

## **FROM ENHANCED COOPERATION TO PESCO, A NEXUS TO SHAPE CSDP`S FUTURE**

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**Abstract:** EUROPE`S IDENTITY IN TERMS OF CSDP HAS EVOLVED A LOT SINCE THE TREATY OF LISBON BUT UNFORTUNATELY NOT ALL THE ELEMENTS THAT WERE DESIGNED TO PROVIDE AND SUSTAIN EU`S ROLE AS A GLOBAL PLAYER WERE PUT TO ACTION. THIS CONTRIBUTION AIMS AT DEPICTING THE MAIN LANDMARKS AND OBSTACLES THAT CHARACTERIZES THIS PROCESS OF REACHING CONSENSUS IN AN AREA USUALLY PLACED IN THE ADMINISTRATION AND DISCRETION OF THE MEMBER STATES, NOW AN IMPORTANT ELEMENT OF THE APPROACH OF SHARED SOVEREIGNTY. STARTING WITH THE BENEVOLENT FORMULA OF ENHANCED COOPERATION AND EVOLVING INTO A MUCH SHARPER FORM OF COLLABORATION CALLED PERMANENT STRUCTURED COOPERATION, THE WHOLE FRAMEWORK OF A COMMON EUROPEAN GRAND STRATEGY FOR SECURITY AND DEFENCE IS STILL FAR FROM REACHING ITS FULL POTENTIAL OR MATURITY.

**Keynotes:** enhanced cooperation, Permanent Structured Cooperation, CSDP, community method.

### **Introduction**

About 2 decades ago the Treaty of Amsterdam brought forward the concept of enhanced cooperation, which was, for the years to come, a perfect representation on how the European integration process could advance in times of political uncertainty, lack of trust, different perspective on behalf of the Member States or limited consensus on the future prospects of the EU`s governance system itself.

Seen as a compromising version, this enhanced cooperation, served the purpose of avoiding institutional blockage for a vast array of initiatives and policies that in terms of regional impact have meant a lot for the development of a European ethos. The enhanced cooperation was provided with a legal framework in order to stem future integration projects, the central aim being that of gathering European states around similar topics that needed pragmatic approaches and solutions.

### **Means of integration from enhanced cooperation to Permanent Structured Cooperation**

The essence of this Community project can be found in other European initiatives, such as the Schengen Agreement of 1985, The Single European Act of 1986, or the Treaty of Maastricht, all of them dedicated to building support around some major lines of sectoral and cross-sectoral integration.

Once established, this form of enhanced cooperation signaled the capability of the European states to create substance for the integration process mainly through a voluntary basis and some flexible means and technics. In order to be advanced the enhanced cooperation needs a

minimum of nine EU states and it is used mainly as a last resort solution, being able to trigger a new dynamics especially within the former second pillar.

Although there was a wide consensus about using the enhanced cooperation within the second pillar to boost coherence among European diplomacies, the practical use of it addressed other issues, namely: recognition and executions of judgements in the case of a divorce/legal separation, property regimes of international couples, cooperation on the establishment and use of European Patents, which led to an Agreement to a Unified Patent Court (signed on February 19<sup>th</sup> 2013) or a common tax regime for financial transactions.

The enhanced cooperation managed to compliment the community method in a time of great changes upon the EU's institutional infrastructure and in a decade with great political pressures from within the Community. The relationship between the community method and the enhanced cooperation is very sound given the fact that both components address the capacity of the EU to adjust its integration process. If the community method proves to be less efficient in crisis, due to its normative, balanced procedures and the whole deliberative process surrounding it, the enhanced cooperation allows a small group of states to tackle important issues and to solve pressing problems by themselves.

The community method proved to be highly successful during the 80's-90's. This particular method of integration, inspired by Jean Monnet is reflected through: the monopoly of the European Commission on proposing legislative acts, the capacity of the Council and the Parliament to adopt laws under the co-decision procedure, while using a qualified majority within the Council and a solid role for European Court of Justice in ensuring judicial accountability. The community method has become `the ordinary legislative procedure`, according to Article 289 of the Treaty of Lisbon, which in fact represents its legal, regulatory and normative force [1].

On behalf of the national states, enhanced cooperation provides some concrete benefits, as resulted from a research organized by the European Council on Foreign Relations, its main motivations for flexible cooperation can be summed up as follows:

- ✓ To demonstrate benefits of collective European Action
- ✓ To overcome policy deadlocks
- ✓ For less bureaucracy and a results-oriented approach
- ✓ To allow greater self-determination for EU members
- ✓ To cooperate with non-EU members [2]

There is a group of states (Austria, Hungary, Poland and the UK) that perceive the enhanced cooperation as a means to regain national independence and sovereignty on some core policies. Almost all EU Member States agree that this enhanced cooperation should be based upon the instruments included in the treaties.

Flexible cooperation is very frequently attached to the complex of European Foreign Policy (EFP). At this level there are some institutional problems that scholars emphasize: the lack of clarity from within the architecture of this policy, a shortage in the capabilities of the EU when dealing with this policy that proved inconsistent especially in delivering a unitary message and of course the lack of consensus in pursuing strategic objectives on the medium to longer term.

The European Foreign Policy depends on the decisions and actions determined by the framework of the Common Foreign and Security Policy (CFSP) which is complimented by the Common Security and Defence Policy (CSDP) which is responsible for the operational basis for the civil and military missions.

Both policies are governed by the relationship between the Council and the Member States. The whole complex of EFP is nourished by the traditional separation between “low politics” which are operated through the community method, and the “high politics” structured around the intergovernmental cooperation. [3]

PeSCo, in the field of CFSP, is related with the development of intelligence complexes and information sharing, fight against cyber-terrorism, and a better regulation and functioning for the defence market. Although there is a rather common trend to put the equality sign between enhanced cooperation and Permanent Structured Cooperation (PeSCo) the two concept are complementary, overlapping but far from defining the same thing.

First of all the distinction between the two comes from the legal provisions of the Treaty of Lisbon, where the “enhanced cooperation” is defined under article 329 of the Treaty on the Functioning of the European Union (TFEU), while the PeSCo find its legal roots in the Articles 43 and 44 of the Treaty on European Union (TEU). While enhanced cooperation allows a group of Member States to surface solutions and to create consensus in an area of general interest for the EU, PeSCo needs at least 5 commitments and one call to action to be triggered. The later can somehow be enacted only by the Member States that possess sufficient military capabilities to engage in such an effort. So the defence capacities and the capacity to supply combat units is an essential ingredient for the PeSCo to be fully operational.

The debated around PeSCo dates back from the draft of the “European Constitution”, when this instrument was conceived to push a group of countries to a further progress in building their defence capabilities through cooperation, which then let to a more integrated European Security and Defence Policy. After it was included in the Lisbon Treaty, PeSCo didn’t raise up to its expectations, because the whole design of the Common Security and Defence Policy was at a standstill. The main obstacles to cooperation were: the outdated protocol texts that advanced this initiative, a poor definition for the criteria that endorsed the initiative and why not Member States fears that the EU bureaucracy would make it inefficient when calls to action would be made, this later gap being accountable also for the lack of support for this initiative.

The economic crisis that hit Europe starting from 2008 determined a series of shortfalls in terms of military capabilities and national defence budgets [4] that had to deal with an increasing demand for intervention, especially outside the EU. In order to tackle this difficult problem, the defence ministers of the EU launched the Pooling and Sharing concept, at their informal summit in Ghent, in autumn 2010. Sharing means that a Member State will have to provide a capability that is missing in another Member State, or to conduct tasks for a Member State that is not able to undertake. On the other hand, pooling a capability implies that the contributions by several Member States are coordinated to make them available to another Member State on a more constant basis or in greater numbers, as it is done with European Air Transport Command (EATC)[5].

The concept of pooling and sharing was complimented ab initio by a joint civil-military research and its design was to be complementary with NATO. This initiative matured a lot after the Ghent Initiative of 2010, in the following 3 years the Council presented its Conclusions upon the Pooling and Sharing of military capabilities, followed by a Policy Framework for systematic and Long-Term Defence Cooperation on the 17-18 November 2014.

European Defence Agency (EDA) has played an important role in conducting the efforts of the Member States to make the pooling and sharing concept a vivid reality. EDA has managed and facilitated more than 185 projects. [6] In order to enhance coherence and transparency in

November 2012 the EDA issued a ``Code of Conduct for pooling and sharing`. Although this code had no legal force it was at least assumed politically.

The EDA managed to propose and prepared four major capability programs which were endorsed by the Heads of State and Government, at the European Council in December 2013.

All of these programs are being implemented in a medium to long term range, and they are as follows:

- ✓ Air-to-Air Refuelling
- ✓ Remotely Piloted Aircraft Systems
- ✓ Governmental Satellite Communication
- ✓ Cyber Defence [7]

PeSCo could provide this concept of pooling and sharing a comfortable space of manoeuvre that might prove its utility mainly in multinational initiatives.

There is a whole apparatus of legal strings that could enforce the integration within the CSDP. Besides PESCO we also have the Mutual Assistance Clause present in TEU, art 42(7), which triggers the obligation of aid and assistance for a Member State that is the victim of an armed aggression on its territory. Solidarity Clause is another component of this legal infrastructure (TEU, Art. 222), but there are other legal possibilities to build coherence among the Member States. The TEU also emphasizes the possibility of a group of Member States to act together in the execution of a task if the Council requires it. This less explicit form of cooperation is referred in the Art. 42 and Art. 44 of the TEU, the Council being the political body responsible to activate it.

In order to simulate coherence in the field of CSDP, the European Commission has proposed a plan to create the European Defence Fund, that would consist of two pillars: a `research window` and a `capability window`. A budget of € 90 million euro is to be submitted for the `research window` until 2020, the initiative being focused mainly to critical areas of defence and innovation-driven technologies. Starting from 2020 the research window would consist of a budget of € 500 million yearly.

The `capability window` advances the idea of joint defence capabilities, and for this objective to be fulfilled the EU pledges an amount of € 5 billion per year. This `capability window` is an umbrella structure that establishes a common basis for independent projects, while providing also the back office activities aimed at consolidating those initiatives.

### **Conclusions**

This flexible cooperation can still forge an identity for EU`s plans to build a solid security and defence policy, together with the European Defence Agency and protected by the Collective Defence Clause.

The future of CSDP should be assessed on a yearly basis like the economic integration process, in the past half of the century. This process should take into consideration the possibility to grant a certain percentage from the EU budget to the security and defence complex.

All the upgrades made so far to the framework and functions of the CSDP should be kept going through a firm political involvement on behalf of the Member States. PeSCo could be a space of experimenting different types of multinational formats and coalition building among Member States. Once the domestic forces converge towards these multilateral arrangements the use of their military capabilities should be used as functional recipes in extending the framework for cooperation.

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