

EXTERNAL ACTIVITIES UNDERTAKEN BY THE UE IN THE DEFENCE AND SECURITY DOMAIN

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Summary. The article covers the issue of the external activities undertaken by the EU in the defence and security domain. Referendum that took place on June 23rd 2016, that had a decisive impact on the Brexit event, made the EU readdress the issue of redefining the issue pertaining to the common defence and security policy, which also translates into further integration of the defence domain. The external actions undertaken by the EU and confirmation of its role as a global international actor are taking place within the framework of rules and goals pertaining to the common foreign and security policy, founded upon mutual development of solidarity policy among the Member States. The Council of Ministers, on December 11th 2017, in line with the regulations of the Treaty of Lisbon (articles 42, 6 and 46), made a decision to bring the PESCO (Permanent Structured Cooperation) to life. 25 EU member states (excluding the UK, Denmark and Malta) decided to join the Permanent Structured Cooperation scheme. Despite the attempt to create a European show of force in the defence and security domain, with Europe being fully responsible for its security, it shall be noted that this is just the beginning, and there is a lot still to be done in this area. Furthermore, despite the deepened collaboration among the member states, it shall not be forgotten that the national security still remains “the sole responsibility of each Member State”.

Key words: common foreign and security policy, common defence and security policy, strategic autonomy of Europe, Permanent Structured Cooperation, PESCO

INTRODUCTION

Referendum that took place on June 23rd 2016, that had a decisive impact on the Brexit event, has set the Europeans free from the British defence policy, paradoxically. The United Kingdom has always portrayed NATO as the sole organization remaining capable of dealing with the European security matters. Thus, the British government has been acting as an opponent in case of any attempts to create an independent European defence potential. Brexit means that the common defence and security policy came back onto the table, and redefinition of this area is expected, which would entail further

integration of the defence and security domain in the EU¹. Furthermore, war in Iraq, conflicts in Libya or Syria, or the Ukrainian crisis, with the EU being unable to take a joint stance, inflicted a pressure on the European organs of some of the EU member states, forcing them to address the issue of the Europe's strategic autonomy².

Even though adoption of the Treaty of Lisbon³ created a new impulse for the EU to take external actions in order to confirm its importance as a global international actor, the reaction towards a variety of armed conflicts that are taking place around the world, that we could have observed, exposes the Union's political powerlessness, but also a deficit of true solidarity among the EU member states.

The Treaty of Lisbon sets the goals for the EU, furthermore, it confirms the Union's identity of a global, international actor: "In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter" (Article 3, paragraph 5 of the Treaty on European Union)⁴. The impulse to act externally pertains primarily to the issues of legal personality and co-existence of the Union and the Community, that have both been definitely a subject to closure. The Union established on the basis of this Treaty replaces the European Community, being its legal successor (Article 1 of the Treaty on European Union) and shall be considered to have a legal personality (Article 47 of the TEU). Meanwhile, according to Article 24, paragraph 2 of the TEU: "Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions". The

¹ A. Dumoulin, *Brexit et défense européenne. Décryptage*, p. 4, in: www.irsd.be/website/images/livres/e-Note20fr.pdf [accessed: 23.03.2018].

² J.-D. Giuliani, *Défense: Le réveil de l'Europe*, "Question d'Europe" 474 (22) mai 2018, p. 6.

³ "Official Journal of the European Union" of 2016, C 202/1.

⁴ E. Neframi, *L'action extérieure de l'Union européenne. Fondements, moyens, principes*, LGDJ, Paris 2010, p. 13.

European Union is gradually being equipped with organs and structures required to expand and develop the concept of common defence policy⁵.

I. The Treaty of Lisbon takes over and includes most of the common foreign and security policy provisions that were contained in the rejected Constitutional Treaty. Even though pillar-based EU structure has been liquidated, the changes introduced by the Treaty of Lisbon seem to be a proof for maintaining a certain degree of separate and extraordinary character of the aforesaid domain. These changes include the following elements added to the Title V of the TEU: "General Provisions on the Union's External Action and Specific Provisions on the Common Foreign and Security Policy", consisting of two new chapters concerning, in general, the external actions of the EU and the Common Foreign and Security Policy (Chapter 1: "General Provisions on the Union's External Action"; Chapter 2: "Specific Provisions on the Common Foreign and Security Policy" also including section 2: "Provisions on the Common Security and Defence Policy"). The Treaty of Lisbon does not form a new qualitative dimension in the area of the Common Security and Defence Policy. It shall still be perceived as an intergovernmental domain of integration⁶. Within the Article 2 paragraph 2 of the TEU it was expressly stated that "In particular, national security remains the sole responsibility of each Member State".

The Treaty of Lisbon also establishes the new role of the High Representative of the Union for Foreign Affairs and Security Policy who, additionally, acts as the Vice-President of the European Commission and acts as the Chair of the Foreign Affairs Council. The High Representative, according to Article 18 of the TEU, is appointed by the European Council which makes its decisions on the basis of supermajority, as authorised by the President of the European Commission.

Furthermore, solidarity clauses were also adopted within the treaty, covering the issue of mutual defence. Article 42, paragraph 7 of the TEU reads as follows: "If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid

⁵ K. Orzeszyna, *Common Foreign and Security Policy of The European Union*, "Teka Komisji Prawniczej. Polska Akademia Nauk Oddział w Lublinie" vol. X (2017), p. 139.

⁶ R. Roloff, *L'UE et la sécurité. Cadre historique et institutionnel*, in: *L'Europe et sa défense*, eds. G. Boutherin, E. Goffi, Choiseul, Paris 2011, p. 49; J. Barcik, § 81. *Wspólna Polityka Zagraniczna i Bezpieczeństwa*, in: J. Barcik, A. Bentkowska, *Prawo Unii Europejskiej po Traktacie z Lizbony*, ed. 2, Wydawnictwo C.H. Beck, Warszawa 2011, p. 454.

and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States”⁷.

It shall be noted that the solidarity clause also includes two disclaimers: firstly, the provisions of Article 42, paragraph 7, sentence 1 of the TEU “shall not prejudice the specific character of the security and defence policy of certain Member States”⁸, secondly, “[c]ommitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organization, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation”. In practical terms the above means that in the defence and security domain, the commitments arising on the grounds of NATO membership shall take precedence over the commitments resulting from the EU membership⁹.

In December 2008, the European Council expressed its will to initiate the development of Common Defence and Security Policy that would be fully complementary with the NATO-defined approach. In order to face the aforesaid challenge Europe should make efforts to gradually perfect its civil and military capabilities, allowing the Europeans to remain responsible, in a credible and effective manner, within the framework of the renewed transatlantic partnership. The conclusions that the nations came to back in 2008 were referred to by the European Council in December 2012, when it was noted that the European Union was called to become responsible within the domain of peacekeeping and maintaining of the international security. This would allow the EU to guarantee security for its citizens and to promote its interest¹⁰. Thus, the European determination to increase the effectiveness of the steps undertaken in the area of Common Defence and Security Policy has been confirmed.

One of the clauses contained within the Treaty on the Functioning of the European Union Article 222 has a slightly different nature, requesting that the EU, as well as its member states shall “act jointly in a spirit of solidarity

⁷ UN Charter, “Journal of Laws” of 1947, No. 23, items 90 and 91.

⁸ This applies to four neutral states: Austria, Finland, Ireland and Sweden.

⁹ E. Dell’Aria, *L’UE dans sa relation avec l’OTAN et quelques autres acteurs: bilan et perspectives*, in: *Le traité de Lisbonne. De nouvelles compétences pour l’Union européenne?*, ed. A. Raccah, L’Harmattan, Paris 2012, pp. 194–195.

¹⁰ Ph. Delivet, *Les politiques de l’Union européenne*, La documentation française, Paris 2013, p. 254.

if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster". For that purpose the Union would employ all of the instruments remaining at its disposal, including the military measures provided by the Member States¹¹. Declarations No. 13 and 14. on the Common Foreign and Security Policy¹² place an emphasis, in a general manner, on the fact that the regulations that concern the common foreign and security policy do not make any specific contributions with regard to the profile of the defence and security policies of the individual member states.

II. The Common Defence and Security Policy constitutes an integral, yet specific, due to the subject matter, part of the Common Foreign and Security Policy. For the first time in the EU's history, a separate section covered the Common Defence and Security Policy (Section 2 of Chapter 2 of Title V of the TEU – Articles 42-46). The adopted provisions were directed towards guaranteeing the Union with operational capabilities based upon civil and military assets. The Union may make use of the said regulations within the framework of peacekeeping, conflict prevention, and international security enhancement operations, all conducted outside of its territory, in line with the UN Charter¹³. Alongside the goals listed above and the humanitarian and rescue operations, the Treaty of Lisbon also included the post-conflict stabilisation missions within the framework of crisis management armed deployments, joint disarmament operations and military support and consulting operations, among the possible uses for the EU military assets¹⁴. The tasks listed above are being carried out on the basis of the capabilities provided by the member states. "The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements" (Article 42, paragraph 2 of the TEU)¹⁵. The policy in question shall

¹¹ T.R. Aleksandrowicz, *Bezpieczeństwo w Unii Europejskiej*, Difin, Warszawa 2011, pp. 80–81.

¹² "Official Journal of the European Union" of 2016, C 202/1.

¹³ Article 1 of the UN Charter.

¹⁴ K. Badźmirowska-Miastowska, *Wspólna polityka zagraniczna i bezpieczeństwa Unii Europejskiej. Aspekty prawne i polityczne*, Wydawnictwo Akademii Obrony Narodowej, Warszawa 2013, p. 102.

¹⁵ J. Barcik, § 81. *Wspólna Polityka Zagraniczna i Bezpieczeństwa*, p. 476.

not prejudice the specific profile of the member states' defence and security policy.

Despite the Treaty regulations existing in the domain of the common security and defence policy, the political will to continue the developments in the domain of European security policy has been quite weak in case of the EU. However, this status is a subject to a gradual change now, which is expressed through a more precise definition of the Petersburg-type missions¹⁶ and unification of them within Article 43, paragraph 1 of the TEU, according to which the said tasks "referred to in Article 42(1), in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation". The aforesaid regulation also includes the following provision: "all these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories". The coordination of civil and military aspects for those missions is entrusted with the High Representative of the Union for Foreign Affairs and Security Policy, working under the guidance of the Council and in close and continuous co-operation with the Political and Security Committee (Article 43 paragraph 2 of the TEU). Considering the acts of terror in the New York City (2001), Madrid (2004), and London (2005) it was also specified that all of the aforesaid deployments may also be embedded within the initiatives the objective of which would be to act against terrorism through provision of support for the third countries in the process of conducting counter-terrorism activities within their territories¹⁷.

The Treaty of Lisbon also gave more authority to the European Defence Agency, providing it with a wider range of competencies in the defence industry and trade areas. According to Article 42 paragraph 3 of the TEU, "The Agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as 'the European Defence Agency') shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and

¹⁶ The qualification has been derived from the Petersburg Declaration of the Western European Union (UEO) issued in 2002.

¹⁷ Ph. Delivet, *Les politiques de l'Union européenne*, p. 255.

technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities”¹⁸. The task of the Agency, in particular, is to identify the subjects of military capabilities of the member states, promote the harmonisation of operational requirements, support the multilateral initiatives and support R&D in the field of defence technologies, as the Article 45 of the TEU suggests¹⁹. At the moment, the European Commission that remains outside the discussion of the EU defence discourse still plays a clearly defined role within the financial domain²⁰. Following the initiative of the President of the European Commission, Jean-Claude Juncker, the Commission has developed a plan for the European defence activities back in November 2016²¹. By 2020 the EU budget is going to include an amount of EUR 90 million, allocated only to defence.

Tighter collaboration between the member states may be expanded as a form of “permanent structured cooperation”. The aforesaid cooperation remains open for the member states that “fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions” (Article 42 of the TEU)²².

According to Article 42, paragraph 6 of the TEU, the “Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework”. The list of the member states involved in the above has been adopted following a consultation with the High Representative. Leaving the procedural differences aside, when it comes to referring to the enhanced cooperation on the grounds of the common law, the permanent structured cooperation has a limited field of application in the area of joint

¹⁸ M. Górką, *Wspólna Polityka Zagraniczna i Bezpieczeństwa*, in: J. Barcz, M. Górką, A. Wyrozumska, *Instytucje i prawo Unii Europejskiej. Podręcznik dla kierunków prawa, zarządzania i administracji*, ed. 3, LexisNexis Polska, Warszawa 2012, p. 192.

¹⁹ Defence expenditure of the member states has been limited, constituting one third of the US spending and 1.34% of the EU GDP in 2010, in comparison with the 4.7% GDP level in case of the US.

²⁰ T. Tardy, *Le retour de la défense européenne? “Question d’Europe”* 474 (22) mai 2018, p. 24.

²¹ European Defence Action Plan, 30th November 2016. European Commission, COM(2016) 950 final.

²² J.-L. Sauron, *Comprendre le Traité de Lisbonne. Texte consolidé integral des traités. Explanations et commentaries*, Gualino, Paris 2008, p. 123.

defence and security policy, and is based, primarily, on the military capabilities of the participating nations.

The permanent structured cooperation must be discriminated from the ability provided to the Council, as the Council may assign command within a mission to a group of states willing to be burdened with such responsibilities, on condition that the said states have the required abilities at their disposal (Article 42 paragraph 5 of the TEU). “Those Member States, in association with the High Representative of the Union for Foreign Affairs and Security Policy, shall agree among themselves on the management of the task” (Article 44 of the TEU). The difference here arises on the grounds of the fact that the latter case does not pertain to performance of the competencies within the area of defence and security by a “diminished” Union, but it rather applies to execution of decisions adopted by the EU as a whole. The group of the EU member states remaining in possession of capabilities required for the said mission carries out operational activities, the results of which remain legally binding for the whole EU. This form of flexibility allows for better securing of the commitments arising on the grounds of the substantive law, but does not create pro-development effect on joint defence and security policy²³.

Furthermore, the Treaty of Lisbon also introduced a certain degree of flexibility in the area of common defence and security policy, through creation of an option of maintaining tighter cooperation, which depends on a unanimous approval expressed by the council on the basis of the opinion issued by the High Representative and the Commission and following an approval issued by the European Parliament (Article 329 paragraph 2 of the Treaty on the Functioning of the European Union).

Reinforced relationship between France and Germany in the defence and security domain created a situation in which these countries dominate the strategic autonomy of Europe²⁴. Back in June 2017, Federica Mogherini, High Representative of the European Union for Foreign Affairs and Security Policy, announced emergence of the Permanent Structured Cooperation initiative. Even though such cooperation was foreseen by the treaties, it was not active until recently. Only after the UK was no longer an obstacle, and with Germany assuming a positive stance, the Council of Ministers was able, on

²³ E. Neframi, *L'action extérieure de l'Union européenne*, p. 32.

²⁴ F. Grossetête, *L'Europe reprend en main sa défense*, “Question d'Europe” 474 (22) mai 2018, p. 19.

December 11th 2017, in line with the regulations of the Treaty of Lisbon (articles 42, 6 and 46) to unlock the process of enhanced cooperation and to formalise the PESCO initiative. 25 EU member states (excluding the UK, Denmark and Malta) decided to join the Permanent Structured Cooperation scheme. The countries have made obligation to respect 20 common commitments and to work together within the framework of 17 projects that would contribute to development of defence capabilities. The European Commission proposed that joint defence domain projects have a budget allocated in an amount of around EUR 13 billion, defined for a fiscal period between 2021 and 2027.

CONCLUSION

The external actions undertaken by the EU and confirmation of its role as a global international actor are taking place within the framework of rules and goals pertaining to the common foreign and security policy, founded upon mutual development of solidarity policy among the Member States. The Council of Ministers, on December 11th 2017, in line with the regulations of the Treaty of Lisbon (articles 42, 6 and 46), made a decision to bring the PESCO (Permanent Structured Cooperation) to life. 25 EU member states (excluding the UK, Denmark and Malta) decided to join the Permanent Structured Cooperation scheme. Despite the attempt to create a European show of force in the defence and security domain, with Europe being fully responsible for its security, it shall be noted that this is just the beginning, and there is a lot still to be done in this area. Furthermore, despite the deepened collaboration among the member states, it shall not be forgotten that the national security still remains “the sole responsibility of each Member State”.

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DZIAŁANIA ZEWNĘTRZNE UNII EUROPEJSKIEJ W SFERZE BEZPIECZEŃSTWA I OBRONY

Streszczenie. Artykuł porusza kwestię działań zewnętrznych Unii Europejskiej w sferze bezpieczeństwa i obrony. Referendum z dnia 23 czerwca 2016 r. w którym zdecydowano o wystąpieniu Zjednoczonego Królestwa z Unii Europejskiej spowodowało podjęcie na nowo kwestii ponownego zdefiniowania wspólnej polityki bezpieczeństwa i obrony, a co za tym idzie również dalszą integrację w dziedzinie obrony. Działania zewnętrzne Unii Europejskiej i jej potwierdzanie jako globalnego aktora międzynarodowego jest prowadzone w ramach zasad i celów dotyczących wspólnej polityki zagranicznej i bezpieczeństwa opartej na rozwijaniu wzajemnej solidarności politycznej między państwami członkowskimi. Rada Ministrów w dniu 11 grudnia 2017 r., stosownie do przepisów Traktatu z Lizbony (artykuły 42, 6 i 46), podjęła decyzję o Stałej Współpracy Strukturalnej. Przystąpiło do niej dwadzieścia pięć państw Unii Europejskiej (oprócz Zjednoczonego Królestwa, Danii i Malty). Mimo próby demonstracji Europy, która bierze w pełni odpowiedzialność za swoje bezpieczeństwo, należy zwrócić uwagę na to, że jest to zaledwie początek i pozostaje jeszcze dużo do zrobienia w tym obszarze. Ponadto, pomimo wzmacnionej współpracy między państwami członkowskimi nie należy zapominać, że bezpieczeństwo narodowe nadal pozostaje w zakresie wyłącznej odpowiedzialności każdego państwa członkowskiego.

Slowa kluczowe: wspólna polityka zagraniczna i bezpieczeństwa, wspólna polityka bezpieczeństwa i obrony, autonomia strategiczna Europy, Stała Współpraca Strukturalna