence would be one of the EU's tools for achieving its primary aims. Reading Articles 3(1), 3(5), and 21(2) TEU on the Union's general and external action objectives together,¹² suggests that the EU's defence portfolio should contribute to promoting peace, safeguarding and promoting EU values, fostering the well-being and security of EU citizens, and upholding fundamental principles of international law, including independence and (territorial) integrity. Furthermore, the values and principles that the EU seeks to protect and promote globally include democracy, the rule of law, human rights, and respect for the principles of the United Nations Charter and international law (Article 21(1) TEU). As the CSDP is an integral part of the CFSP (Articles 42(1) and 23 TEU), these objectives, values, and principles also underpin the Union's defence policy.

Alongside other tools – such as diplomacy, geoeconomic Statecraft, or development cooperation – defence could contribute significantly to achieving the EU's objectives by providing the necessary capacity to act.¹³ This capacity to act has two key dimensions: collective defence and strategic influence. In terms of collective defence, the EU and its Member States would be capable of independently deterring and, if necessary, warding off attacks on Member States' territory. In terms of strategic influence, the Union would wield the clout to shape international relations in line with its values and objectives, principally upholding multilateralism and a rules-based international order. In a geopolitical landscape marked by great power rivalry, imperialist aggression, transactionalism, and rising

11. Marise Cremona, 'The Two (or Three) Treaty Solution: The New Treaty Structure of the EU' in Andrea Biondi, Piet Eeckhout and Stefanie Ripley (eds), *EU Law After Lisbon* (OUP 2012) 50–54.

12. For in-depth discussion of these articles in their wider EU constitutional law context, see the contributions of Ferdinand Weber and Isabelle Ley, respectively, in Jürgen Bast and Armin von Bogdandy (eds), *The Constitutional Core of the Union: Basic Provisions and Structures of the EU Treaties* (OUP forthcoming).

13. See Jan Wouters' contribution to this issue.

authoritarianism,¹⁴ the EU's global standing hinges on being (perceived) as a credible military actor, not merely an economic giant.¹⁵ Only if the EU can defend itself credibly will it be able to uphold and promote its normative core and vision. A robust defence policy would hence not only contribute to protecting shared values and security, but ideally also to reinforcing European identity and potentially helping resolve intra-EU debates over normative priorities.¹⁶

However, the Russian war of aggression against Ukraine has exposed Europe's security and defence vulnerability, both on the battlefield and in the international diplomatic arena. It is true that the Union has demonstrated remarkable responsiveness since the invasion of Ukraine, adopting sanctions of unprecedented breadth and depth, and deploying an innovative mix of intergovernmental and supranational tools to address security challenges.¹⁷ Today, the EU and its Member States remain Kyiv's staunchest supporters.¹⁸ Yet, initially, European States struggled to supply Ukraine with sufficient ammunition and weaponry. Similarly, panic spread through European capitals at the prospect of a deal on Ukraine between US President Donald Trump and Russian President Vladimir Putin that could potentially reconfigure Europe's territorial and political order without European involvement. The 2025 EU–US trade deal has further exposed the EU's vulnerability, blurring the lines between trade and security as EU Trade Commissioner Maroš Šefčovič noted:¹⁹ it introduced 15% tariffs and contained a pledge to purchase more US (defence) products. However, this did not prevent the US from announcing the phasing out of military training and equipment programmes for European countries bordering Russia shortly afterwards.

14. See, *inter alia*, Carlo Masala, *Weltunordnung. Die globalen Krisen und die Illusion des Westens* (3rd edn, HC Beck 2022); Anne Appelbaum, *Autocracy, Inc – The Dictators Who Want to Run the World* (Doubleday 2024).

15. Judy Dempsey, 'Is Post-1945 Europe an Aberration?' (2019) 20 *Georgetown Journal of International Affairs* 102 at 106, doi: 10.1353/gia.2019.0011.

16. Thomas Diez and Michelle Pace, 'Normative Power Europe and Conflict Transformation' in Richard G Whitman (ed), *Normative Power Europe: Empirical and Theoretical Perspectives* (Palgrave Macmillan 2011) 194; 203.

17. Carolyn Moser, 'The Impact of the War in Ukraine on the EU's Common Security and Defence Policy' in Stefan Kadelbach and Rainer Hofmann (eds), *The EU Security and Defence Policy* (Nomos 2024). See also Daniel Sarmiento's contribution to this issue.

18. Christoph Trebesch and others, 'Ukraine Support Tracker – A Database of Military, Financial and Humanitarian Aid to Ukraine' (Kiel Institute) <www.kielinstitut.de/topics/war-against-ukraine/ukraine-support-tracker/>.

19. Antonia Zimmermann and Giorgio Leali, 'Under-Fire EU Says Trade Deal with Trump Was Best It Could Do' (*Politico*, 28 July 2025) <www.politico.eu/article/eu-trade-deal-donald-trump-tariffs-us-ursula-von-der-leyen-maros-sefcovic-imports-lobby/>.

Without a tangible common defence, the Union is currently weak in an increasingly hostile world and lacks the means to take control of its own destiny. By outsourcing their security and defence to the NATO (that is, the United States) for decades, Europeans have become susceptible to extortion and blackmail in order to retain the security guarantees deemed necessary. The fragility of this arrangement is especially glaring with Trump (re-) entering the White House. Therefore, in its current state of immaturity, European defence remains far from the asset it can – and must – become. Notably, opinion polls consistently reveal strong public support for closer EU defence integration.²⁰

3. Going beyond the normative power comfort zone

Transforming the Union into a liberal democratic polity capable of safeguarding its existence by addressing all defence dimensions marks a paradigm shift. For decades, Europeans have cultivated the idea that the EU could influence international affairs through its civilian power alone, namely its substantial geoeconomic footprint and significant regulatory reach, rather than by displaying military strength.²¹ Some have even argued that the EU was a unique international actor predisposed to normative behaviour in world politics given its normative identity.²² While the EU undoubtedly has a considerable economic weight and normative clout,²³ often going hand in hand,²⁴ there is a growing imperative for Europe to adapt to challenging geostrategic conditions. Consequently, both the former and current EU High Representative for Foreign Affairs and Security Policy, Josep Borrell and Kaja Kallas, have urged the EU to adopt a more assertive stance.

This change in approach is also reflected in the EU's policy and strategy documents. Starting out as a 'force for good' in the early 2000s with the European Security Strategy (2003), the EU embraced 'principled pragmatism' as its motto for external action with the EU Global Strategy in 2016, before shifting to a 'stop being naïve' attitude with the Strategic Compass, endorsed

20. Joseph de Weck and Minna Ålander, 'Voters Believe in a Sovereign Europe More than Elites' (*Politico*, 4 September 2025) <www.politico.eu/article/voters-europe-elite-coal-steel-defense-union/>.

21. In this vein, François Duchêne, 'Europe's Role in World Peace' in R Mayne (ed), *Europe Tomorrow: Sixteen Europeans Look Ahead* (Fontana 1972).

22. Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) 40 *JCMS* 235, doi: 10.1111/1468-5965.00353.

23. Joanne Scott, 'Extraterritoriality and Territorial Extension in EU Law' (2014) 62 *AJCL* 87, doi: 10.5131/AJCL.2013.0009.

24. Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (OUP 2019).

in 2022 just two weeks after Russia invaded Ukraine.²⁵ Similarly, the operational emphasis of CSDP has shifted. For many years, CSDP practice focussed on enabling the EU to carry out small-scale peace operations and stabilization missions around the world in line with Articles 42(1) and 43(1) TEU. It was not intended for territorial defence, which was institutionally left to NATO and, in primary law, codified essentially as an interstate obligation under the mutual assistance clause enshrined in Article 42(7) TEU. Recently, though, the EU has shifted its defence focus from overseas deployments to defence itself – meaning that the emphasis has changed from upholding values in faraway places to protecting them primarily within the EU and its vicinity. For instance, Member States are now training Ukrainian soldiers on their soil as part of the CSDP military assistance mission EUMAM Ukraine.

This reorientation reflects an adaptation to a new threat landscape. For example, the Strategic Compass identifies power politics – marked by a departure from multilateralism and the rules-based international order – as the main threat to the EU. While terrorism and extremism remain acute threats, the document also highlights the growing concern of hybrid campaigns. Such campaigns can cause significant damage to open, pluralistic democracies by means of foreign information manipulation and interference.

These new security and defence realities have already found their way into European jurisprudence, as evidenced by three emblematic cases concerning restrictions on propaganda dissemination. In *Kiselev v Council*, for example, the Court provided an account of how the Russian propaganda machine operates to influence public opinion in Member States, and clarified which individuals along the operational chain could be held accountable for creating and disseminating propaganda.²⁶ Disinformation also features prominently in the *Baltic Media Alliance (BMA)* and *RT France v Council* cases. In , the EU judiciary addressed matters of editorial responsibility, among other things.²⁷ And in *RT France*, meanwhile, the Court stated that such campaigns pose a serious risk to the foundations of democratic societies and form an ‘integral part of the arsenal of modern warfare’.²⁸

25. A Secure Europe in a Better World: European Security Strategy (Brussels, 12 December 2003); Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union’s Foreign and Security Policy (Brussels, 28 June 2016); Strategic Compass (2022).

26. Case T-262/15, *Dmitrii Konstantinovich Kiselev v Council of the European Union*, EU:T:2017:392.

27. Opinion of AG Saugmandsgaard Øe in Case C-622/17, *Baltic Media Alliance Ltd v Lietuvos radijo ir televizijos komisija*, EU:C:2019:154; and judgment, Case C-622/17, *Baltic Media Alliance Ltd v Lietuvos radijo ir televizijos komisija*, EU:C:2019:566.

28. Case T-125/22, *RT France v Council*, EU:T:2022:483, paras 56; 162.

4. The quest for defence readiness

As Europe can no longer afford to ignore its unpreparedness, defence spending is soaring. Several Nordic countries have also adjusted their defence posture: Denmark has integrated the CSDP, while Sweden and Finland have joined NATO. At the EU level, the Strategic Compass is not the only document indicating a shift in strategy. The 2025 White Paper for European Defence and Readiness 2030 (formerly ReArm Europe) authored by the European Commission clearly outlines new strategic circumstances and proposes policy responses.²⁹ The rationale is that the EU will attempt to pool all its resources – political, legal, institutional, and military – across policy strands under the ‘defence readiness’ motto, using a combination of CSDP and non-CSDP instruments.³⁰

Regarding CSDP, major financial innovations have emerged, particularly through the European Peace Facility (EPF).³¹ Established in 2021 to succeed the Athena mechanism and the African Peace Facility, the EPF was repurposed as a security assistance fund following Russia’s invasion of Ukraine. As the operating expenditure of CSDP operations with military and defence implications cannot be financed from the EU budget (Article 41 (2) TEU), the EPF has become the primary mechanism to (partly) reimburse Member States for supplying military equipment to Kyiv, with EUR 11 billion spent on supporting Ukraine to date. However, as an intergovernmental mechanism, the EPF requires unanimous approval, leaving it vulnerable to vetoes – notably from Hungary, which has blocked the disbursement of further tranches for weapons deliveries to Kyiv for over a year. This has slowed down CSDP, as progress hinges on funding. Furthermore, Member States have repeatedly promised to increase defence spending and equip their armies more effectively.³² Since Member States supply military assets for EU defence (Article 42(3) TEU), investment in national capabilities is essential. Yet, as in the past, many governments needed a transatlantic nudge to finally agree in June 2025 to increase their defence spending to 5% of their GDP by 2035 (including 1.5% on infrastructure etc.).

On the supranational side of things, the Commission introduced several non-CSDP defence initiatives to bolster the European Defence Technological

29. European Commission, ‘White Paper for European Defence – Readiness 2030’, 19 March 2025.

30. In this vein, see also Sauli Niinistö, ‘The Niinistö Report: Safer Together – Strengthening Europe’s Civilian and Military Preparedness and Readiness’ (European Commission 2024).

31. For an account of the operational novelties, see Moser (n 17).

32. *Inter alia*, Versailles Declaration (2022); Strategic Compass (2022); Conclusions of the Special European Council Meeting of 6 March 2025, EUCO 6/25.

and Industrial Base. These include legal acts on defence-related research (European Defence Fund, EDF), joint armaments production (Act in Support of Ammunition Production, ASAP), joint procurement (European Defence Industry Reinforcement through Common Procurement Act, EDIRPA), and financial assistance to Member States (Security Action for Europe, SAFE). The Commission also spearheaded the European Defence Industrial Strategy (2024) and the European Defence Industry Programme (EDIP), adopted in late 2025. With a budget of EUR 1.5 billion (until 2027), EDIP aims to expand defence manufacturing capacity across the EU, *inter alia*, by funding common procurement and joint production, and by establishing a dedicated fund to help transform defence supply chains. These Commission-driven initiatives mark a substantial advancement in defence integration, positioning the Commission as a pivotal actor in defence policy.³³ The appointment of the EU's first Defence Commissioner in 2024 further highlights the Commission's efforts to strengthen its defence industrial role.

Indeed, the growing reliance on supranational EU law and actors, rather than intergovernmental CSDP arrangements, is fundamentally reshaping European defence governance. This is occurring without Treaty revisions, as the intergovernmental and supranational aspects of European defence are interacting and reinforcing one another. By participating in the ordinary legislative procedure through the Council, Member States have approved defence-related legislation under an increasing number of TFEU legal bases, notably competitiveness (Article 173(3) TFEU), research and development (Article 182(4) TFEU), cooperation with third countries (Article 212 TFEU), and harmonization (Article 114 TFEU). Economic emergency measures (Article 122(2) TFEU) have also served as a legal basis with Member States' agreement. Against this backdrop, two critical questions emerge: what (additional) legal bases can the Commission invoke to enhance European defence readiness with regard to dual use goods, AI, military mobility, or (critical) infrastructure? Furthermore, how does the interplay between intergovernmental and supranational defence strands affect EU law and governance?

5. Law and governance challenges and opportunities

The quest for 'defence readiness' presents several law and governance challenges and opportunities, some of which will be discussed here. The first

33. Elsa Bernard, 'La communautarisation de la défense européenne dans le contexte de la guerre en Ukraine' 2023 RTDE 325.

challenge concerns decision-making, on which primary law is unequivocal: unanimity governs CSDP (Article 31(1) read in conjunction with Articles 31 (4) and 42(4) TEU). While neutral Member States have repeatedly employed constructive abstention since 2022, pro-Russia spoilers (that is, Hungary) have clung to their veto power. The question of how voting modalities could be adapted *à droit constant* to circumvent a prolonged obstruction of defence activities by certain Member States remains crucial. However, a practical solution to neutralize such obstructions has yet to be found. This said, a veto hampering collective self-defence would contradict the duty of loyalty and solidarity (Article 24(3) TEU) and the obligation of mutual assistance (Article 42(7) TEU), and could therefore be disregarded.

Although unanimity remains an obstacle, primary law provides four underused scenarios that allow for qualified majority voting (QMV) in CSDP decision-making processes: (1) within the European Defence Agency (EDA), for example, certain decisions fall under QMV.³⁴ Making better use of the EDA's cooperation and coordination potential would strengthen much-needed defence capabilities. (2) Likewise, QMV applies to certain PESCO-related decisions (Articles 46(2–4) TEU). One idea would therefore be to reinvigorate PESCO by reconfiguring participation, or by launching a more exclusive PESCO 2.0. (3) The establishment of a start-up fund for CSDP activities (Article 41(3) TEU) is equally governed by QMV. Member States could use this to break new ground by financing joint endeavours and then attempt to incorporate this integration *fait accompli* into CSDP practice. (4) QMV could also potentially apply if a group of States were entrusted with a task under Articles 42(5) and 44 TEU via a unanimous Council decision. These States could then decide how to manage the task, including the decision-making, themselves. This approach could be adopted to empower motivated Member States with specific mandates to promote defence integration, thereby influencing CSDP developments more broadly.

A second legal challenge concerns funding, specifically the extent to which the EU budget can finance defence or defence-related endeavours. Article 41(2) TEU, which excludes budgetary disbursements for '[operating] expenditure arising from operations having military or defence implications', tends to be interpreted as a blanket ban on EU defence spending. However, a closer analysis suggests that this presumption is overly restrictive. Rather than prohibiting the EU budget from being spent on CSDP *tout court*, the provision reflects Member States' reluctance to grant the

34. Art 9(2) Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency (recast).

European Parliament oversight of operational military activities.³⁵ ‘Operations’ therefore plausibly refers to ‘military deployments’ in line with the Petersberg tasks incorporated into Article 43(1) TEU, rather than any type of defence-related ‘measure’ generating expenditure. Indeed, civilian CSDP missions can draw on the EU budget for operational expenditure. Furthermore, the EU budget already partially finances activities ‘having military or defence implications’ that are not deployment-related, such as the European Security and Defence College. That being said, the Commission has leveraged various TFEU provisions (see above) in the absence of an explicit or ‘generic’ legal basis for funding defence-related initiatives and programmes.

Importantly, these initiatives and programmes are channelling an increasing proportion of EU money towards defence. To date, most programmes funded by the EU budget have been relatively modest in scale, including EDIRPA (EUR 310 million), ASAP (EUR 500 million), EDIP (EUR 1.5 billion), and the EDF (EUR 8 billion). In contrast, the loan-based SAFE instrument now offers up to EUR 150 billion.³⁶ Cohesion funds were also geared towards defence to a certain extent, opening up further funding streams. Additionally, debt rule relaxations under the national escape clause of the Stability and Growth Pact could unlock an additional EUR 650 billion in national defence spending; 16 Member States have already applied for its activation.³⁷

This increased supranational defence spending raises a third governance challenge in the form of parliamentary oversight, but also presents an opportunity. While the European Parliament plays a comparatively limited role in CSDP,³⁸ it acts as a co-legislator for TFEU-based defence instruments (SAFE excluded). Thus, parliamentary involvement in shaping EU defence writ large has expanded significantly as supranational legislation has come to complement the intergovernmental CSDP framework. However, once adopted, the Commission implements these instruments via implementing acts (Article 291 TFEU), thereby limiting parliamentary oversight. Nevertheless, while the implementation details are to some extent beyond the European Parliament’s control, its legislative powers enable it to influence EU defence conditions more broadly.

35. Koutrakos (n 7) 76.

36. More on the novelties regarding EU defence spending, see Van den Bogaert’s contribution in this issue.

37. Namely, Belgium, Bulgaria, Croatia, Czechia, Denmark, Estonia, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Poland, Portugal, Slovakia, and Slovenia.

38. Carolyn Moser and Steven Blockmans, ‘The Untapped Role of the European Parliament in Common Security and Defence Policy’ (2024) 84 *ZaöRV* 585, doi: 10.17104/0044-2348-2024-3-585.

Similarly, recent initiatives on EU defence and industrial matters have improved the conditions for judicial review, offering governance opportunities. While the scope of judicial review by the EU judiciary is limited in the CFSP and CSDP realms – at least in principle, given that the Court of Justice of the EU (CJEU) has considerably expanded its jurisdictional remit in this field over time³⁹ – its competence over measures based on the TFEU is clear. The European Parliament has already lodged an application with the CJEU, challenging the Commission’s use of Article 122(2) TFEU as the legal basis for the SAFE Regulation.

6. Nostalgia is not a strategy for the future – *bricolage* is

European defence integration has long suffered from self-inflicted under-performance, with Member States prioritizing sovereignty over efficiency and settling for suboptimal solutions. To move forward, Europeans must recognize a fundamental truth: inadequate EU defence integration undermines – rather than enhances – sovereignty. While this may seem logical, it represents a radical departure from previous defence integration patterns, which were characterized by intergovernmental delegation, prioritizing practice over law and institutionalization over capability-building, alongside chronic hesitation.⁴⁰ In September 2025, Russian drones violated Polish airspace. While Trump dismissed the incident as an accident, Europeans viewed the deliberate, unlawful incursion as the new normal. Persistent hesitation to strengthen European defence is no longer a viable response to such provocative acts. Rather than succumbing to lethargy or defeatism, the Union must utilize all available resources to secure its future and uphold its normative vision. This could involve solutions based on international law supplementing CSDP, such as an extra-EU agreement modelled on the ‘coalition of the willing’ supporting Ukraine, which would expand defence cooperation beyond the EU and potentially include the UK and Canada.⁴¹

39. Carolyn Moser and Berthold Rittberger, ‘The CJEU and EU (de-) Constitutionalization – Unpacking Jurisprudential Responses’ (2022) 20 *International Journal of Constitutional Law* 1038, doi: 10.1093/icon/moac061.

40. Carolyn Moser, *Accountability in EU Security and Defence. The Law and Practice of Peacebuilding* (OUP 2020) 29–41; Claudia Major and Christian Mölling, ‘The EU’s Military Legacy – Over-Institutionalised, under-Equipped and Strategically Divided’ in Daniel Fiott (ed), *The EU’s Legacy and Ambition in Security and Defence* (EUISS 2020); Hylke Dijkstra, *Policy-Making in EU Security and Defence: An Institutional Perspective* (Palgrave Macmillan 2013).

41. On capacity to act, see the Bruno de Witte’s contribution in this issue.

However, leading EU figures seem so far reluctant to propose such bold initiatives or ideas.

Furthermore, the EU must address its fraught relationship with NATO – and the US. Since the CSDP’s inception in 1999, tensions have persisted over whether EU defence constitutes duplication or decoupling from NATO. According to the Treaties, EU defence policy must be conducted in accordance with NATO commitments (Articles 42(2) and 42(7) TEU). The Strategic Compass also acknowledges NATO as a pillar of European security, particularly regarding collective defence. For decades, Europe has depended on the US – via NATO – for its security and defence, but doubts are growing about the long-term viability of the alliance and the level of US support in times of crisis. Indeed, transatlantic overreliance is increasingly likely to jeopardize Europe’s security than it. Given the fragility of the transatlantic relationship, strengthening the EU’s strategic and operational autonomy is now imperative. More than 20 years after the CSDP became operational, the EU should establish a permanent military headquarters for executive military operations, for instance by broadening the mandate of the Military Planning and Conduct Capability – currently only responsible for commanding non-executive military activities. This would not replace NATO, whose nuclear deterrent remains crucial, but would signal Europe’s readiness to assume primary responsibility for its own security. At the same time, Europeans must prepare to take on critical NATO tasks that have so far been carried out by the US, particularly those relating to supreme command. This will ensure that the alliance can continue to operate as the backbone of European security and defence, even if US support decreases or ceases.⁴² While this shift is political rather than legal, it is important to underline that there are no legal obstacles to it.

Another challenge lies in armament production and procurement. The transatlantic defence procurement dependency of certain Member States poses a challenge to EU defence integration and armament cooperation. Nevertheless, new EU programmes aimed at increasing production capacities and joint procurement in the defence sector generally contain a clause stipulating that the majority of funds – usually 65% – must be spent on (end) products manufactured by companies operating and having their executive management structures in the EU. Special rules apply to associated third countries, candidate countries, and countries having signed a security and defence partnership with the Union, such as the UK or Canada. This ‘buy European’ approach has met with resistance from a number of Member

42. In this vein, see also Olivier Schmitt, ‘Défense de l’Europe : la nouvelle crise des fondements’ (2025) 3 *Politique étrangère* 77, doi: 10.3917/pe.253.0077; CEPS, ‘Roadmap towards a Common Defence for Europe – Analysing Eight Governance Models’ (2025).

States, and it is uncertain how it will play out in practice. But if Europe is serious about achieving strategic autonomy, it would be wise to prioritize EU-manufactured arms and avoid perpetuating transatlantic dependence by subsidizing US producers. Some Member States – notably Denmark, which is wary of US–Greenland tensions – have shifted to European procurement despite historical ties to US industry. It is also worth noting that the new instruments in question contain references to EU interests and values, stipulating that disbursement to contractors must not contravene these.⁴³ Monitoring compliance with this normative requirement is crucial, for instance through the efforts of parliamentarians and civil society. Finally, it is important that novel procurement programmes financed with EU funds are European in scope rather than nationally oriented so as to overcome the financial and operational inefficiencies caused by a fragmented European defence market.

What role ultimately remains for the law and lawyers? Current Treaty law is imperfect in terms of defence – the unanimity requirement is a case in point. Nevertheless, this is the legal framework we have, and no better alternative is imminent. If the EU is to shape its own destiny rather than letting others shape it, it must prioritize defence. As Sabine Weyand, the Commission’s Director-General for Trade, warned, ‘[n]ostalgia is not a strategy’.⁴⁴ Instead, political resolve and legal creativity – enabling smart bricolage – are essential. Therefore, lawyers must focus on feasible solutions within existing frameworks to transform defence into a tool for safeguarding the EU’s normative core.

43. See, for instance, Art 9(6) EDIRPA; paras 16–18 of the Preamble of the SAFE Council Regulation .

44. Cited in Sarah Wheaton, ‘Trade Truth and Consequences’ (*Politico*, 29 August 2025) <www.politico.eu/newsletter/brussels-playbook/trade-truth-and-consequences/>.