

# Becoming sovereign: A Proposal for the Establishment of a European Security Council

Blueprint, legal basis, and considerations

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## Introduction

The transatlantic alliance has reached a critical point while unprecedented threats to European security continue to persist, including Russia's aggression against Ukraine and its aggressive posture towards the EU. The recklessness with which the current United States Administration intervened in Venezuela and continues to threaten Greenland reinforces the concerns. Under those circumstances a reform of Europe's decision-making in strategic and defence matters is of paramount, even existential importance.

The urgency of such reform is underlined by the latest 2025 U.S. National Security Strategy, which signals a fundamental shift in Washington's perception of Europe. The strategy no longer treats the European Union as a strategic partner, but rather as a weakened and internally constrained adversary, an outdated actor whose members are expected to assume primary responsibility for their own security. This marks a clear departure from the post-Cold War logic of automatic transatlantic guarantees and introduces a new era of strategic uncertainty for Europe. Under those circumstances, the EU will not be able to continue relying on determination of others but will need to develop capabilities of its own.

The existing mechanisms mostly require consensus among all 27 EU Member States, leading to slow outcomes that mostly reflect a lowest-common-denominator. This is an outdated mode of operations and Europe must agree to establish a new structure to accelerate decision-making in defence of the whole continent. In this paper I advocate that this body should become a European Security Council (ESC). The ESC will need a structural ecosystem that would enable it as a body that can both decide and deliver quickly. This presupposes a core Defence Union and further institutional design operating along the three important principles, the "Three Nots" – "Not the Entire EU / Not Only the EU / Not Without the EU". Under those circumstances the ESC would be a decision-making body of a flexible coalition anchored to the European Union's institutional framework, open to key allies, yet unencumbered by the need for full EU unanimity.

The following proposal outlines a blueprint for a European Security Council (ESC), covering first its legal status and jurisdiction, mandate, decision-making mechanism, membership and composition, and relationship to the EU and other institutions. After highlighting the precedents set by other initiatives, the paper also examines the legal basis for the establishment of such a body, finding that the most suitable means to do so would be via intergovernmental cooperation under international law. A final section exemplifies the challenges and chances in the intersection between national and supranational rules. It provides a brief exemplary overview focusing on the German constitutional environment in relation to defence and considers its implications for the establishment of a European Security Council.

# I. Blueprint for a European Security Council

## A. Legal Status and Jurisdiction

**Establishment and relationship to the EU:** The ESC will be established as an inter-governmental security body by treaty. It will operate alongside the EU's legal framework rather than as an official EU institution, allowing a subset of European nations to coordinate defence policy without formal amendment to the EU Treaties. This arrangement will leverage the model of enhanced cooperation in EU defence currently embodied by Permanent Structured Cooperation (PESCO) – integration that does not require the participation of all EU Member States and includes willing non-EU allies.

**Legal authority:** While ESC decisions will be politically and morally binding on its members, who will commit to implementing agreed actions in support of collective European security, these decisions will not directly create EU law. When appropriate, the ESC may seek endorsement of its decisions by the EU Council or implementation through EU instruments, in accordance with the EU Treaties. For example, the Council of the EU may subsequently approve an ESC-agreed military mission pursuant to Article 44 of the Treaty on European Union (TEU) or use EU funds to support ESC initiatives, but only with the necessary EU-level consent. However, the decisions of ESC could serve as a legal basis for national parliaments to assume military actions and thus base their final decision on that legal basis. Besides, countries – both members and non-members of the EU, participating in an additionally created voluntary Defence Union, could consensually submit under the jurisdiction of the ESC to facilitate faster collective actions.

**No treaty change required:** By operating via intergovernmental accord and existing defence cooperation clauses, the ESC will avoid the need for immediate change to the EU Treaties, which do not explicitly provide for a security council of this nature. Establishing the ESC via a standalone agreement or under the PESCO framework will allow it to commence operations swiftly. Participation under the umbrella of PESCO is feasible, as 25 EU Member States already pursue joint defence projects in this way. The founder members of the ESC, being among those most committed to EU defence, will be able to invoke PESCO mechanisms to legitimise their cooperation if desirable, while also inviting third countries to participate as permitted under PESCO's rules on third-state involvement.

**Jurisdiction and scope:** The ESC's remit will centre on security and defence policy. It will deliberate and decide on matters of collective defence readiness, operational military assistance, crisis management, intelligence and counter-intelligence, cybersecurity, counter-hybrid warfare, and other security issues impacting Europe. The ESC will not supplant NATO's collective defence guarantee; instead, it will coordinate European contributions and actions within both the Alliance and the EU's Common Security and Defence Policy (CSDP). Each Member State will retain ultimate national sovereignty over its armed forces and foreign policy; the ESC's coordinated decisions will represent a joint commitment rather than a

supranational command. However, the ESC could serve as a structure that could allow more decisive integration of armed forces in the mid- and long-term.

**Compatibility with other obligations:** Actions undertaken by the ESC shall be consistent with the United Nations Charter and NATO commitments for any members that are Alliance members. ESC cooperation will also respect EU law and competences – for instance, it will avoid duplicating EU sanctions regimes or infringing on exclusive EU competences. In the event that the ESC agrees on measures that require EU involvement (such as EU funding or legislation), it will channel proposals to the appropriate EU institutions for consideration, remaining as closely linked to the EU level as possible for legitimacy. In this way, the ESC will complement existing frameworks rather than contradicting them.

## **B. Mandate**

The European Security Council will be entrusted with the following core strategic goals and functions in order to bolster European security and support allies under threat:

- a) **Collective defence readiness: *Enhance Europe's preparedness for the collective defence of its territory and citizens.*** The ESC will coordinate military planning, readiness exercises, and capability development among members to ensure they are able to respond decisively to any aggression. This will include setting targets (e.g. meeting NATO's defence spending commitment) and holding members accountable in order to strengthen Europe's defensive capacity. The ESC will serve as a high-level forum to devise strategies and policies to bolster Europe's deterrence posture, complementing NATO by developing a stronger European pillar within the Alliance. The definition of defence and security will include societal resilience and civic defence readiness.
- b) **Operational military aid to Ukraine: *Prioritise and streamline the provision of military assistance to Ukraine in the face of Russian aggression and the follow-up.*** The ESC will act as an operational coordination centre for Member States to jointly plan arms deliveries, ammunition supplies, training programmes, and financial aid for Ukraine, during and beyond the defence against the full-fledged aggression phase. By uniting key European donors, the ESC will be able to overcome fragmentation and accelerate the delivery of aid. It will also coordinate with broader international efforts to ensure European contributions are timely and effective. Joint operations or training missions in support of Ukraine may be launched under the auspices of the ESC, with willing members contributing troops or matériel. This focus on Ukraine will underscore the ESC's commitment to defending European democracy and stability in areas where they are most directly under attack.
- c) **Rapid crisis response and hybrid threats: *Provide a nimble decision-making "steering committee" for emerging security crises.*** The ESC will be able to convene at short notice to address unfolding emergencies such as sudden military confrontations

as well as cyberattacks on European infrastructure, disinformation campaigns, and other hybrid warfare tactics. By sidestepping the 27-member unanimity rule that often slows EU responses, the ESC will be able to formulate unified responses (diplomatic, military, economic, or intelligence) within hours or days rather than weeks and take swift action to counter threats such as cyber intrusions, election interference, the sabotage of critical infrastructure, or covert paramilitary operations. This agility will help to pre-empt obstruction from pro-Kremlin leaders such as Hungary's Viktor Orbán or Slovakia's Robert Fico, who may otherwise veto collective action. The ESC will also develop contingency plans and exercises for various hybrid threat scenarios in order to improve collective resilience.

- d) **Intelligence sharing and coordination: *Improve the sharing of intelligence and strategic assessments among Europe's key security actors.*** The ESC will establish a secure platform for the exchange of intelligence on military threats, terrorism, hostile state activities, and other risks. Members' national intelligence agencies and the EU Intelligence and Situation Centre (INTCEN) will interface through the ESC to create a common operational picture of threats. By fusing insights from the major European powers (and the UK as a leading intelligence player), the ESC will facilitate better-informed and faster joint decisions. It may create an "Intelligence Coordination Cell" within its secretariat (see section F(1) of this proposal) to compile and disseminate intelligence reports to members. Additionally, the ESC can issue joint intelligence estimates to guide policy, for example on Russia's military intentions or warning of hybrid operations, ensuring that all members have the same information at their disposal.
- e) **Countering terrorism and regional instability: *Extend the ESC's mandate beyond the Russian threat to include other security challenges facing Europe.*** The ESC will coordinate counter-terrorism efforts among its members, including information sharing on threats and aligning strategies to prevent attacks. It will also address instability in neighbouring regions (e.g. the Western Balkans, North Africa, or the Middle East) that could impact European security, devising collective responses such as training missions, peacekeeping deployments, or support for EU/NATO operations in these theatres.
- f) **Defence capacity building and mutual accountability: *Serve as a forum for holding members accountable for meeting their commitments and collectively improving capabilities.*** Members will regularly review each other's contributions to common security such as defence budgets, force readiness, contributions to joint missions, and the implementation of agreed-upon initiatives. This mutual accountability will create collective pressure to meet targets, for example on defence spending or investment benchmarks, and will respond directly to Trump's recurring criticism that European allies are overly reliant on the US military presence in the region. The ESC will be able to commission joint reports on gaps in Europe's defence posture and direct resources to fill those gaps, in coordination with EU instruments such as the European Defence Fund (EDF). It will also oversee collaborative projects (potentially under PESCO or

multinational frameworks) that strengthen Europe's industrial and military capacities, ensuring that political will translates into concrete capabilities.

With the unanimous agreement of ESC members, these core mandates may be updated as Europe's strategic environment evolves. Overall, the ESC's mission will be to preserve peace and security in Europe through a high-level, streamlined structure able to coordinate approaches, develop joint strategies, and play a leading role in upholding regional stability, in concert with existing NATO and EU structures.

### C. Decision-Making Mechanism

- 1. Consensus-based decisions:** The ESC will endeavour to take all significant decisions by unanimous consensus of its core voting members. Each member will have an equal voice, and decisions – such as authorising a military mission, issuing a collective statement or alert, or triggering mutual defence support – shall require the assent of all core members present.
- 2. Rationale for small-group unanimity:** Unanimity within a small, like-minded group of major states is considered both feasible and essential. It is feasible because, with only a handful of participants who share strategic interests, reaching agreement is far easier than among 27 divergent states. By restricting decision-making to the ESC's limited membership, the ESC will avoid the paralysis that can afflict the broader EU. The EU's past crises (Iraq 2003, Libya 2011, Ukraine 2014, etc.) showed the 28- (now 27-) member format struggled to move beyond the "lowest common denominator" response.<sup>1</sup> In contrast, the ESC will be composed of a committed core able to agree on bolder, more decisive action. Unanimity among five or seven key governments/actors is easier to achieve and faster to execute than unanimity among all EU states. It is essential because consensus ensures that any action taken has the full political backing and resources of all key players, lending it maximum credibility. Each ESC member will thus understand that they must take the initiative – not wait for "someone else" to act – which will increase pressure to act and to not compromise. This approach is expected to yield far more effective outcomes in emergencies.
- 3. Abstention and flexible consensus:** To maintain momentum, the ESC may allow a form of constructive abstention. If a member has strong reservations about a particular action, it will be able to formally abstain – i.e. decline to participate in implementation – without blocking the other members. An abstaining member will not veto the decision; the remaining members will be able to proceed, with the abstainer simply taking no active role (while still observing and not obstructing the action). This mechanism, akin to Article 31 TEU on the Common Foreign and Security Policy (CFSP), will ensure that a single hesitant member need not derail collective action.

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<sup>1</sup> Niklas Nováky (2019). *EU It Yourself: A Blueprint for a European Security Council*. Wilfried Martens Centre for European Studies. <https://www.martenscentre.eu/publication/eu-it-yourself-a-blueprint-for-a-european-security-council/>.

However, abstention must only be used in exceptional circumstances. In general, all core members will be expected to participate fully in agreed actions. If more than one member expresses a fundamental objection, the decision will be revised or dropped, as genuine consensus no longer exists.

- 4. Voting procedure:** ESC decisions, taken on the basis of consensus as declared by the chair (see section F(1) on chairpersonship), will be recorded in written conclusions after each meeting. In the rare event that a vote is needed (for example, on the election of a rotating member or a procedural matter), each core state member will cast one vote, and all core members will be required to concur for adoption. Each non-state institutional member (such as the president of the European Parliament (EP) ) shall also cast one vote. Decisions can be made at either head of state/governmental level or at ministerial level. (The ESC may convene in leaders' summit format or in ministerial format, as appropriate.) However, major strategic decisions (e.g. on determining a war situation or a declaring a case for collective self-defence), if the product of ministerial-level decision-making, must be confirmed or subsequently endorsed by ESC members' heads of state/governments to ensure the highest level of political commitment.
- 5. Relationship to EU-27 decision-making:** The ESC decision-making mechanism is intended to complement, not replace, EU-27 decision-making. As mentioned previously, unanimity among a small group of like-minded states is preferable to full EU consensus in urgent security matters because it allows potential vetoes by states with misaligned interests or domestic constraints to be sidestepped. Recent experience with Hungary has shown that currently a single Member State can block or delay critical EU actions. In short, the ESC's streamlined unanimity will strike a balance between efficiency and unity: it will preserve the requirement of agreement (ensuring unity among those who matter most and contribute the bulk of resources) while eliminating the unnecessary actors who might hinder action. This will result in faster, more robust collective responses in support of European security.
- 6. Transparency and EU notification:** While it is possible for ESC deliberations to remain confidential, any decisions affecting EU policy will be communicated to the wider EU as appropriate. If not ESC members themselves, the High Representative of the Union for Foreign Affairs and Security Policy and the presidency of the Council of the EU shall be informed of ESC decisions (in confidence) to ensure that non-ESC EU members are kept aware of major actions. This aim of this approach is to ensure that smaller states are not overlooked or taken by surprise by ESC initiatives. By notifying the broader EU (through the Political and Security Committee (PSC) or Council consultations), the ESC will be able to eventually bring along other Member States, inviting them to support or participate in implementation on a voluntary basis, without granting them a de facto veto in the decision-making phase.



## D. Membership and Composition

**1. Initial composition:** The European Security Council will initially be composed of seven founder (or “core”) members – Europe’s six major military powers, including one major non-EU European ally, plus the president of the European Parliament:

- **European Parliament:** The president of the European Parliament shall sit on the European Security Council as a representative of the EU’s only directly elected institution. This is to ensure that the ESC remains accountable to EU citizens and subject to democratic scrutiny. The EP president will participate – with full voting rights – in decision-making and may voice the Parliament’s position within the ESC and endorse the legitimacy of the ESC. Their presence will satisfy the European Parliament’s call for any new security body to be subject to democratic oversight.<sup>2</sup>
- **Core EU Member States (“Founding Five”):** The five EU Member States with the largest economies and militaries and highest defence spending across the western, central, and southern regions of the European Union – France, Germany, Italy, Spain, and Poland – will be among the core members of the ESC. These nations are collectively responsible for a substantial majority of the EU’s defence spending and capabilities, and each has demonstrated commitment to European security, including strong support for Ukraine. They will form the critical nucleus of the ESC.<sup>3</sup>
- **Key non-EU Member State:** The UK remains one of Europe’s top defence spenders and is a nuclear power with global reach. Its inclusion in a planned European Security Council is vital for strengthening UK-EU security ties after Brexit. It will signal that European security is not only the EU’s purview – close allies outside the EU are integral to the continent’s defence – and maintain British involvement in this. The ESC treaty will thus include the UK as an equal participant from the outset, with the understanding that it will coordinate intensively with EU members in this forum, as envisioned by proposals from both French/German leaders and the European People’s Party.<sup>4</sup>

**2. Rotating membership for other EU Member States:** In order to uphold the principles of “three nots” - “not the entire EU, but never without the EU”, in addition to the permanent core members above, a number of additional EU Member States (initially two) shall sit on the ESC on a rotating basis. These members will have no

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<sup>2</sup> Niklas Nováky (2019). *EU It Yourself: A Blueprint for a European Security Council*. Wilfried Martens Centre for European Studies. <https://www.martenscentre.eu/publication/eu-it-yourself-a-blueprint-for-a-european-security-council/>.

<sup>3</sup> Ibid.

<sup>4</sup> Francis Shin (2024). “Europe still needs a security council”. *New Eastern Europe*. 29 November 2024. <https://neweasterneurope.eu/2024/11/29/europe-still-needs-a-security-council/>; Jon Stone (2024). “Save Brexit Britain a seat on new European Security Council, von der Leyen’s party says”. *POLITICO*. 7 March 2024. <https://www.politico.eu/article/brexit-britain-security-council-european-peoples-party/>.

vetoing right and will change every two years. This will ensure that every EU Member State will eventually have a seat at the table<sup>5</sup>, preventing the ESC from becoming an exclusive club of large states and injecting fresh perspectives and regional diversity, thereby defusing the possible concerns of smaller Member States about being sidelined.<sup>6</sup>

- 3. Rotating membership for non-EU European partner (optional):** A key non-EU European ally that contributes to EU security, such as NATO co-founder Norway, could be admitted as a rotating member for a two-year term with the unanimous consent of existing ESC members, assuming its involvement was deemed crucial, and it accepted the ESC's terms. (Such states could also be considered as permanent members of a European Security Council – see section 5.)
- 4. Term and renewal:** To ensure continuity, the ESC's core member states will sit on the body for a three-year term before a major review of composition.<sup>7</sup> Considering that pro-European foreign policy continuity is not the rule in increasing number of EU-countries, an option to exchange the core members of the Council will secure that governmental changes in one of the countries do not block defence capabilities and strategic positioning of the EU defence structures. Another important aspect is the contributing power of the core members: A regular three-year review will also allow the assessment of whether any other country has surpassed a core member in capability or commitment, such that core membership should be adjusted.<sup>8</sup>
- 5. Accession of new “core” members:** The ESC will be able to expand the core to other European countries that wish to join and meet the requisite criteria, if justified and on the condition of unanimity.<sup>9</sup> Additional EU Member States will be considered for permanent membership if they develop significantly higher defence capacities or political weight and pro-EU determination in the area of defence and security. For their part, key non-EU European allies – such as Norway – must request participation and agree to the ESC treaty obligations.

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<sup>5</sup> Niklas Nováky (2019). *EU It Yourself: A Blueprint for a European Security Council*. Wilfried Martens Centre for European Studies. <https://www.martenscentre.eu/publication/eu-it-yourself-a-blueprint-for-a-european-security-council/>.

<sup>6</sup> Francis Shin (2024). “Europe still needs a security council”. *New Eastern Europe*. 29 November 2024. <https://neweasterneurope.eu/2024/11/29/europe-still-needs-a-security-council/>.

<sup>7</sup> Francis Shin (2024). “Europe still needs a security council”. *New Eastern Europe*. 29 November 2024. <https://neweasterneurope.eu/2024/11/29/europe-still-needs-a-security-council/>.

<sup>8</sup> Niklas Nováky (2019). *EU It Yourself: A Blueprint for a European Security Council*. Wilfried Martens Centre for European Studies. <https://www.martenscentre.eu/publication/eu-it-yourself-a-blueprint-for-a-european-security-council/>.

<sup>9</sup> Should Ukraine or any other European state attain EU or NATO status and prove a capable contributor, the ESC would be able to include them in some form – whether as a permanent member, a rotating member, or an observer (see later section) – to integrate their perspective in defending the continent. In all cases, new entrants must share the democratic values and security goals of the ESC.

**6. Criteria for continued participation:** All members, whether core or rotating, must maintain alignment with the common goals and contributions that justified their inclusion. Objective benchmarks will be set, for example, maintaining defence spending at or above a certain portion of GDP, contributing to joint missions or aid initiatives, and adhering to collective decisions. If a member state's government makes a drastic policy shift away from ESC objectives – for instance ceasing agreed support for Ukraine or vetoing sanctions against an aggressor contrary to ESC consensus – the ESC may call an extraordinary review of that state's membership. By unanimous agreement (excluding the state in question), the ESC will be able to suspend or expel a member that is no longer a reliable partner in upholding European security. This clause will ensure the ESC remains a coalition of the willing and able, preventing internal obstruction by any member that reneges on shared principles (an issue the EU has faced with certain governments). Likewise, chronic failure to meet contribution commitments (e.g. persistently underspending on defence with no improvement) can be grounds for not renewing a member's term or replacing a core member subsequent to the five-year review.<sup>10</sup> These provisions will create a positive incentive for ESC members to continuously uphold their commitments or risk losing their seat to more deserving peers.

**7. Observers:** The ESC may grant observer status to relevant institutions and states. The NATO secretary general and the EU High Representative for Foreign Affairs and Security Policy – if not already in attendance) may be invited as observers to ESC meetings, ensuring coordination with NATO and the EU at the highest level.<sup>11</sup> Other possible observers could include the European Commission president (on issues of EU competence), representatives of neutral European states (e.g. Ireland, Austria) when matters affecting them are discussed, or even Ukraine (to sit in on discussions directly pertaining to its defence). Observers may participate in discussions by invitation but will not hold a vote. This flexible approach will allow the ESC to interface with broader alliances, institutions, and states and honour the “not without the EU” principle by keeping the EU closely informed.

The structure outlined above creates a council of around nine to 10 members at any one time (i.e. six states and EU Parliament President as core members, at least two rotating states, and possibly one key non-EU rotating state), which is small enough to be effective but inclusive enough over time to cover “all European states, including smaller EU members like Luxembourg and non-EU NATO allies like Norway” through rotation.<sup>12</sup>

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<sup>10</sup> Niklas Nováky (2019). *EU It Yourself: A Blueprint for a European Security Council*. Wilfried Martens Centre for European Studies. <https://www.martenscentre.eu/publication/eu-it-yourself-a-blueprint-for-a-european-security-council/>.

<sup>11</sup> Francis Shin (2024). “Europe still needs a security council”. *New Eastern Europe*. 29 November 2024. <https://neweasterneurope.eu/2024/11/29/europe-still-needs-a-security-council/>.

<sup>12</sup> Ibid.

**Table 1. Summary of the proposed membership structure for the ESC**

<b>Member category</b>	<b>Included parties</b>	<b>Selection criteria</b>	<b>Term &amp; rotation</b>
<b>Core EU members</b> (core decision-making power)	France, Germany, Italy, Spain, Poland (initially)	Top five EU defence spenders, major military capabilities, commitment to European security	Three-yearly review for adjustment <sup>13</sup>
<b>Core non-EU member</b> (core decision-making power)	United Kingdom	Major European defence power outside the EU, invited by ESC <sup>14</sup>	Three yearly review for adjustment
<b>Institutional member</b> (core decision-making power)	President of the European Parliament	EU institutional representative for democratic oversight	Ex officio (2.5-year term)
<b>Rotating members (EU)</b>	At least two additional EU Member States at any one time	Willing contributors among remaining EU states, regional diversity, commitment to ESC objectives (if elected) <sup>15</sup>	Two-year terms, staggered (rotation basis)
<b>(Optional) Rotating European partner</b>	One optional non-EU European ally (e.g. Norway)	Key NATO-aligned European state contributing to EU security	Two-year term (if applicable, by unanimous invitation)
<b>Observers</b>	EU High Rep., NATO Secretary General, Ukraine (special case), etc.	Invited, must share ESC objectives	Attendance as needed, no fixed term or vote

To summarize: This composition and rotation system will ensure continuity, legitimacy, and inclusivity. The largest powers will provide continuity and resources; the presence of the EP president and potentially the High Representative for Foreign Affairs and Security Policy will anchor the ESC in the EU system; rotating seats will give every EU nation a stake and a voice; and the inclusion of the UK (and any similar partners) will extend the ESC's reach beyond the EU27 alone. The ESC will thus embody a "Europe of concentric circles" on defence: a tight inner core of committed leaders, with outer rings that rotate in, all connected to wider EU/NATO frameworks.

<sup>13</sup> Niklas Nováky (2019). *EU It Yourself: A Blueprint for a European Security Council*. Wilfried Martens Centre for European Studies. <https://www.martenscentre.eu/publication/eu-it-yourself-a-blueprint-for-a-european-security-council/>.

<sup>14</sup> Jon Stone (2024). "Save Brexit Britain a seat on new European Security Council, von der Leyen's party says". *POLITICO*. 7 March 2024. <https://www.politico.eu/article/brexit-britain-security-council-european-peoples-party/>.

<sup>15</sup> Niklas Nováky (2019). *EU It Yourself: A Blueprint for a European Security Council*. Wilfried Martens Centre for European Studies. <https://www.martenscentre.eu/publication/eu-it-yourself-a-blueprint-for-a-european-security-council/>.

## E. The “3 Nots”- Principle

The Security Council will be a decision-making body for a European Core Union of Defence – a coalition of the willing-type community committed to defence and security cooperation and submitting itself under the prerogative of the ESC. The guiding principle of such Core Union of Defence and thus the ESC is that European security cooperation should be flexible but not fragmented. The principle of “3 nots”: “Not the whole EU, not only the EU, not without the EU” encapsulates how the ESC will function.

1. **Not the entire EU:** The core Union of Defence cooperation and the ESC will be legally and politically autonomous from the full EU membership. When necessary, they will operate independently of the EU27, meaning it will not require the participation or sign-off of every EU Member State to act. This smaller coalition format will deliberately exclude those EU states that are either unable or unwilling to act swiftly on certain security matters. By freeing itself from the need for universal EU consensus, the ESC will be able to take decisions with a subset of countries that are ready to move forward and engage in decisive action, unhampered by the lowest-common-denominator politics of a larger group. (Crucially, any EU Member not in the ESC at a given time is not able to veto or impede the ESC’s decisions.) The formation of a coalition of willing EU states taking the initiative in defence will form part of the broader multi-speed integration approach exemplified by the Eurozone and Schengen, which also began with only a limited number of EU members. Such an arrangement in the field of defence is acknowledged by the EU as a legitimate form of enhanced cooperation via the precedent set by PESCO, which allowed 25 out of 28 EU states to advance defence integration in 2017 while others (such as Denmark, Malta, and the UK) refrained.<sup>16</sup>
2. **Not only the EU:** As detailed in the previous section, the ESC will not be limited to EU members. Recognising that European security encompasses allies beyond the EU’s borders, the ESC will structurally include non-EU European partners. The United Kingdom’s seat is the primary example.<sup>17</sup> Other non-EU allies, such as Norway – a NATO member with deep ties to EU security efforts – could be associated or included. This principle will ensure that Europe’s security architecture remains inclusive of like-minded democracies on the continent, even if they are outside the EU. This is echoed

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<sup>16</sup> Sven Biscop (2018). “European Defence: Give PESCO a Chance”. *Survival*, vol. 60(3), pp.161-180. <https://doi.org/10.1080/00396338.2018.1470771>.

<sup>17</sup> The desire to maintain UK involvement in European security was a key motivation behind the push to create a European Security Council after Brexit. See Luigi Scazzari (2019). “Towards a European Security Council?”. *Centre for European Reform*. 27 November 2019. <https://www.cer.eu/insights/towards-european-security-council/>; Francis Shin (2024). See also ‘Europe still needs a security council’. *New Eastern Europe*. 29 November 2024. <https://neweasterneurope.eu/2024/11/29/europe-still-needs-a-security-council/>.

in proposals by the EU's largest political family, the European People's Party (EPP).<sup>18</sup> The ESC will thus serve as a bridge between the EU and its non-EU allies, fostering a united European front. This flexible geometry is critical: threats such as Russian aggression or terrorism do not stop at EU borders and neither should Europe's defence coordination. By formalising the role of non-EU allies, the ESC will avoid the duplication of effort and prevent the emergence of separate, disconnected security forums – instead, all key European players will be under one tent.

To operationalise “not only the EU”, the ESC treaty will provide pathways for non-EU countries to participate. This will be achieved by parallel agreements or protocols associated with the ESC treaty. For example, the United Kingdom and any other non-EU invitee will sign an Associated Partnership Protocol binding them to the ESC's decisions and obligations, thereby giving them equal standing in discussions. This will avoid the ESC being an EU-only body that merely invites others as observers; instead, it will be possible for non-EU members – such as the UK – to be full parties to the decision-making. This associated membership model will be crafted to ensure compatibility with EU law. EU Member States will need to confirm that such cooperation with third states on defence is consistent with Article 21 TEU (which encourages cooperation with partners) and recall that even within PESCO, the EU has made room for third-country participation on a case-by-case basis (e.g. the US, Canada, and Norway joined a PESCO project on military mobility).<sup>19</sup> Thus, the ESC will use existing precedents to legally integrate non-EU allies into its framework.

**3. Not without the EU:** The ESC will remain institutionally and politically synchronized with the EU at all times. It will operate *with* the EU, not against or apart from it. Several mechanisms will ensure this:

- **EU institutional linkages:** The EU institutions will be represented and involved in the ESC – for instance via the EP president as a core member, the High Representative as the chair or observer, and the presence of an EU common position in discussions. This will guarantee that ESC deliberations take EU policies into consideration and that there is a flow of information back to EU bodies.<sup>20</sup>
- **Reporting and coordination:** The ESC will coordinate its initiatives with the EU's CFSP and CSDP. If the ESC agrees on an action that could benefit from wider EU support, it will seek the endorsement of the EU Council or implementation via EU mechanisms. Examples include asking the EU Council to authorise an EU military mission carried out by ESC states or requesting EU funding from the European

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<sup>18</sup> Jon Stone (2024). “Save Brexit Britain a seat on new European Security Council, von der Leyen's party says”. *POLITICO*. 7 March 2024. <https://www.politico.eu/article/brexit-britain-security-council-european-peoples-party/>.

<sup>19</sup> Jon Stone (2024). “Save Brexit Britain a seat on new European Security Council, von der Leyen's party says”. *POLITICO*. 7 March 2024. <https://www.politico.eu/article/brexit-britain-security-council-european-peoples-party/>.

<sup>20</sup> Luigi Scazzari (2019). “Towards a European Security Council?”. *Centre for European Reform*. 27 November 2019. <https://www.cer.eu/insights/towards-european-security-council>



Peace Facility (EPF) to co-finance arms deliveries organised by the ESC.<sup>21</sup> The ESC will have to be careful to avoid legal ambiguity by anchoring its actions in EU frameworks wherever feasible – it will not create conflicting policies, but rather pilot “small group initiatives” that the EU at large can later adopt or support.<sup>22</sup> In essence, the ESC will act as an advance team for EU security policy, blazing a trail that the rest of the EU might follow once consensus allows.

- **Consultation with other EU members:** Non-ESC EU states will be regularly consulted. The ESC may brief the PSC or even convene informal sessions open to all EU members to discuss its decisions. This will keep the EU27 collectively in the loop, reinforcing trust. The message is that while not every EU member will participate in the ESC, none will be deliberately kept in the dark or disregarded. This will mitigate the risk of the ESC being seen as undermining EU unity. Instead, it will be a vanguard operating with transparency and in pursuit of agreed EU objectives such as defending Ukraine and strengthening NATO.
- **Compliance with EU (and national) law:** The European Security Council treaty will explicitly require that ESC actions respect members’ obligations under the EU Treaties and national law. For example, ESC cooperation will not assume the active military participation of an EU member that is officially neutral without its consent, and ESC decisions will honour the integrity of EU decision-making in areas where unanimity is still needed. (An example of this would be EU sanctions. The ESC could decide to push for sanctions, with each EU ESC member pledging to vote for them in the EU Council, but formal adoption would nevertheless take place according to EU procedure.)

In summary, the ESC and the Core Defence Coalition will not constitute a “break away” from the EU, but rather a pilot group working within a broader EU orbit. It will be “not without the EU” in that it will seek EU legitimacy and use EU structures whenever possible to amplify its impact. As one analysis notes, “the work of small formats should be linked as closely to the EU level as possible” for legitimacy and effectiveness.<sup>23</sup> By adhering to this, the ESC will avoid the pitfalls of duplication or contradiction and ensure that whatever it does strengthens European unity. Not all EU states will be members of the ESC, and the ESC will include more than just EU states, yet all the ESC’s actions will reinforce EU security, thus achieving a delicate balance that will fulfil the guiding principle set out above.

By adhering to the above principles, the ESC will achieve a flexible coalition that is effective precisely because it is *not the whole EU, not only the EU, and not entirely outside the EU*. It will be a coalition of committed actors that remains moored to the broader European project. This triple principle of “3 nots” will be the ESC’s foundational philosophy, preventing it from drifting into exclusivity or detachment.

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

## F. Institutional Anchoring and Avoidance of Duplication

To ensure the ESC will enhance rather than complicate Europe's security architecture, it will be institutionally anchored to existing structures such as the EU's External Action Service and the Council and will consciously avoid duplicating existing capabilities.

1. **Chair and secretariat:** The ESC may be chaired by the EU High Representative for Foreign Affairs and Security Policy (HR), or another designated senior EU official, to firmly anchor it to the EU's institutional framework.<sup>24</sup> The High Representative – who is also a vice-president of the European Commission – will provide a direct link between the ESC and the EU's foreign policy apparatus. In this role, the HR will convene and preside over ESC meetings, helping to formulate agendas and guiding discussions to align with EU policies. Should the High Representative role be reformed into an “EU Foreign Minister” position in the future (as envisaged by some proposals), the post holder would naturally assume the chair.<sup>25</sup> The ESC secretariat will be housed within the European External Action Service (EEAS) for practical support.<sup>26</sup> A dedicated ESC support unit in the EEAS will handle meeting logistics, record-keeping, communiqués, and the coordination of follow-up actions. In this way, the ESC will not be required to create a separate bureaucracy from scratch. Instead, it will tap into existing EEAS resources (diplomatic expertise, strategic communications, intelligence support via INTCEN), while remaining a distinct entity. The secretariat will also include military staff, drawn from the EU Military Staff (EUMS) or seconded national officers, to provide planning and operational expertise.
2. **Integration with EU Council structures:** The European Security Council will maintain an institutional link to both the Council of the European Union and the European Council. While the ESC will operate with a subset of countries, it will inform and, where possible, seek mandates from the full EU Council as follows:
  - The **Political and Security Committee (PSC)** – the EU's ambassador-level body that monitors CFSP issues – can serve as a point of contact. After each ESC meeting, the HRVP/Chair can brief the PSC (in a confidential session) on decisions taken, especially if they might evolve into EU-wide actions. This way, the Council of 27 is looped in and can consider endorsing ESC actions. For example, if the ESC decides on a military advisory mission to a partner country, the PSC could then

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<sup>24</sup> Niklas Novák (2019). *EU It Yourself: A Blueprint for a European Security Council*. Wilfried Martens Centre for European Studies. <https://www.martenscentre.eu/publication/eu-it-yourself-a-blueprint-for-a-european-security-council/>.

<sup>25</sup> Jon Stone (2024). “Save Brexit Britain a seat on new European Security Council, von der Leyen's party says”. *POLITICO*. 7 March 2024. <https://www.politico.eu/article/brexit-britain-security-council-european-peoples-party/>.

<sup>26</sup> Niklas Novák (2019). *EU It Yourself: A Blueprint for a European Security Council*. Wilfried Martens Centre for European Studies. <https://www.martenscentre.eu/publication/eu-it-yourself-a-blueprint-for-a-european-security-council/>.



recommend the full Council authorise it as an EU CSDP mission (using Article 44 TEU to entrust implementation to the willing ESC states).<sup>27</sup>

- The **European Council** (EU27 leaders) may hold a special annual discussion “in ESC format” – effectively a session where only ESC members plus the European Council president participate, focusing on security and defence, analogous to how the Eurozone countries meet as the “Euro Summit” within EU summits. While not formally binding on non-members, such acknowledgment at European Council level will give the ESC political backing at the highest level and clarify its relationship to the EU.
- The ESC will avoid duplicating the role of the Council of EU (Foreign Affairs/Defence Council (FAC)). The FAC, composed of all EU foreign or defence ministers, will remain the primary venue for EU-wide decisions. The ESC will serve as a complementary forum for more rapid action. To prevent confusion, the ESC may agree that whenever feasible, its decisions will be offered to the FAC for adoption. In this way, they will become EU decisions binding on all (if unanimity is later achieved). If certain EU members are still unable to agree, ESC member states will proceed on their own authority (possibly as a coalition of the willing outside the EU framework, the approach taken in certain past crises).

**3. Relationship with PESCO and EEAS structures:** The ESC will leverage Permanent Structured Cooperation (PESCO) and other EU defence initiatives, not duplicate them. PESCO’s various capability projects – from joint training centres to the development of new equipment – will be utilised by the ESC to fulfil its mandate. For example, if the ESC identifies a critical capability gap (for instance, in air defence systems to protect the EU’s Eastern borders), it can task its members to lead a PESCO project to acquire that capability, using the EDF for support. Thus, the ESC will provide strategic direction, while PESCO will provide the tools for capability building. Additionally, ESC members that also participate in PESCO (all core EU ESC members) will coordinate their PESCO commitments with ESC priorities. Should a non-EU ESC member (such as the UK) wish to join a specific PESCO project relevant to ESC goals, the ESC will encourage the EU to permit this, in line with the precedent set by the Military Mobility project, in which the US, Canada, Norway, and the United Kingdom are taking part.<sup>28</sup>

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<sup>27</sup> Luigi Scazzari (2019). “Towards a European Security Council?”. *Centre for European Reform*. 27 November 2019. <https://www.cer.eu/insights/towards-european-security-council>.

<sup>28</sup> Permanent Structured Cooperation (PESCO). *PESCO Projects: Military Mobility (MM)*. <https://www.pesco.europa.eu/project/military-mobility/>.

Within the EEAS, structures such as the EUMS and the Civilian Planning and Conduct Capability (CPCC) will be on hand to assist ESC missions. For instance, if the ESC plans a training mission in Ukraine or a rapid deployment, it can draw upon EUMS planners and CPCC expertise, which are responsible for planning CSDP operations. By using these, the ESC will avoid building a parallel planning HQ. The ESC secretariat will coordinate closely with the heads of these EEAS departments to ensure any action aligns with or transitions smoothly into formal CSDP processes.

**4. No duplication of effort:** A core goal is that the ESC will not needlessly replicate what already exists:

- **NATO coordination:** The ESC will acknowledge NATO as the cornerstone of collective defence in Europe and will not attempt to duplicate the collective defence foreseen in Article 5. Instead, it will work on the “demand side” – improving European readiness and the political will to act, which in turn will strengthen NATO.<sup>29</sup> The ESC will coordinate with NATO’s command structure. For example, NATO’s Supreme Allied Commander Europe (SACEUR) or their deputy (DSACEUR) could be invited to ESC meetings when military coordination is discussed. The aim will be to ensure ESC decisions to deploy forces or enhance readiness complement NATO plans. In areas such as cyber defence or hybrid threats, where NATO and EU roles overlap, the ESC will fill gaps (e.g. the political attribution of a cyberattack, sanctions for hybrid aggression) rather than duplicating NATO’s capabilities in this area.
- **EU operations:** In the event that an EU military or civilian mission already exists in a particular area of interest to the ESC (e.g. an EU training mission in Africa or a naval operation in the Mediterranean), the body will not launch a separate mission in competition. Instead, it may decide to reinforce that mission by pledging additional troops or assets from its members, effectively using the ESC to rally support for an under-resourced EU operation. In cases where an EU mission is blocked (due to lack of unanimous approval by all 27), the ESC may launch its own joint mission outside the EU framework, but with an open door for other EU states to join if they later wish. In that case, the ESC will ideally transfer the mission to formal EU command once consensus is achievable – thereby folding it back under EU auspices to avoid long-term duplication.
- **Intelligence and analysis:** The ESC will use the EU INTCEN for intelligence fusion rather than establishing a new intel agency. It will use NATO intelligence-sharing for military threats where possible. An ESC analytical cell may be tasked with producing strategy papers, but these will draw on existing EU and NATO expertise. Essentially, the ESC’s added value will be political agility and decision-making; it will not set up large permanent structures of its own.

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<sup>29</sup> Francis Shin (2024). “Europe still needs a security council”. *New Eastern Europe*. 29 November 2024. <https://neweasterneurope.eu/2024/11/29/europe-still-needs-a-security-council/>.

**5. Legal clarity:** To avoid legal ambiguity, the treaty establishing the ESC will clarify its relationship with EU law. It will contain a clause stating that its provisions do not prejudice the EU treaties, and that if any ESC decision is found to conflict with an EU obligation of a member, that member must inform the ESC and seek a solution that respects EU law. The purpose of this would be to reassure all parties that the ESC will not inadvertently put members in the position of violating their EU commitments. For example, if a trade embargo was decided on as a security measure, it would be highlighted that trade sanctions must be implemented at the EU level. The ESC would then likely task its members with proposing that measure in the EU Council rather than executing it unilaterally. This kind of self-restraint and clarity will ensure that the ESC remains anchored in a zone of legal certainty. The ESC treaty may even be appended to the EU Treaties at a later point or referenced in a protocol to the treaties, in order to cement its role.

In conclusion, the ESC will be structurally designed to plug into the EU institutions (EEAS, Council) and NATO, not to float as an isolated entity. It will harness existing mechanisms such as PESCO and the approach foreseen under Article 44 TEU to implement its decisions within established legal frameworks.<sup>30</sup> By doing so, it will preserve unity of effort, minimise bureaucratic overhead, and stay within the bounds of international law. Such institutional anchoring will be vital to ensure the ESC's actions are effective and widely accepted, avoiding any duplication or legal grey zones that could undermine its legitimacy.

## G. Precedents and Inspiration

The concept and design of the European Security Council draw on several precedents of flexible coalition-building and multi-speed integration, in Europe and beyond, as follows:

- **United Nations Security Council:** The ESC's very name and structure take inspiration from the UN Security Council (UNSC) – a small body of major powers with primary responsibility for security decisions. Similar to the UNSC, the ESC will combine a core of permanent (or long-term) members with rotating seats to balance effectiveness with inclusivity.<sup>31</sup> Unlike the UNSC, however, the ESC will operate in a regional context. Furthermore, all of its members will share broadly aligned values, which will make consensus easier to achieve.
- **Schengen Agreement:** A historical example of integration by a subset of states is the 1985 Schengen Agreement, where five of the then ten European Economic Community (EEC) members – France, West Germany, Belgium, the Netherlands, and Luxembourg – agreed to abolish internal border controls. Initially outside of the EC treaties, Schengen was later absorbed into EU law and eventually expanded to almost all EU members. This precedent

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<sup>30</sup> Luigi Scazzari (2019). "Towards a European Security Council?". *Centre for European Reform*. 27 November 2019. <https://www.cer.eu/insights/towards-european-security-council>.

<sup>31</sup> Ibid.

shows how a bold initiative by a core group can start outside the formal structure and later become an EU-wide policy once proven. Similarly, the ESC may begin with a core group and – if successful – be formalised within the EU framework (subject to treaty change) later or expanded to include more members. Schengen’s “multi-speed” integration model – integrating willing states first, with others joining when ready – is a clear inspiration for the ESC’s approach to EU defence integration.

- **Eurozone and Eurogroup:** Within the EU, the creation of the euro currency (and the informal Eurogroup of finance ministers) was another form of multi-speed integration. Not all EU states adopted the common currency; only those meeting the criteria and wishing to join did so, forming an inner core for economic decisions. The Eurogroup meets separately to take decisions affecting only them. This arrangement, later codified in protocols, provides a template for how an ESC could function: an inner circle of states making binding decisions among themselves but still coordinating with the broader EU. The ESC, similarly, will be an “inner circle” for security and defence.
- **Permanent Structured Cooperation (PESCO):** PESCO is a formal mechanism introduced by the Lisbon Treaty that allows a group of EU states to deepen defence cooperation without requiring the participation of all EU Member States. It was launched in 2017 by 25 EU countries; the UK, Denmark, and Malta refrained from joining. PESCO demonstrates both the demand for closer defence integration and the possibility for a subset of Member States to do this under existing EU law. While PESCO’s focus is on capability development projects, its existence has legitimised the notion that a coalition of the willing in defence is officially acceptable. The ESC can be seen as a political/operational complement to the more technical PESCO: the two together will embody a multi-speed Europe in defence. The implementation of PESCO also set a precedent for involving third countries in European defence projects with unanimous consent, which paved the way for including the UK and Norway in ESC activities.<sup>32</sup>
- **European Intervention Initiative:** Frustrated by EU bureaucracy, France spearheaded the European Intervention Initiative (EI2) outside of EU structures. Established in 2018, the EI2 initially brought together nine European countries (including the UK and Germany) to develop a common strategic culture and prepare for joint military interventions, explicitly outside the EU framework. The EI2 was intended to make countries more willing and able to act together in crises, whether through the EU, UN, NATO, or ad hoc coalitions. Notably, its creation outside the EU allowed the UK and Denmark (then with an EU defence opt-out) to participate freely.<sup>33</sup> The ESC builds on the EI2 concept of an agile coalition but seeks to anchor it more formally to institutions. The ESC can be viewed as “EI2 plus integration”; it carries forward the idea of a flexible European military coalition while

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<sup>32</sup> Jon Stone (2024). “Save Brexit Britain a seat on new European Security Council, von der Leyen’s party says”. *POLITICO*. 7 March 2024. <https://www.politico.eu/article/brexit-britain-security-council-european-peoples-party/>.

<sup>33</sup> Niklas Nováky (2019). *EU It Yourself: A Blueprint for a European Security Council*. Wilfried Martens Centre for European Studies. <https://www.martenscentre.eu/publication/eu-it-yourself-a-blueprint-for-a-european-security-council/>.

giving it a treaty-based structure and linkage to the EU system that the EI2 lacked. The ESC's inclusion of the UK and opt-out states was proven workable by the EI2, which set a precedent that political will can overcome formal membership barriers.

- **“E3” and other ad hoc coalitions:** European states have often formed small groups to address specific foreign policy issues. The E3 format for negotiations with Iran on the nuclear issue is a case in point: France, Germany, and the UK, along with the EU High Representative, acted as a vanguard in talks that eventually included others.<sup>34</sup> Other examples are the Contact Group on the Balkans and the Normandy Format on the conflict in Ukraine. These illustrate that, in practice, Europe is able to form flexible coalitions when the formal multilateral system is unwieldy. The ESC will institutionalise this practice. Rather than creating a new coalition from scratch for each crisis, the ESC will be a standing coalition-of-the-willing able to adapt to different crises. The experiences of the E3 (which acted effectively in foreign policy by staying tightly coordinated) show the value of a pre-set core group that can lead Europe's response.<sup>35</sup> The ESC will expand this concept to five or six nations and bring in a formal mandate.
- **Article 44 TEU:** Article 44 of the Treaty on European Union (TEU) foresees that “a group of Member States which are willing and have the necessary capabilities” can be tasked by the EU to carry out a security mission on its behalf. While this mechanism has not been used often, it directly inspires the ESC's operational concept. The ESC can be seen as a permanent realisation of Article 44: a readily identifiable, pre-organised group of willing states available to take on missions, rather than a case-by-case coalition. When the EU needs a subgroup to act, the ESC will therefore be available as an instrument.
- **NATO Framework Nations and JEF:** Within NATO, there are initiatives such as the UK-led Joint Expeditionary Force (JEF) – a high-readiness force for deployment comprising the UK and nine other like-minded northern European nations, including pre-NATO Sweden and Finland – and Germany's Framework Nations Concept (FNC), which groups smaller allies around larger ones for capability development. These show an appetite for minilateral defence groupings, even within larger alliances. The JEF in particular provides a model of a quick-reaction coalition that complements the larger body to which it belongs; this can be a model for the ESC's commitment to rapid response. Indeed, ESC operations could be composed of JEF-like formations drawn from its members.
- **Western European Union:** The Western European Union (WEU) was a military alliance of certain European countries that existed parallel to NATO and the European Community/Union. Formed in 1954, it allowed for collective defence among a subset (originally the UK, France, Benelux, later others) and was eventually merged into the EU's CSDP in 2011. While the WEU was ultimately dissolved, it set a strong precedent for a European collective defence arrangement outside the EU framework. The ESC will differ in that it will not be a mutual defence pact per se, as this is covered by NATO. However, it

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<sup>34</sup> Luigi Scazzari (2019). “Towards a European Security Council?”. *Centre for European Reform*. 27 November 2019. <https://www.cer.eu/insights/towards-european-security-council>.

<sup>35</sup> Ibid.

will echo the WEU in form: a treaty-based group focusing on European security. The fate of the WEU also teaches the importance of integrating with EU structures over time – a lesson the ESC will bake in from the start to avoid the redundancy suffered by the WEU once the EU took on defence tasks.

- **Enhanced Cooperation Mechanism (EnC):** The EU’s enhanced cooperation procedure, which allows a minimum of nine countries to move ahead on a policy if broader support is unachievable, provides a more general political precedent. It has already been employed in areas such as the establishment of the European Public Prosecutor’s Office (EPPO) and divorce law, and conceptually in defence via PESCO. The ESC will be akin to enhanced cooperation in CFSP/defence: a smaller pioneer group implementing actions based on commitments that all EU members have theoretically made (to common defence and support for Ukraine).

This section illustrates that this concept of a “coalition of the able and willing” to achieve agreed goals faster is a throughline in EU history, from the Eurozone to PESCO. As such, the European Security Council will not be an unprecedented aberration, but rather the next logical step in a lineage of European initiatives that will synthesise elements of past successes:

- the efficiency of a small leadership group (UNSC, E3, JEF)
- the flexibility of intergovernmental treaties (Schengen, EI2, WEU)
- the legitimacy conferred by EU anchoring (PESCO, enhanced cooperation)
- inclusivity via rotation (UNSC model, EU Council presidency rotations).

The ESC will stand on the shoulders of these precedents, aiming to provide the right structure at the right time: a European Security Council for a new era in which Europe must take greater responsibility for its own defence.<sup>36</sup> It will represent a tailored solution to current strategic needs that is firmly rooted in tested concepts of multi-speed and multi-format integration, both long part of Europe’s institutional evolution.

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<sup>36</sup> Francis Shin (2024). “Europe still needs a security council”. *New Eastern Europe*. 29 November 2024. <https://neweasterneurope.eu/2024/11/29/europe-still-needs-a-security-council/>.



## **II. Compatibility of a European Security Council with EU and German Law**

Chapter 2 of this proposal recommends that a European Security Council (ESC) be established as an intergovernmental security body by international treaty within the framework of international cooperation, operating alongside the EU's legal framework, rather than as an official EU institution, as such a body could not be implemented within the existing competence framework of the EU.

While Union law does provide mechanisms and procedures that Member States can use if they wish to cooperate beyond the existing framework, these options do not appear suitable for a Security Council as currently proposed. This is also due to the fact that ESC membership would extend beyond EU Member States.

Section A of this chapter provides more detail on the obstacles to establishing an ESC within existing supranational and intergovernmental frameworks, in addition to an overview of the possibilities offered by intergovernmental cooperation outside Union law. Section B spotlights the German example, investigating the implications of the country's constitutional environment for a European Security Council.

### **A. Legal Basis of Competences for the Establishment of a Security Council**

#### **I. Supranational cooperation**

Supranational cooperation essentially refers to cooperation within the framework of a supranational organisation. The term is closely linked to the European Union. EU Member States transfer certain sovereign rights to the Union, which adopts binding decisions through its independent institutions. These decisions can oblige Member States to act in a certain way, even against their will. Supranational lawmaking refers to action within the EU institutions – using their own decision-making mechanisms, procedural rules, and competences.

As the European Union is not a sovereign state, it cannot establish its competences independently. Instead, it is bound to those conferred upon it by Member States according to the so-called “principle of conferral”. Within the existing supranational framework of competences, there is no legal basis that would allow the EU to establish a body such as a European Security Council through supranational means. Such a body could only be integrated into the EU's supranational system by means of treaty revision, which would require the unanimity of all Member States.

## II. Intergovernmental cooperation: PESCO

Defence policy, as a classic core area of national sovereignty, should not, according to the will of Member States, be subject to the dynamics of supranational decision-making processes or to the principle of majority voting. The Union's competences in the field of Common Foreign and Security Policy (CFSP), as set out in Articles 42 et seq. TEU, are therefore weakly developed. Both the scope of the competences conferred on the Union and the role of the EU institutions in this policy area are very limited.

Cooperation in the field of Common Foreign and Security Policy (CFSP) takes place predominantly on an intergovernmental basis, that is, in the Council and by consensus.<sup>37</sup> This makes the CFSP overall cumbersome and inefficient. Institutionally, the only body foreseen in this area is the establishment of a European Defence Agency under Article 45 of the Treaty on European Union (TEU).

Article 46 TEU, in conjunction with Article 42(6) TEU, foresees the possibility of enhanced cooperation in the form of Permanent Structured Cooperation (PESCO). PESCO allows willing Member States to move forward together on security and defence initiatives without the participation of hesitant states. In this way, Member States that are ready to integrate can cooperate more closely within the existing EU framework without having to rely on achieving consensus among all. As shown by Council Decision (CFSP) 2017/2315, cooperation with third countries (non-EU states) is also possible within the framework of PESCO.<sup>38</sup>

Cooperation within PESCO takes place in accordance with Protocol No. 10 for the achievement of the objectives agreed therein.<sup>39</sup> According to Article 2, PESCO participants undertake to:<sup>40</sup>

- achieve approved objectives on investment expenditure for defence equipment and review these targets
- bring participants' defence apparatus into line
- strengthen the availability, interoperability, flexibility, and deployability of participants' forces
  - close the gaps identified under the Capability Development Mechanism
  - develop joint or European programmes for key assets within the framework of the European Defence Agency.

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<sup>37</sup> Intergovernmental cooperation describes the classic form of international legal cooperation between states. Under this process, states create international legal rules by mutual agreement. Decisions are taken by the governments of the states by consensus, and each state retains its full sovereignty.

<sup>38</sup> See also: [https://beck-online.beck.de/Dokument?vpath=bibdata%2Fkomm%2Fcalliesrufferteuvegv\\_6%2Feuv2009%2Fcont%2Fcalliesrufferteuvegv.euv2009.a46.htm&pos=3](https://beck-online.beck.de/Dokument?vpath=bibdata%2Fkomm%2Fcalliesrufferteuvegv_6%2Feuv2009%2Fcont%2Fcalliesrufferteuvegv.euv2009.a46.htm&pos=3).

<sup>39</sup> Consolidated version of the Treaty on European Union [2008] - PROTOCOLS - Protocol (No 10) on permanent structured cooperation established by Article 42 of the Treaty on European Union. 12008M/PRO/10. OJ C115. [https://eur-lex.europa.eu/eli/treaty/teu\\_2008/pro\\_10/oj/eng](https://eur-lex.europa.eu/eli/treaty/teu_2008/pro_10/oj/eng).

<sup>40</sup> [https://beck-online.beck.de/?vpath=bibdata%2Fkomm%2FGeiKhanKotzKoEUVAEUUV\\_7%2FEUV2009%2Fcont%2FGeiKhanKotzKoEUVAEUUV%2EEUV2009%2Ea46%2EgIII%2Ehtm](https://beck-online.beck.de/?vpath=bibdata%2Fkomm%2FGeiKhanKotzKoEUVAEUUV_7%2FEUV2009%2Fcont%2FGeiKhanKotzKoEUVAEUUV%2EEUV2009%2Ea46%2EgIII%2Ehtm)



The PESCO framework does not provide the appropriate legal means for implementing a European Security Council in the sense presented in this proposal. Firstly, the Council decides on the establishment of PESCO cooperation under Article 46(2) TEU by qualified majority.<sup>41</sup> This means that support from other Member States would be required, who may not hold leading roles in the envisaged ESC. Furthermore, Permanent Structured Cooperation does not create its own institutions; rather, it uses existing structures and decision-making procedures within the CFSP. The establishment of an ESC would therefore require an independent political initiative as well as an amendment of the EU Treaties or at least an adjustment of the institutional framework. Within PESCO, decision-making authority remains exclusively with the Council of the EU and the existing CFSP bodies.<sup>42</sup>

Permanent Structured Cooperation also has no operational component but serves solely to strengthen the Union's defence capabilities. This is made clear by Article 42(6) TEU, which states that Article 43 TEU remains unaffected by Permanent Structured Cooperation.<sup>43</sup>

### **III. Intergovernmental cooperation: General enhanced cooperation**

Detailed under Article 20 TEU and Articles 326 to 334 of the Treaty on the Functioning of the European Union (TFEU), enhanced cooperation (EnC) is a procedure under EU law that allows at least nine Member States to cooperate more closely in certain policy areas in the event that other states do not wish or are not able to participate. The aim of this instrument is to advance integration within the EU in a targeted manner and to overcome deadlocks in the Council – without making participation mandatory for all Member States. Enhanced cooperation is only permitted in policy areas that do not fall under the exclusive competence of the EU. For the area of CFSP, special provisions apply within the framework of enhanced cooperation, which are intended to preserve the intergovernmental nature and the principle of consensus in this policy field.

The lack of feasibility of a European Security Council within the framework of Permanent Structured Cooperation does not, in principle, exclude the applicability of the general rules on enhanced cooperation. Permanent Structured Cooperation can be understood as a special form of enhanced cooperation within the meaning of Article 20 TEU and Articles 326 et seq. TFEU. It is specifically regulated in Article 42(6) TEU, Article 46 TEU, and Protocol No. 10 on Permanent Structured Cooperation pursuant to Article 42 TEU. It complements the general provisions on enhanced cooperation rather than excluding them. Therefore, the general provisions of Articles 326 et seq. TFEU can also be applied in the field of defence policy – at

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<sup>41</sup> [https://beck-online.beck.de/Dokument?vpath=bibdata%2Fkomm%2Fstreinzeuvaeuvkoeur\\_3%2Fevv2009%2Fcont%2Fstreinzeuvaeuvkoeur.euv2009.a46.htm](https://beck-online.beck.de/Dokument?vpath=bibdata%2Fkomm%2Fstreinzeuvaeuvkoeur_3%2Fevv2009%2Fcont%2Fstreinzeuvaeuvkoeur.euv2009.a46.htm).

<sup>42</sup> Sebastian Vagt (2017). "EU beschließt Ständige Strukturierte Zusammenarbeit". [EU decides on Permanent Structured Cooperation]. *Friedrich-Naumann-Stiftung*. 14 December 2017.  
<https://www.freiheit.org/de/deutschland/eu-beschliesst-staendige-strukturierte-zusammenarbeit>.

<sup>43</sup> [https://beck-online.beck.de/?vpath=bibdata%2Fkomm%2FGeiKhanKotzKoEUVAEUV\\_7%2FEUV2009%2Fcont%2FGeiKhanKotzKoEUVAEUV%2EEUV2009%2Ea46%2EgIII%2Ehtm](https://beck-online.beck.de/?vpath=bibdata%2Fkomm%2FGeiKhanKotzKoEUVAEUV_7%2FEUV2009%2Fcont%2FGeiKhanKotzKoEUVAEUV%2EEUV2009%2Ea46%2EgIII%2Ehtm)

least insofar as it does not concern military capabilities. Article 329(2) TFEU expressly provides for this possibility.

However, the involvement of third countries in a European Security Council brings the instrument of enhanced cooperation to its legal limits, as EnC can only take place between EU Member States. Third countries are generally excluded from participation. The relevant provisions – Article 20 TEU and Articles 326 et seq. TFEU – explicitly state that this procedure is a form of integration within the institutional framework of the EU. Only Member States may participate; third countries cannot formally and equally take part in enhanced cooperation. Their involvement is conceivable only informally or within the framework of bilateral or specific agreements with participating Member States. However, then they are not part of the procedure and have no decision-making rights. This makes the inclusion of third countries within the framework of enhanced cooperation generally impracticable.

Even if the aspect of third-country participation is disregarded, the establishment of a European Security Council by means of enhanced cooperation appears unsuitable. According to the Treaties, enhanced cooperation may only be used as a last resort to achieve the objectives of the Union; it must be demonstrated that the intended objectives cannot be achieved by other means. In addition, a minimum of nine Member States is required. Furthermore, unanimity is required for authorising enhanced cooperation in the area of the CFSP, i.e. within the framework of the CSDP. This follows from Article 329(2), second subparagraph, TFEU.

#### **IV. Intergovernmental cooperation outside Union law**

Given the unsuitability of the existing EU framework for implementing a European Security Council, the preferred legal means would be intergovernmental cooperation under international law outside (but alongside) EU law. European law permits such cooperation.

##### **1. Foundations**

The supranational character of the EU does not exclude intergovernmental cooperation between the Member States; on the contrary, it is a key feature of the Union. Intergovernmental cooperation under international law provides a crucial balance in the tension between supranational integration and the preservation of national sovereignty. It enables Member States to pursue common objectives without fully relinquishing their national autonomy. In many areas, intergovernmental cooperation exists alongside the EU, especially where there are no or only limited Union competences.

Intergovernmental cooperation between Member States is also permitted outside the EU Treaties. As the “Masters of the Treaties”, the Member States may, under the general rules of international law, exercise their sovereignty and deepen European integration without requiring treaty-based authorisation. Unlike the European Union, which may act only within the scope of the competences conferred upon it, sovereign Member States are, in principle, free to pursue common objectives and shape their capacity to act jointly through bilateral or

multilateral intergovernmental cooperation. This form of cooperation is particularly motivated by the complex process of compromise within the supranational EU institutions and by the difficulty of expanding the Union's primary law competences. In this context, international law increasingly serves as an "alternative legal order" when integration-related projects encounter purely Union-based structures that offer no adequate legal basis for action. At the same time, intergovernmental cooperation is often driven by the desire to involve third countries in European policy initiatives.

## **2. Legality of intergovernmental cooperation outside Union law**

EU Member States may also adopt legal rules intergovernmentally outside of Union law. Such rules exist alongside existing Union law – they build on, complement, relate to, and further develop it. According to the principle of conferral, Member States retain competence for all sovereign powers that they have not transferred to the European Union. These remaining competences can be exercised jointly through intergovernmental cooperation – even in areas that concern or complement Union law. However, the Member States are not entirely free in doing so. Even when acting intergovernmentally outside the EU Treaties, Member States must respect Union law and its fundamental values and structures. This obligation includes, in particular, maintaining the Union's system of competences, observing the applicable norms and principles of EU law, safeguarding the functioning of secondary law, and ensuring coherent coordination of their international legal actions with the Union. Union law can thus serve as a standard of legality for intergovernmental initiatives – particularly when these come into substantive or institutional contact with existing provisions of Union law.

Within the areas of exclusive competence of the EU, as well as in fields of exercised shared competences, intergovernmental action by the Member States outside the Treaties is generally not permitted. Once the European Union has taken action in a particular policy area, its action usually precludes further international legal initiatives by the Member States.

If, on the other hand, the EU has no competence, then none can be violated. In such a case, the Member States act on the basis of their own sovereignty as subjects of international law and have broad scope for shaping their actions.

As mentioned previously, in the field of Common Security and Defence Policy (CSDP), the Union's competences are particularly weak. The CSDP is a key component of the CFSP, which holds a special position within the otherwise supranational structure of the EU. Despite the Union's single legal personality, the CFSP is largely organised on an intergovernmental basis. Decisions within the framework of the CFSP – for example, under Article 24(1) second subparagraph, Article 31(1) TEU, or Article 42(4) TEU – are adopted unanimously in the Council. The European Commission and the European Parliament have little influence in this area. Moreover, the adoption of legislative acts within the meaning of Article 289(3) TFEU is explicitly excluded.

A substantive violation of applicable EU law or existing EU competences through the establishment of a European Security Council based on the model outlined here is not apparent. As the CSDP is an integral part of the Common Foreign and Security Policy

according to Article 42(1) sentence 1 TEU, primary law assigns particular importance to it – both in terms of its existence and its further development. The concept of a European Security Council proposed here specifically builds on this further development. It does not aim to compete institutionally with the CSDP, but rather to strengthen and implement it. The European Security Council would explicitly relate to the European Union, build on its objectives, and provide supporting assistance.

The proposed structure of a European Security Council does not aim at institutional separation from the EU, but rather at a functional complement to the existing CFSP structures – within the framework of international legal cooperation and with respect for the Union's legal order. ESC decisions that affect EU policy are – where appropriate – to be communicated to the entire Union. The High Representative of the Union and the presidency of the Council (if they are not themselves members of the ESC) would be regularly informed of ESC decisions. This would ensure that other Member States were also kept informed about essential measures. Communication to the rest of the EU may take place through existing channels, such as the Political and Security Committee (PSC) or by way of consultative procedures in the Council. In this way, the ESC could gradually involve further Member States and invite them to participate in the implementation on a voluntary basis or to support it politically.

The President of the European Parliament would participate in the meetings of the ESC as a representative of the EU's democratic institution. They would hold voting rights in ESC decisions and may actively contribute the position of the Parliament. This constitutes a significant step toward the democratic accountability and legitimacy of European defence policy vis-à-vis EU citizens. The High Representative would participate in the ESC deliberations either as chair or as an observer. This would ensure close coordination with the common EU position.

Through institutional linkage with the Council of the EU, the ESC would be structurally connected to the CFSP as well as the CSDP. In addition, it is envisaged that ESC decisions may be further legitimised by Council decisions. The Council could, for instance in the context of consensual decision-making, align itself with the ESC's positions and thereby provide them with legal legitimacy under Union law.

The proposed ESC explicitly commits to not adopting any measures that contradict EU policy. Since decisions in the field of CSDP can only be taken unanimously and many ESC members are simultaneously members of the Council of the EU, a structural contradiction appears highly unlikely in any case.

In addition, the question arises as to whether a possible legal review of a violation of CFSP provisions could be undertaken. The Court of Justice of the European Union (CJEU) is – by way of derogation from Article 19(1) sentence 2 TEU – generally not competent for the CFSP and thus also not for the CSDP. Pursuant to Article 24(1) second subparagraph sentence 2 TEU and Article 275 TFEU, the CJEU has jurisdiction only in two narrowly defined areas.

The first area concerns questions of the delimitation of competences and procedures between the CFSP on the one hand and the other Union competences under Articles 3 et seq. TFEU on the other. This results in particular from Article 40 TEU, which regulates the demarcation of CFSP measures from other policy areas of the Union. The second area relates to decisions “providing for restrictive measures against natural or legal persons”. Only in these cases is the CJEU expressly empowered to review CFSP measures. Outside of these two scenarios, no grounds for a judicial review by the CJEU exist. This means that the Court of Justice shall not have jurisdiction with respect to the provisions relating to the Common Foreign and Security Policy according to the wording of Article 24(1) TEU.<sup>44</sup>

Thus, a judicial review under Union law of the establishment of a European Security Council would likely only be conceivable from the perspective of a violation of other Union competences. Such violations are not apparent in this case.

### **3. Involvement of EU institutions in the intergovernmental cooperation of Member States**

Respect for Union law also includes the preservation of the institutional framework of the European Union. The Member States may not, through their actions under international law, endanger the effective exercise of the coordination and supervisory powers of the EU institutions as laid down in the EU Treaty. This issue was, for example, discussed in connection with the extensive involvement of EU institutions in the implementation of the European Stability Mechanism (ESM) Treaty. In this context, the CJEU expressly approved the use of EU institutions (institutional borrowing).

From this it follows that international treaties concluded between Member States outside Union law may legitimately make extensive use of the institutional framework of the EU institutions – provided they do not impair their functioning under Union law or disrupt institutional balance. In practice, when implementing intergovernmental agreements, Member States frequently make use of the EU’s institutional framework – such as the Council, the Commission, or the European External Action Service. The aim is often to gradually incorporate intergovernmental cooperation into the legal system of the Union.

Consequently, the ESC’s connection of the European Security Council to the High Representative and to the president of the European Parliament is, in principle, permissible. In the interest of close institutional linkage with the Union, such involvement is also expressly desirable.

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<sup>44</sup> Deutscher Bundestag (2023). Zur Unionsrechtskonformität von GSVP-Ausbildungsmissionen auf dem Hoheitsgebiet der Europäischen Union: Bewertung des Ratsbeschlusses (GASP) 2022/1968 zur Einrichtung der EU Military Assistance Mission in support of Ukraine (EUMAM Ukraine). [On the conformity of CSDP training missions on the territory of the European Union with Union law: Assessment of Council Decision (CFSP) 2022/1968 establishing the EU Military Assistance Mission in support of Ukraine (EUMAM Ukraine).] PE 6 - 3000 - 066/22.  
<https://www.bundestag.de/resource/blob/928472/a9b8a1b88566d6408645918c118b063d/PE-6-066-22-pdf.pdf>, p. 7.

Intergovernmental cooperation between the Member States outside Union law may, in principle, also involve the CJEU as a legal review body. For example, it would be conceivable to grant the High Representative the right to bring an action if they identify a violation of Union law by measures of the European Security Council. In this way, it could be determined independently and with legal authority whether the ESC is living up to its self-imposed commitment to respect Union law.

## **B. Spotlight: Implications of the German Constitutional Environment for a European Security Council**

This explores the relationship between a possible treaty agreement on ESC and domestic law, taking an exemplary case of Germany. The German constitution, known as the Basic Law (*Grundgesetz*), does not preclude the country from joining a body such as the European Security Council as a system of collective security.

Article 24(2) of the Basic Law permits Germany to join a system of mutual collective security for the preservation of peace. For this purpose, it may consent to limitations on its own sovereign powers in order to enable and secure a peaceful and lasting order in Europe and among the peoples of the world. A possible treaty establishing a European Security Council can be understood as such a system of collective security within the meaning of Article 24(2).

The Federal Constitutional Court has made it clear in its case law that any armed deployment of the German armed forces abroad generally requires the prior approval of the Bundestag – the so-called “parliamentary reservation” (*Parlamentsvorbehalt*). This obligation for parliamentary approval results from the systematic interpretation of Article 24(2) in conjunction with the constitutional principles governing the armed forces, in particular Article 87a of the same law. The Court derives from this that the decision to deploy armed forces is a fundamental element of state sovereignty and therefore requires democratic legitimacy through Parliament.<sup>45</sup>

Parliamentary participation in deployments of the German armed forces (*Bundeswehr*) is governed by the Parliamentary Participation Act (*Parlamentsbeteiligungsgesetz*). This law specifies the conditions under which and the procedure by which German armed forces may be deployed in armed operations abroad. Section 1 of the Act stipulates that, prior to any deployment of armed forces abroad, the Federal Government must submit an appropriate request to the German Bundestag. Only in exceptional cases, such as imminent danger, is subsequent approval by the Bundestag permitted. Section 2 of the Act defines a deployment of armed forces as occurring when soldiers of the Bundeswehr are involved in armed operations or such involvement is to be expected.

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<sup>45</sup> Bundeswehr. *Rechtliche Grundlagen von Auslandseinsätzen*. [Legal Basis for Foreign Deployments]. <https://www.bundeswehr.de/de/auftrag/einsaetze/rechtliche-grundlagen>.

A direct deployment of German troops solely on the basis of an ESC mandate is therefore constitutionally excluded. It would only be possible following an amendment to the Basic Law – which is currently considered unrealistic. Nevertheless, it would be conceivable to impose an obligation on the Federal Government to immediately initiate a corresponding mandating procedure in the Bundestag following the issuance of a mandate by the European Security Council. This would comply with the constitutional parliamentary reservation while at the same time strengthening the link to multilateral decision-making structures.

### **III. Concluding remarks**

This study demonstrates that European cooperation around defence and security can transcend the structural limitations of the EU Treaties and prove that the European Union is a flexible and effective institution, regardless of seemingly unavoidable hurdles.

It is trivial to explain why more defence cooperation and strategic coordination are existential for the future of the EU. It is clear that aside from NATO whose credibility has been greatly damaged by the current US administration, only a new Defence Coalition in parallel to the existing EU structures and a strategic decision-maker like ESC could secure the future European ability to defend itself and its interests. This paper is a contribution to the debate about how to advance on the path towards more defensive capabilities and institutional decisiveness.

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