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Towards a European Defence and Security Union

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Towards a European Defence and Security Union

Traditionally, threats to the security of nations and people have been divided into external and internal threats. States deal with military and political threats from other States against their territorial integrity and their self-determination with their defence and foreign and security policy. Threats from the inside are met by law enforcement and police action. However, this traditional divide has become more fluid. External threats can emanate also from private actors (terrorists). Internal threats are more and more attributable to external interference (cyber-attacks) by third states and organizations. Moreover, organized crime combines transnational and domestic crimes. Hence, a modern approach to security should look at both external and internal threats in a holistic manner. In this paper, I will argue that most issues not only call for a national response but should be organized within the framework of the European Union. For that purpose, I will first present some ideas on how to build a European Defence Union (A). Next, I will dwell into the concept of a Security Union (B). Section (C) contains thoughts on how to bring these two pillars together followed by an overall conclusion in section (D).

A. The European Defence Union

I. Overview of the Evolution of European Defence since 1945

The **foundations** of a common European Defence Policy were laid in 1948 when the United Kingdom, France, Belgium, the Netherlands and Luxembourg signed the Treaty of Brussels and thus created the Western Union (WU).² The WU was conceptualised as a defensive alliance with the primary purpose of being a forum of consultation and dialogue on security and defence in Europe as well as to offer mutual military assistance in case of external aggression.³ The original intent was to organise solidarity between the signatories against potential threats from Germany or the Soviet Union.

However, the direction soon changed under American leadership.

Amongst rising tensions between the West and the East at the end of the 40s in the context of the Cold War and military conflict taking place on the Korean peninsula the United States were now considering that the containment of the Soviet Union would be the primary foreign policy goal. The US government organised a transatlantic military pact: through the signature of the Washington Treaty on April 4th 1949, the founding members of the WU plus the United States and Canada agreed to offer their mutual assistance against any aggression of their members (Art. 5 NATO Treaty). In order to avoid duplication, the signatories of the Brussels Treaty agreed in December 1950 to transfer their personnel and military headquarter to NATO. Henceforth, NATO's "Supreme Headquarters Allied Powers Europe" (SHAPE) was the key instrument to organize defensive capabilities in Europe.

In that connection, the United States also expressed its wish for the rearmament of Western Germany. France and other European Powers however, were naturally rather sceptical of giving back military

² Treaty of the WEU available at: <http://www.weu.int/Treaty.htm>

³ Article V of the Brussels Treaty states: "If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power." However the implementation of this provision was de facto left to NATO (Article 5 NATO Treaty), to which all WEU members belonged.

power to their former enemy. In order to secure their influence over German military capabilities but at the same time getting around American dominance within NATO and withstanding the new geopolitical challenges arising, France's Prime Minister René Pleven proposed the so-called *Pleven Plan* on October 24th 1950 foreseeing the creation of a **communauté européenne de défense** (C.E.D). The CED aimed at integrating German military capabilities into a supranational military force – a supranational European army composed of military units from all Member States that were willing to join.⁴ This way American demands of greater military rearmament of Germany were met but within a separate framework under European (and therefore strong French) control. The *Pleven Plan* which was renamed into Treaty establishing the European Defence Community⁵ was signed on May 27th 1952 by six European foreign ministers: France, Germany, Italy and the Benelux countries. The UK did not sign the treaty as it was unsatisfied with the supranational character of the community. After signing, the treaty had to be ratified according to national constitutional procedures. However, in 1954 the French Assemblée nationale rejected ratification by a vote of 319 against 264⁶ on August 31st 1954 and effectively buried the project. The main reasons appeared to be – amongst others - fears over the loss of national sovereignty and the calming down of the international conflicts on the Korean peninsula.

As a result of this historic failure Western Germany joined NATO and fully integrated into the transatlantic security structures. At the same time, the Western Union was transformed into the Western European Union (WEU) at the 1954 Paris Conference: Western Germany and Italy were admitted to this organisation, which did not have operational military capabilities, though. “Hard security” in Europe was thus still organized under the leadership of the United States in NATO, whereas the WEU carried over the old mutual assistance clause on paper only. Being firmly anchored in both organisations, Western Germany then regained sovereignty from the three Western Allies in 1955, who ended their occupation in accordance with the *Deutschland-Vertrag* (1952).

Until the late 80s- beginning of the 90s nothing much changed. One had to wait roughly 45 years until 1992 to see greater involvement of European defence. In the so called **Petersberg Declaration**,⁷ of June 1992, the WEU Member States expressed their readiness to make available military forces to the WEU, to NATO and also the newly formed European Union⁸ when performing concrete tasks. The so-called

⁴ Statement by René Pleven on the establishment of a European army on October 24th 1950: https://www.cvce.eu/en/education/unit-content/-/unit/803b2430-7d1c-4e7b-9101-47415702fc8e/bbc7cdad-0bb3-4b8a-9322-eb93e2d65670/Resources#4a3f4499-daf1-44c1-b313-212b31cad878_fr&overlay; also Article 1 of the Treaty establishing the European Defence Community states: “By the present Treaty the High Contracting Parties institute among themselves a European Defense Community, supranational in character, consisting of common institutions, common armed Forces and a common budget”

⁵ Original Text can be found at: <http://aei.pitt.edu/5201/1/5201.pdf>

⁶ "La CED est rejetée"- la une du quotidien communiste français L'Humanité (31 août 1954) https://www.cvce.eu/obj/la_ced_est_rejetee_la_un_e_du_quotidien_communiste_francais_l_humanite_31_aout_1954-fr-350e5110-0a97-4dc9-998d-03099660bd81.html

⁷ Petersberg Declaration: <http://www.weu.int/documents/920619peten.pdf>

⁸ Treaty of Maastricht was signed in February 1992.

“Petersberg Tasks” outlined three purposes for which military units could be deployed:⁹ (1) humanitarian and rescue tasks, (2) peacekeeping tasks and (3) task of combat forces in crisis management including peace-making. These tasks were subsequently also included into the Treaty of Amsterdam in 1999 amongst a general push for a European external and defence policy area.

With respect to the (slowly) growing importance of the EU also in matters of Foreign and Security Policy Member States and NATO agreed to allow the EU to make use of NATO assets and capabilities for EU-led crisis management operations. This so-called **Berlin Plus agreement**¹⁰ was finalised in early 2003. As an immediate follow up to the Berlin Plus Agreement and the deep split of Member States towards the US-led invasion of Iraq, the European Council adopted the **European Security Strategy (ESS) in December 2003** – a common vision to enhance internal cohesion at EU level¹¹. The ESS identifies five key threats: terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure and organised crime.

Finally, the current **Lisbon Treaty** incorporates a slightly expanded Petersberg Task list,¹² a mutual assistance clause (Art. 42 (7) TEU and Art. 222 TFEU), and the possibility of the creation of a framework for Permanent Structured Cooperations (PESCO). The remainder of the WEU assets (such as the Security Studies Institute and the Satellite Center) was legally transposed to the European Union and the WEU ceased to exist by June 2011. Moreover, the European Union’s European External Action Service (EEAS) can also cover security aspects, and the EU Council of Ministers meets in a configuration of Defence Ministers. Especially in the field of **PESCO** we have seen some changes happening in the recent year(s).

So far 34 projects with a total of 25 Member States participating have been agreed under the framework of PESCO. A European Defence Fund has been established as well as the Coordinated Annual Review on Defence (CARD) which is a mechanism to promote information exchange and synchronisation of national defence investment planning.¹³ Also, the Unions Representative for Foreign Affairs and Security Policy has proposed a European Peace Facility (EPF) - an off-budget instrument that would provide €10.5bn for 2021-27 trying to cover the common costs of military operations, contribute to military peace operations led by other international actors and support third countries with military infrastructure and equipment.¹⁴

⁹ Overview of the CSDP available at: https://eeas.europa.eu/headquarters/headquarters-homepage_en/5388/Shaping%20of%20a%20Common%20Security%20and%20Defence%20Policy

¹⁰ Details of the Berlin Plus Agreement are confidential. A general overview however is been given by the EEAS at <https://eeas.europa.eu/topics/common-security-and-defence-policy-csdp/5388/shaping-of-a-common-security-and-defence-policy-en>

¹¹ Overview made by the EEAS of the CSDP available at: https://eeas.europa.eu/headquarters/headquarters-homepage_en/5388/Shaping%20of%20a%20Common%20Security%20and%20Defence%20Policy

¹² The Lisbon Treaty extends the scope and range to joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks and post-conflict stabilisation tasks.

¹³ Jacques Delors Institute, new beginnings bolstering eu foreign and security policy in times of contestation, <https://www.delorsinstitut.de/2015/wp-content/uploads/2019/09/4-FOREIGN-SECURITY-POLICY-koenig-1.pdf>

¹⁴ Idem ibidem.

European Defence Cooperation has come a long way so far, but has not and must not have reached its final form. On the contrary, in this ever-evolving world European Defence Cooperation must further be strengthened.

II. Current Challenges

The geo-political situation has become more and more heated in recent years. In the **Middle East** we see conflicts in Syria, Iraq and Yemen that are part of a broader regional conflict between two regional powers – Saudi Arabia and Iran - and which destabilises not only the whole region, but also fosters the emergence of terrorist threats in that region and in Europe. **In Africa**, for instance, the situation in failed states like Libya, Mali or in the Central African Republic remains unstable with rebel and terrorist groups continuing to seek or exercise power. Overall the Sahel region has been struck by major instability causing further emigrational movements towards European shores. To the east of the European Union tensions with **Russia** have not cooled off. Relations with the Russian Federation have continued to deteriorate: The annexation of Crimea violated a corner-stone principle of international law and the conflict in eastern Ukraine is still ongoing without an end in sight. The Skripal case, the violation of the INF treaty as well as increased disinformation campaigns all over Europe have exposed the rising tensions even more strongly. The global influence of the **US** and the Trump administration is now actively being challenged by **China**. First tensions have already expressed themselves in form of an ongoing trade war.

Overall, we see a world of disorder emerging, where major powers – the US, China and Russia – try to manifest their influence in key conflict areas (middle East, East Europe, South China Sea) and start competing over natural resources (in Africa or the Arctic).¹⁵ New battlefields in cyberspace and new hybrid warfare methods have emerged. The multipolar world and the rule of international law is being strongly challenged and yet some European Member States don't seem to have understood, that any single European Nation has become too small to deliver on its own, even if some of them are permanent members of the UN Security Council. Against this background one should ask oneself what the European Union could do in order not to disappear into geopolitical oblivion. If Europe is to compete worldwide, it will also need to pool and integrate stronger and faster in fields of defence policy. Consequently, one should look at which concrete first steps have been taken so far and what still needs to be done in terms of a common European defence.

III. Reform Proposals

1. Going beyond the European Defence Fund

At the moment, Europe is facing a huge duplication of military systems. There are 17 main battle tanks, 20 different destroyer types and 20 different fighter planes, whereas the US for instance only has one main battle tank, 4 destroyer types and 6 fighter planes.¹⁶ These massive duplications and discrepancies

¹⁵ Good analysis by Pedro A. Serrano de Haro, “the bundle of sticks: a stronger European defence to face global challenges”, Real Instituto Elcano Madrid (retrieved on August 10th 2019), <http://www.realinstitutoelcano.org/wps/wcm/connect/e1544a29-c4d0-4265-b48c-cbcffe913dd9/WP03-2019-Serrano-the-bundle-of-sticks-stronger-European-defence-to-face-global-challenges.pdf?MOD=AJPERES&CACHEID=e1544a29-c4d0-4265-b48c-cbcffe913dd9>

¹⁶ See figure beneath taken from the European Commission's Reflection paper on the future of European Defence, p. 9.

in weapon systems across the Union lead to little if any interoperability. In fact, around 80 % of defence procurement is currently run on a purely national basis, leading to a costly duplication of military capabilities.¹⁷ If a Polish soldier who has been trained to drive a Polish battle tank cannot drive a German or French battle tank (or vice versa) in case of a potential military operation, the effective common defence equals zero, leading to a lack of preparation and readiness for armed forces. This seems absurd. Instead of having many different weapon systems which effectively may lead to an absolute paralysed, the EU should start developing **common European equipment** and capabilities that can be operated by any European Soldier regardless of his or her Member State' origin. Furthermore, according to the Commission, the lack of cooperation between Member States in the field of security and defence is estimated to cost between €25 billion and €100 billion every year.¹⁸ The need for more interoperability and cooperation thus becomes even more evident.

To this end, the European Commission has proposed the so called “**European Defence Fund**”. This Fund, which will have an agreed financial capacity of € 590 million until 2020 and will be increased to € 13 billion in the long term, aims to coordinate, supplement and amplify national investments in defence. The Fund will also promote cooperation among Member States in producing state-of-the-art and interoperable defence technology and equipment. It will strongly encourage participation of small and medium-sized enterprises in collaborative projects and foster breakthrough innovation solutions.¹⁹ If Europe is to compete worldwide it will have to pool and integrate its best industrial and technological capabilities. As a first example of a joint development one can refer to the so-called Eurofighter. Initially used by the British Royal Air Force, the German Luftwaffe, Italian Aeronautica Militare, Spanish Ejército del Aire, Austrian Luftstreitkräfte the Eurofighter has been developed together by the countries involved and now has even won customers like the Royal Saudi Air force, Royal Air force of Oman, Kuwait Air force and the Qatar Air force.²⁰ Common European production and systems thus also show that technology and capabilities “made in Europe” are at the forefront of technological progress. Whether selling these technologies and especially weapons to authoritarian regimes, who have a bad human rights record, constitutes a good idea is highly questionable but is a different issue, which shall not be further discussed hereafter.

However, simply having a European Defence fund cannot be enough. If one is serious about making European transnational Defence more efficient and responsive to growing challenges, Europe needs to enlarge its **common single market for defence procurement**. This could be done when even high-value strategic and complex defence systems and equipment is procured under the Defence procurement directive.²¹ A common procurement in fields of space, air, maritime and communication technologies would make a significant difference to the currently fragmented, often inefficient and non-transparent defence procurement market. One needs to encourage industrial competition including cross border

¹⁷ European Defence Fund Factsheet, European Commission, (retrieved September 5th 2019), <https://ec.europa.eu/docsroom/documents/34509>

¹⁸ Idem ibidem

¹⁹ Idem ibidem

²⁰ Eurofighter Customers (retrieved on September 3rd), <https://www.eurofighter.com/customers>.

²¹ Defence procurement directive 2009/81/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02009L0081-20180101>

access of smaller industries in the supply chain and specializations in order to achieve a supplier optimized production capacity, lower production costs and security of supply.²²

It is noteworthy that a Joint Commission and EEAS Action Plan on Military Mobility was adopted in 2018.²³ A major part of it deals with dual-use (civilian-military) transport infrastructure, telecommunications and energy. Infrastructure priorities could be financed through a “military mobility envelope” within the Connecting Europe Facility (CEF) which is a funding programme that supports trans-European networks and infrastructures. In March 2019, the co-legislators have prolonged the CEF by agreeing on the second generation of CEF 2021-2027 regulation. Co-funding of dual-use civilian-military infrastructure is to start as of 2021. As a next step, investment priorities have to be set at EU level. Nevertheless, it remains to be considered whether further action at EU level is needed with regard to the transportation of dangerous goods in a military context.

It remains to be seen whether Member States will continue making the necessary steps or whether they will still keep on using their national frameworks. In the end, a common European approach would strengthen the community and make European citizens safer.

2. Protecting strategic infrastructure

Once the Union and its Member States have started developing more and more common infrastructure, whether it is in form of common military equipment and capabilities or in form of maritime bases, ports or energy parks, one should start identifying infrastructures of crucial strategic interests and protect them from hostile external takeovers.²⁴ This could be done by an Strategic Investments and Infrastructure **Observatory** which would screen foreign direct investment in critical technologies like AI and assess its potential defence impact.²⁵ This might be done on the basis of the recently passed regulation 2019/452 establishing a framework for the screening of foreign direct investments into the Union.²⁶

In times of hybrid warfare and strategic economic investment, such as the One Belt One Road Initiative coming from China, Europe needs to safeguard its overall strategic autonomy, which can be ensured on a European level the most effective way.

3. European Army

In the mid and long term, the European Union should also establish a unified defence force. One could call this a **European Army**. If the Union wants to be able to act sovereignly and autonomously in this

²² European Commission, Reflection Paper on the future of European Defence, p. 11, https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-defence_en.pdf.

The European Defence Agency to this end also contributes in major aspects. For more information: <https://www.eda.europa.eu/what-we-do/our-current-priorities>

²³ https://ec.europa.eu/transport/sites/transport/files/2018-military_mobility_action_plan.pdf

²⁴ European Commission, Reflection Paper on the future of European Defence, p. 15, https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-defence_en.pdf.

²⁵ Idem ibidem, p. 14.

²⁶ For a good Overview: European commission, factsheet screening of foreign direct investment - an eu framework, http://trade.ec.europa.eu/doclib/docs/2019/february/tradoc_157683.pdf; see also Regulation EU 2019/452

ever-changing world, it will have to be able to do so quickly and independently from other actors. By introducing such a military component, the Union will gain in credibility when dealing with international crises. Also, by pooling national armies together, one could, as mentioned above, effectively save up to € 100 billion annually²⁷ which could benefit other important sectors, like education, social standards, employment and environmental protection.

First, steps should be taken soon in order to use the momentum for European Defence that has arisen in the mixed of multiple geo-political crises we have experienced over the last couple of years. Multinational capabilities (such as the franco-german brigades) must be activated in a more systematic way in fields including strategic transport, remotely piloted aircraft systems, management of surveillance satellites. Also, the continuous refusal of Member States to use the common **battle groups**, which so far have never been used, should be overcome.²⁸ **Joint trainings, military education and regular exercise** should become the norm rather than the exception, promoting joint thinking and a European esprit de corps. The Budapest based European Union Agency for Law Enforcement Training (CEPOL) should become a fully-fledged **European Police Academy** providing these trainings.

Finally, a European army will also contribute to a **stronger feeling of belonging together**, contributing to European Identity and showing the world, that there will never ever be an armed conflict on the European continent.

²⁷ The European Files, June 2018, https://www.edf-vienna2018.at/wp-content/uploads/2018/09/Brochure_The-European-Defense-Industry-Towards-EU-strategic-autonomy.pdf ; as well as European External Action Service, https://eeas.europa.eu/headquarters/headquarters-homepage/49010/part-1-cu-acts-peace-and-security_en

²⁸ Jacques Delors Institute, new beginnings bolstering EU foreign and security policy in times of contestation, <https://www.delorsinstitut.de/2015/wp-content/uploads/2019/09/4-FOREIGN-SECURITY-POLICY-koenig-1.pdf>

B. The European Security Union

I. The Evolution of the European area of freedom, security and justice

While the European Economic Community of 1957 already created an internal market (which was finalised in 1986) with its four freedoms, the cooperation between police forces and judicial cooperation in civil and criminal matters was left out. Moreover, asylum and immigration policies and the fight against crime were a firm national competence. In the Maastricht treaty in 1991, the Member States changed the treaty and created the famous “third pillar”, which allowed more structured intergovernmental cooperation in these fields. However, they were not yet willing to apply the “Community method”, i.e. involving the Commission making proposals and enforcing common rules. This atypical situation was overcome first in the Amsterdam Treaty (1997), where judicial cooperation on civil matters and asylum policy was transferred into the Community Pillar. On its basis, the Tampere (1999-04), and Hague programmes (2004-09) gradually created the area of freedom security and justice. With the Lisbon Treaty, which entered into force in 2009, the remaining “third pillar” policy areas (police and judicial cooperation in criminal matters) were integrated into primary EU law. On that basis, the EU can today legislate in the entire spectrum of the area of freedom, justice and security (see TITLE V TFEU).

II. Challenges

In 2019, ten years after Lisbon, the European Union has implemented the principle of mutual trust and recognition already in many fields such as the recognition of civil and commercial judgments and European arrest warrant and a common definition of terrorism which enables better cooperation in the fight of the latter, just to name a few. Moreover, EUROPOL exists, and the European Public Prosecutor is about to begin its work. However, in many fields, progress has been stalled: Member States were not able to find a common approach to the immigration challenges. The result was most obviously a dysfunctional Dublin regime which paralyzed the union as whole. But also, in fields of criminal justice, progress has been limited. In an ever more interconnected world, it becomes evident that information crosses national borders within seconds. Neither Information flow nor criminal activities halt at the borders. Therefore, further interconnectivity and information sharing between national authorities is becoming increasingly inevitable.

European Security necessitates a strong supranational component, good cooperation between Member States, better law enforcement and adaptation to new fields security challenges such as Cyberspace. Consequently, one must find new tools, platforms and institutions to do so.

III. Reform proposals

1. Step up information sharing within the Union to prosecute crime effectively

In June 2018 the European Commission has proposed a new Regulation and a Directive to make it easier and faster for law enforcement and judicial authorities to obtain the electronic evidence they need to investigate and eventually prosecute criminals.²⁹ The Commission has stated that “there is a lack of

²⁹ European Commission Migration and Home Affairs, organized crime/human trafficking/e-evidence, https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/e-evidence_en

efficiency in judicial cooperation between public authorities, direct cooperation between public authorities and service providers, and public authorities' direct access to electronic evidence. As a result, investigations come to a halt, crimes go unpunished, victims are less well protected, and EU citizens feel less safe.” The impact assessment by the Commission identifies three problems:³⁰

- 1) It takes too long to access e-evidence across borders under existing judicial cooperation procedures, rendering investigations and prosecutions less effective.
- 2) Inefficiencies in public-private cooperation between service providers and public authorities hamper effective investigations and prosecutions.
- 3) Shortcomings in defining jurisdiction can hinder effective cross-border investigations and prosecutions.

It is therefore welcoming that the European Commission has proposed tools like the “**e-evidence**”. Though it has been confronted with some very legitimate criticisms³¹ it is a step in the right direction. The regulation could – if accepted by the Council and the Parliament – create a European Production Order. This will allow a judicial authority in one Member State to obtain electronic evidence (such as emails, text or messages in apps, as well as information to identify a perpetrator as a first step) directly from a service provider or its legal representative in another Member State, which will be obliged to respond within 10 days, and within 6 hours in cases of emergency (compared to up to 120 days for the existing European Investigation Order or an average of 10 months for a Mutual Legal Assistance procedure).³² The tool of e-evidence is a step in achieving further information sharing between national authorities. The Council and the Parliament should pass this regulation after having taken into account comments and amendments from civil society organisations.

2. European Cybersecurity

In times of more and more threats arising in the digital world, with great potential impacts in the real world (i.e.: power supplies, hospitals, traffic, banking and financial market disruptions), protecting cyberspace is a top priority. The European Parliament has passed in mid 2019 the so called “**Cybersecurity Act**”.³³ The Regulation strengthens the ENISA by granting to the agency a permanent mandate, reinforcing its financial and human resources and overall enhancing its role in supporting the EU to achieve a common and high level cybersecurity. More importantly though, it also establishes the first

³⁰ Commission Staff Working Document Executive Summary of The Impact Assessment, European Commission (retrieved on August 14th 2019), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018SC0119&from=EN>

³¹ Eurim.eu, Commission Proposes Legislative Framework for E-Evidence, June 29th 2018, <https://eu-crim.eu/news/commission-proposes-legislative-framework-e-evidence/> as well as edri.org, EU “e-evidence” proposals turn service providers into judicial authorities, April 17th 2018, <https://edri.org/eu-e-evidence-proposals-turn-service-providers-into-judicial-authorities/>

³² European Commission, Policies/e-evidence, (retrieved on August 14th 2019), https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/e-evidence_en

³³ European Parliament, European Cybersecurity Act, http://www.europarl.europa.eu/doceo/document/TA-8-2019-0151_EN.html?redirect#BKMD-20

EU-wide cybersecurity certification framework to ensure a common cybersecurity certification approach on the continent, thus harmonizing the European internal market and ultimately improving cybersecurity in a broad range of digital products (e.g. Internet of Things) and services.³⁴ In 2018 the European Commission also proposed the creation of a so called European Competence Centre for Cyber Security.³⁵ Establishing such a competence centre on the European level, which could be incorporated into the Framework of the EU Cyber Security Agency (ENISA), would promote coordination of research and cybersecurity on a pan-European scale. Until now, coordination and cooperation has been rather limited, due to a lack of effective cooperation and of various branches of industry working in parallel.³⁶ The competence centre would stimulate the European technological and industrial cybersecurity ecosystem as well as coordinating and pooling necessary resources in Europe and thus be working on improving the EU's cyber security defence as a whole.³⁷

Last but not least, the European Union should envisage creating a **Directorate General for Cyber Security** (DG Cyber) or at least a Cyberspace unit within the European Commission. Such a proposal has been put forward lately by the Bulgarian Prime Minister Boyko Borisov.³⁸ The proposal acknowledges the importance of the new challenges arising from Cyberspace. By creating such a “DG Cyber” within the Commission (or the EEAS), the issue of cybersecurity would gain more attention on a regulatory and political level and the Union as a whole could better face the difficult challenges.

3. Police cooperation with executive powers

In 1999 Europol was set up as an intergovernmental entity and has become an EU Agency since 2009. It is mandated to assist EU Member States in the fight against international crime, such as illicit drugs, trafficking in human beings, intellectual property crime, cybercrime, euro counterfeiting and terrorism, by serving as a centre for law enforcement co-operation, expertise and criminal intelligence.³⁹ However, Europol has no executive powers. It is merely a support service for the law enforcement agencies of the EU Member States. This means that Europol officials are not entitled to arrest suspects or act without the approval of national authorities.⁴⁰ This undermines the call of a broader European approach with

³⁴ European Commission, The Cybersecurity Act strengthens Europe's cybersecurity, <https://ec.europa.eu/digital-single-market/en/news/cybersecurity-act-strengthens-europes-cybersecurity>

³⁵ European Commission, Proposal for a Regulation Of The European Parliament And Of The Council establishing the European Cybersecurity Industrial, Technology and Research Competence Centre and the Network of National Coordination Centres, COM(2018) 630 final 2018/0328(COD), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52018PC0630>

³⁶ Kipker/Müller, International Regulation of Cybersecurity – Legal and Technical Requirements, MMR-Aktuell 2019.

³⁷ European Parliament, Briefing on The new European cybersecurity competence centre and network, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2019\)635518](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2019)635518)

³⁸ Novinite.com, August 23rd 2019, Bulgarian PM Borisov: We Suggest to Have a Cybersecurity Department in the European Commission, <https://www.novinite.com/articles/199633/Bulgarian+PM+Borisov%3A+We+Suggest+to+Have+a+Cybersecurity+Department+in+the+European+Commission>

³⁹ Regulation on the European Union Agency for Law Enforcement Cooperation (Europol), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0794>

⁴⁰ Is Europol a European FBI?, <https://www.europol.europa.eu/faq/europol-european-fbi>

regards to security issues in Europe. According to the latest Eurobarometer Public Opinion Polls⁴¹ more than 75 % of Europeans say they are in favour of a common European Defence and Security Policy (with figures in the Baltics, Benelux, Cyprus, Germany above 85%).

A common European approach is undoubtedly a priority for citizens which could be met with a “European FBI”. The idea of a **“European FBI”** is not new. In 1991 already, the German Chancellor Helmut Kohl called for the creation of a European police agency similar to the German Bundeskriminalamt. Against the background of rising challenges Member States and Institutions must consider creating such a European Supranational Bureau of Investigation. This means first and foremost giving **(1) Europol executive powers** and thus strengthening its abilities to protect citizens.⁴² In addition, the Union could establish an **(2) Intelligence Agency** with a common **“spy school”**.⁴³ Such an EU Intelligence Agency (EIA) would not necessarily have to be a supranational structure which would give tasks to national Intelligence services and to which the French DST or the German Bundesnachrichtendienst would have to report.⁴⁴ It would be more “the hub of a network with spokes in every national capital; the top of a web of information exchange linking Member States’ intelligence services.”⁴⁵ Considering that the Galileo satellite navigation system is up and running, equipped with the most accurate positioning systems with 30 satellites orbiting the earth, the European Union will have a great amount of information at its disposal. All the information gathered by Galileo for civilian and military use will have to be managed and protected by an entity, which should also be able to make use of this valuable information. Why not an EIA then? As a matter of fact, even the United Nations former executive director for counter terrorism Javier Rupérez supports a European Intelligence service, saying that it would be “perfectly logical”.⁴⁶ Terrorists and crime are organised on a Pan-European scale. Our information sharing however, too often isn’t.

4. Stronger Public Prosecution

Judicial coordination and cooperation between national authorities to combat terrorism and serious organised crime affecting more than one EU country is supported by the European Agency called Eurojust.⁴⁷ However, just as Europol, Eurojust lacks the necessary executive powers to carry out criminal investigations and prosecutions. In this regard, the **European Public Prosecutors Office (EPPO)** was

⁴¹ Eurobarometer November 2018, Europeans views on the priorities of the European Union, <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2215>

⁴² Art. 88 (3) TFEU seems to limit the executive competences of Europol by stating that any coercive measures remain exclusive responsibility of the competent national authority.

⁴³ Politico, EU to launch joint spy school, boost electronic warfare skills, https://www.politico.eu/article/europe-spy-school-defense-poised-to-launch-boost-electronic-warfare-skills/?fbclid=IwAR3QO3N3MXRPLJYZwJN1iGacT22qhCseMnYKxTs6IfQpjCaS_mn7raCr1ag

⁴⁴ Dana Spinant in Politico Europe, EU version of the CIA is best way of fighting Europe-wide terrorism, March 17th 2004, <https://www.politico.eu/article/eu-version-of-the-cia-is-best-way-of-fighting-europe-wide-terrorism/>

⁴⁵ Idem ibidem

⁴⁶ Politico, UN support for European intelligence service, November 9th 2004.

⁴⁷ Europa.eu, Eurojust, https://europa.eu/european-union/about-eu/agencies/eurojust_en

established in October 2017.⁴⁸ EPPO will have the competence to investigate, prosecute and bring to judgment crimes against the EU Budget, such as fraud, corruption or serious cross border VAT fraud. This is a very welcoming but overdue decision. In fact, the Union should broaden the competencies of the European Public Prosecutor. One could envisage **widening its mandate** to appellate cases and cases concerning the Unions security interests – not just cases against the Unions financial interest. The Public Prosecutor could therefore have primary jurisdiction in cases of crimes against the Union such as terrorism and espionage.

5. Effective border control

In 2016 at the height of the “migration crises” the mandate of **Frontex** was widened and the so-called European Border and Coast Guard Agency was established. It promotes, coordinates and develops European border management.⁴⁹ To this date Frontex has some 1,500 officers deployed at the EU’s sea, land and air borders, assisting EU Member States in tasks such as surveillance, fingerprinting and security checks. In the case of an emergency at the external border, Frontex has a further 1,500 officers at its disposal at short notice, as well as additional equipment if needed.⁵⁰ In order to ensure an orderly Migration and boarder protection as well as the existence of Europe’s internal border-free area, Frontex’ capabilities should be increased financially and in terms of personnel. Border control was identified as a major priority by Member States in June 2018. However, when the European Commission proposed to boost up the personnel capabilities of Frontex some Member States such as Austria which have previously strong been advocating for a tighter grid on migration and border protection have sharply criticised the proposal.⁵¹ Indeed, this seems to be a rather counterproductive and incoherent approach from some Member States. In any case, further development of a common border management through better personnel and financial resources is much more beneficial than a segmented approach putting at risk the Schengen area.

When it comes to migration, deep reforms of the Dublin II system are needed: a proper relocation system, a solidarity mechanism at EU level and a European Asylum Agency are proposals that have been put forward these past years. Discussing these major challenges would however go far beyond the scope of this paper.

C. Bringing together the two policy pillars

With better and more integrated capabilities, comes the need for better and more cohesive **decision making** accompanied by a long-term vision. Multiple reforms can be envisaged to this end.

⁴⁸ See Regulation 2017/1939 implementing enhanced cooperation on the establishment of the European Prosecutors Office (EPPO)

⁴⁹ Frontex, Origin & Task, <https://frontex.europa.eu/about-frontex/origin-tasks/>

⁵⁰ Frontex, Foreword, <https://frontex.europa.eu/about-frontex/foreword/>

⁵¹ Spiegel Online, Juncker wirft EU-Staaten "himmelschreiende Heuchelei" bei Grenzschutz vor, <https://www.spiegel.de/politik/ausland/jean-claude-juncker-wirft-eu-staaten-heuchelei-bei-grenzschutz-vor-a-1245849.html>

On a **Council level**, one could imagine a “European Security Council”. This would be a new meeting format of Heads of States and Governments, prepared by the foreign and defence ministers.⁵² Such a new format would be beneficial on multiple accounts: It would force the European Council to focus there and then on foreign and security policy alone and to agree on concrete annual priorities while implementing the EU Global Strategy.⁵³ It would also serve as the perfect discussion forum with key non-EU European partners. Post-Brexit UK and Norway could, for instance, be regular invitees.⁵⁴

When it comes to the **European Commission**, a Directorate General for Defence (DG Defence) could be established, which could include the above-mentioned important Cyberspace unit.⁵⁵ A European Defence Commissioner would oversee the DGs work and act as its head. In the area of defence, for Military Planning and Conduct Capabilities (MPCC), as well as Civilian Planning and Conduct Capabilities (CPCC) operations, a *permanent* Headquarters coordinating the operations should finally be established.

Last but not least, a **parliamentary oversight** over military activities must be insured. To this end a European Parliament Defence Committee could be established, promoting the check and balance system of a working democracy.

Together, all three institutions shall put forward a **joint doctrine**, bringing together both pillars into a cohesive European Defence and Security Policy.

D. Concluding remarks

European Defence has come a long way so far. Especially in these past few years the Union has experienced some momentum in this specific policy area. The efforts made should be continued and the momentum used. If further promises are made but no follow up occurs, not only damage to the reputation and credibility of the Union will be done, but this would also intensify the skepticism towards the European project as a whole. Member States and leading political forces must understand that in a globalized, interconnected world, where huge new challenges arise, Europe’s nation states are too small to deliver on their own. With the United Kingdom leaving the European Union a big Member State with considerable military weights is weakening the Union. Only by systematically integrating Europe’s defence capabilities the national sovereignty will be preserved on the long run. In the end, all Europeans live on the same continent, in the same Union driven by common values and have the same interests.

Kalojan Hoffmeister,

Shanghai, September 2019.

⁵² Jacques Delors Institute, new beginnings bolstering EU foreign and security policy in times of contestation, <https://www.delorsinstitut.de/2015/wp-content/uploads/2019/09/4-FOREIGN-SECURITY-POLICY-koenig-1.pdf>

⁵³ Idem ibidem

⁵⁴ Idem ibidem

⁵⁵ As of September 2019 Commission president elect Ursula von der Leyen has indeed established such a DG Defence.