



**FINABEL**  
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# Legal Constraints on EU Defence and Emerging Alternatives: Is the Union Destined to Be a “Military Worm”?

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RESEARCH REPORT



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RESEARCH REPORT

The European Union sits at a critical juncture. Historically, European integration has undergone at least three critical moments: the post-WWII period, the end of the Cold War, and the euro crisis.<sup>1</sup> Academics have also recently come to consider the Covid-19 crisis as the latest critical juncture.<sup>2</sup> A critical juncture, as defined by renowned EU academic S. Fabbrini, refers to an “historical moment when actors with decision-making powers can pursue potentially alternative courses of action because of the de-structuring of the previous context”.<sup>3</sup> The full-blown outbreak of the Russo-Ukrainian war in 2022, the bloodiest military confrontation in Europe since WWII,<sup>4</sup> redefined European security and defence. The conflict shattered illusions of ever-lasting peace, requiring EU Member States (MSs) to address a compelling military threat to its eastern border.<sup>5</sup>

As indicated, the status quo has been altered irrevocably by Russia, and for this reason, the EU and its MSs are placed in a pivotal position to put forward a substantial change of course. Yet, when it comes to defence, the EU faces a structural paradox. While the Union, led by President of the Commission Von der Leyen since 2019, is increasingly aspiring to become a credible defence actor, its own founding treaties prohibit the use of EU budget for operations having military or defence implications.<sup>6</sup> These circumstances are causing the Union to stretch its legal boundaries through innovative mechanisms, such as the European Peace Facility (off-budget) and the European Defence Fund (budgetary via industrial policy), allowing the *de facto* financing of defence-related activities while remaining *de jure* compliant with Treaty prohibitions.

The aim of this paper is to explore the evolution of the EU’s legal framework governing defence financing. In particular, to assess how the post-Ukraine shock has driven the EU toward a more flexible, quasi-fiscal role in defence.<sup>7</sup> However, this paper argues that, inescapably, these developments have proven to be palliative solutions to an inescapable structural and treaty-based conundrum. The discussion starts with a legal-historical analysis of defence constraints of the European integration project. The third section explores the legal workarounds the EU has implemented to deal with its legal constraints. Lastly, the paper concludes by underscoring the inherent limitations of these mechanisms, stressing the need for the European integration project to explore alternative pathways in order to shake off its position as a “military worm”.<sup>8</sup> The term refers to the European Union’s historical status as an economic powerhouse, but a politically and militarily weak entity reliant on external powers for its defence.

<sup>1</sup> Sergio Fabbrini, ‘Preface – How Many Unions?’ in *Which European Union? Europe after the Euro Crisis* (Cambridge University Press 2015) xxv.

<sup>2</sup> Andrea Capati, ‘The COVID-19 Pandemic and the Establishment of the Recovery and Resilience Facility: A “Critical Junctures” Analysis of the European Union’s Financial Assistance Regime’ (2023) 55 *Politikon: The IAPSS Journal of Political Science* 19 <https://doi.org/10.22151/politikon.55.2>.

<sup>3</sup> Fabbrini (n 1) xxv.

<sup>4</sup> Jonathan Masters, ‘Ukraine: Conflict at the Crossroads of Europe and Russia’ (Council on Foreign Relations, 14 February 2023) <https://www.cfr.org/background/ukraine-conflict-crossroads-europe-and-russia> accessed 6 November 2025.

<sup>5</sup> Federico Fabbrini, ‘Funding the War in Ukraine: The European Peace Facility, the Macro-Financial Assistance Instrument, and the Slow Rise of an EU Fiscal Capacity’ (2023) 11(4) *Politics and Governance*, 52.

<sup>6</sup> Consolidated Version of the Treaty on European Union [2016] OJ C202/28, art 41(2).

<sup>7</sup> Fabbrini (n 4).

<sup>8</sup> Mark Eyskens, former Belgian Foreign Minister, quoted in Carolyn Moser, ‘On the Way to a European Defence Union’ (Verfassungsblog, 29 October 2024), para.

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## 1. Legal and Historical Origins of Defence Constraints in the EU

### 1.1 *The European Defence Community*

The idea for a purely European defence integration project gained prominence in the 1950s.<sup>9</sup> The historical context of the early 1950s saw the separation of Europe in two hostile blocks, one led by the USSR, a nuclear power since 1949. Simultaneously, the Korean War was raging in the East, the first open conflict and “a most important milestone in the Cold War”.<sup>10</sup> In 1952, France, Italy, West Germany, and the Benelux countries signed the European Defense Community (EDC) Treaty, establishing an unprecedented common European army, funded by a common budget, and governed by supranational institutions.<sup>11</sup> France was the main supporter of the initiative, as it saw the EDC as a tool to manage the re-militarisation of Germany.<sup>12</sup> The signatories were the same that had established the European Coal and Steel Community (ECSC) a year earlier,<sup>13</sup> the first step towards European economic integration.

The EDC Treaty starts by stating that the most appropriate way to maintain peace and defend Western Europe, in accordance with the UN Charter, is to pursue a defence integration as complete as possible. This means to gather the defence forces of the signatory countries into a supranational European Organization, sure that such framework will produce the most reasonable and cost-effective solution.<sup>14</sup> Among its fundamental principles, Art. 1 makes clear that the supranational organization, led by common institutions, shall dispose of common armed forces financed by a common budget.<sup>15</sup> The defensive alliance’s forces are to be “fused” together by contingents made available by each member state.<sup>16</sup> Indeed, no MS shall recruit or maintain national armed forces apart for a few exceptions, such as the protection of non-European territories or military bodyguard corps.<sup>17</sup> Given the nature of the organization and the context at the time, the EDF was also meant to closely cooperate with NATO.<sup>18</sup>

This innovative and deep defence integration project came very close to being realized. However, in 1954, after Germany and the Benelux countries had already ratified the Treaty, the French National Assembly voted to postpone the ratification with a procedural vote, eventually leading to the EDC’s dismissal.<sup>19</sup> Despite France being the initial promoter of the project, the growing political representation of Gaullists and communists in the French Assembly, two forces hostile to the EDC, proved to be decisive.<sup>20</sup> According to Taylor, two further reasons are behind the EDC’s failure. First, the UK’s disinterest towards the proposal alimented the French fear to be locked into an organization dominated by Germany.

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<sup>9</sup> Federico Fabbrini, ‘European Defence Integration after Trump’s Re-Election: A Proposal to Revive the European Defense Community Treaty and Its Legal Feasibility’ (2024) 30 *European Law Journal* 615 <https://doi.org/10.1111/eulj.12531>.

<sup>10</sup> Walter LaFeber, ‘Crossing the 38th: The Cold War in Microcosm’ in L H Miller and R W Pruessen (eds), *Reflections on the Cold War: A Quarter Century of American Foreign Policy* (Temple University Press 1974) 74-75, quoted in Geoffrey Warner, ‘The Korean War’ (1980) 56(1) *International Affairs* 98, 98 <https://doi.org/10.2307/2615722>.

<sup>11</sup> Fabbrini (n 13).

<sup>12</sup> *Ibid.*

<sup>13</sup> Dietmar Petzina and others, ‘The Origin of the European Coal and Steel Community: Economic Forces and Political Interests’ (1981) 137(3) *Journal of Institutional and Theoretical Economics* 450 <http://www.jstor.org/stable/40750370>

<sup>14</sup> Treaty Constituting the European Defense Community (signed 27 May 1952, not in force) in *Convention on Relations with the Federal Republic of Germany and a Protocol to the North Atlantic Treaty*, 82nd Congress, 2nd Session, Senate Executives Q and R (US Government Printing Office 1952) 167–251 (Unofficial Translation) <https://aei.pitt.edu/5201/1/5201.pdf>

<sup>15</sup> *Ibid* art 1.

<sup>16</sup> *Ibid* art 9.

<sup>17</sup> *Ibid* art 10.

<sup>18</sup> *Ibid* art 5.

<sup>19</sup> Fabbrini (n 12).

<sup>20</sup> Taylor (n 11) 16.

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Secondly, by 1954 the Korean War had come to an end, Stalin had died the previous year, and the Soviet threat appeared downsized.<sup>21</sup> The failure of the EDC was the historical precedent that labelled defence as a subject unsuitable for the European integration project. In the words of F. Fabbrini, the failure of the EDC “left a collective trauma”.<sup>22</sup> From the mid-1950s onwards, the aspect of European defence was left at the margins of the European integration initiative. This was swiftly confirmed in the 1957 Treaty of Rome, the founding stone for the European Economic Community (EEC) and the Common Market, as the treaty never makes any mention of defence in a military sense.<sup>23</sup>

## 1.2 From Maastricht to Lisbon

After more than three decades where defence policy was excluded from European integration, the Maastricht Treaty of 1992 partially changed the paradigm of previous treaties. Indeed, the EEC of 1957, the Merger Treaty of 1965, and the Single European Act of 1986 were purely dedicated to economic and commercial matters.<sup>24</sup> Already in the preamble of the Maastricht treaty, one of the core resolves of the agreement is to implement a Common Foreign and Security Policy (CFSP), including “the eventual framing of a common defence policy, which might in time lead to a common defence”.<sup>25</sup> The same phrasing is reiterated in article J.4 and at the end of the document, in the “Declaration on Western European Union” (WEU).<sup>26</sup> The CSFP was intended as the second of three pillars that constituted the Union, along with the European Communities (first pillar) and the Justice and Home Affairs (third pillar).<sup>27</sup>

Contrarily to the EDC, the CSFP was an intergovernmental system of cooperation lacking supranational status. Indeed, while the CFSP attempted to lay the foundation for autonomous EU action, early critics already depicted the framework as “nothing more than another rhetoric filled codification” with a “dim prospect for effective action”.<sup>28</sup> A clear budgetary constraint is outlined in Art. 28 (ex Art. J.18) of the Maastricht document. Very similarly to what is enforced today, operational expenditures are to be charged to the community budget, apart from operations with military or defence implications.<sup>29</sup> The Amsterdam Treaty of 1997 reaffirmed the need to develop a “genuine European Security and Defence Identity” (ESDI),<sup>30</sup> as also prescribed in the Petersberg tasks of 1992, which were integrated into the Treaty. The Petersberg Declaration, among other things, assigned the WEU a more active role in scenarios of conflict prevention and crisis management for the Union.<sup>31</sup> The Nice Treaty of 2001 reiterated the prospect of a common defence policy, as well as the possibility of common defence, within the CFSP.<sup>32</sup> Indeed, the document sets the objective of quickly making operational the European Security and Defence Policy (ESDP).<sup>33</sup>

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<sup>21</sup> Ibid.

<sup>22</sup> Fabbrini (n 12) 616.

<sup>23</sup> Treaty establishing the European Economic Community (signed 25 March 1957, entered into force 1 January 1958) art 113(1).

<sup>24</sup> Single European Act 1987 OJ L 169/1; Treaty Establishing a Single Council and a Single Commission of the European Communities (Merger Treaty) 1967 OJ L 152/2.

<sup>25</sup> Treaty on European Union 1992 OJ C 191/1 Preamble.

<sup>26</sup> Ibid Art J.4, Declaration on Western European Union.

<sup>27</sup> European Parliament, ‘Treaty on European Union (TEU) / Maastricht Treaty’ (European Parliament, accessed 9 December 2025).

<sup>28</sup> Elizabeth Duquette, ‘The European Union’s Common Foreign and Security Policy: Emerging from the U.S. Shadow’ (2001) Chicago Unbound 173.

<sup>29</sup> TEU (n 28) art 28(3) (ex J.18).

<sup>30</sup> Declaration of Western European Union on the Role of Western European Union and its Relations with the European Union and with the Atlantic Alliance (Declaration 30, annexed to the Treaty of Amsterdam) 1997 OJ C 340/1.

<sup>31</sup> Protocol on Article J.7 (annexed to the Treaty of Amsterdam) 1997 OJ C 340/1, Section B (10).

<sup>32</sup> Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (signed 26 February 2001, entered into force 1 February 2003) OJ C 80/1, art 2.

<sup>33</sup> Treaty of Nice, Declaration 1.

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However, truly decisive steps were taken only with the 2009 Lisbon Treaty. The Treaty led the way for the creation of the Common Security and Defence Policy (CSDP), a branch of the CFSP equipped with operational capacity of civilian and military assets, and a diplomatic body, the European External Action Service (EEAS), under the direction of the High Representative of the Union for Foreign Affairs & Security Policy/Vice-President of the European Commission (HR/VP). At the same time, a new clause of mutual assistance was enshrined, obliging MSs to assist “by all means in their power” an attacked MS.<sup>34</sup> Additionally, the legal basis for Permanent Structured Cooperation (PESCO) was created, where members that meet certain military criteria may engage into more binding commitments in defence.<sup>35</sup>

However, despite all of these innovations in EU defence policy, the Treaty still reckons a common defence policy as a future progressive prospect, and not a treaty-based reality.<sup>36</sup> In fact, the fundamental budgetary restraint for operations having military or defence implications was left untouched.<sup>37</sup> The next section is dedicated to the legal workarounds that the Union has attempted to implement in the defence sector before, and especially after, the invasion of Ukraine.

## 2. Legal Workarounds and the Post-Ukraine Momentum

### 2.1 Pre-2022: Defence policy through the “Industrial Back Door”

In the years following the Lisbon Treaty and preceding the conflict in Ukraine, the Union was focused of making use of its reinvigorated CFSP and newly formed CSDP. When it came to defence policy, the EU made ample use of an “industrial back door”. Indeed, due to its explicit limitation to fund operations with military or defence implications in the TEU, the EU legally justified its defence policies mainly under Article 173 TFEU. The provision is dedicated to ensuring the Union’s industry competitiveness, technological development, innovation, and research, with the Commission’s ability to “take any useful initiative to promote such coordination”.<sup>38</sup>

The prime example in this sense is the European Defence Fund (EDF), formally established through Regulation 2021/697. The Fund’s aim, coherently with its legal basis, articles 173, 182 and 183 of the TFEU, is to enhance competitiveness, innovation, and the technological autonomy of the Union’s defence industry.<sup>39</sup> Due to its legal nature, by passing through the “industrial back door”, the EDF was to foster financial defence cooperation while being financed by the Community budget. Consequentially, the Commission could play a role in the development and allocation of MSs’ military capabilities.<sup>40</sup> Additionally, the EDF can also collaborate within the framework of PESCO, an initiative launched in 2017 within the scope of the Lisbon Treaty, where MSs meeting the necessary military requirements can voluntarily engage in more binding commitments in military cooperation.<sup>41</sup>

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<sup>34</sup> Consolidated Version of the Treaty on European Union [2008] OJ C 115/13, art 42.

<sup>35</sup> Ibid. art 46.

<sup>36</sup> Ibid. art 2.

<sup>37</sup> Ibid. art 41(2).

<sup>38</sup> Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47, art 173.

<sup>39</sup> Regulation (EU) 2021/697 of the European Parliament and of the Council establishing the European Defence Fund [2021] OJ L 170/149, preamble and arts 1–5.

<sup>40</sup> Tine Elisabeth Brøgger, ‘A “Europe of Defence”? The Establishment of Binding Commitments and Supranational Governance in European Security and Defence’ (2024) 47(3) *Journal of European Integration* 403, 406.

<sup>41</sup> Council Decision (CFSP) 2017/2315 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States [2017] OJ L 331/57.

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Indeed, eligible PESCO projects can receive an increased funding rate from the EDF, and for development actions the funding rate may increase by 10 percent.<sup>42</sup>

While the budgetary constraint was ingeniously avoided for the EDF and eligible PESCO initiatives, such legal workaround was not possible for the European Peace Facility (EPF). Also established in 2021, the EPF's objective is to provide financial, technical or material assistance to non-EU partners for their military capabilities, peace operations, and conflict prevention.<sup>43</sup> Because these purposes explicitly conflicted with the defence budget constraint of the Union, the EPF is entirely an off-budget initiative and, therefore, it is entirely dependent upon the contributions that MSs decide to allocate.<sup>44</sup>

Overall, the main pre-2022 defence initiatives implemented by the Union were either focused on the industrial sector, an approach which allowed decision-makers in Brussels to partially circumvent the budgetary handicap of the EU, or on off-budget measures which relied on the willingness of MSs for their functionality. These measures saw a drastic increase in their functions and a noticeable change in their original purposes.

## *2.2 Post-2022: The Ukraine catalyst and the emergence of a “Quasi-fiscal” Capacity*

As unfortunately well-known, the full invasion of Ukraine by Russian forces broke the already uneasy balance on the EU's eastern border. This critical juncture in European politics was reflected by a series of EU initiatives, meant to strengthen its military posture and come to Ukraine's aid.

Additionally, the recent experience dealing with the Covid-19 crisis provided the EU with some economic models that could be replicated within the context of the new crisis. In particular, the response was built upon the Next Generation EU (NGEU) economic package, implemented during the pandemic.<sup>45</sup>

First, once the war broke out, the EU decided to take advantage of the EPF to provide Ukraine with financial aid. This included purchasing lethal weapons, an historical move in EU politics. Throughout 2022, the EPF sent €3.1 billion in disbursements to Kiev, draining in one year most of its initial budget of €5.69 billion.<sup>46</sup> The latter was expanded by €2.29 billion in March 2023, €4.06 in June of the same year, and by a further €5 billion in 2024.<sup>47</sup> Indeed, the EPF became a fundamental instrument in the Union's policy to help Ukraine sustain its military confrontation with Russia. Its off-budget legal nature allowed the EU to collectively pool resources to be used in defence. However, the EPF's off-budget nature meant that it was a mostly intergovernmental instrument, and not a supranational one.

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<sup>42</sup> Consolidated Version of the Treaty on European Union [2008] OJ C 115/13, art 42.

<sup>43</sup> Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility [2021] OJ L 102/1, preamble.

<sup>44</sup> Ibid. art. 1(2).

<sup>45</sup> Federico Fabbrini, 'From the Pandemic to the War: The EU Fiscal Response to Russia's Aggression of Ukraine, the Legacy of NGEU, and the Challenge to "Promote the General Welfare"' (2024) 118 AJIL Unbound 181.

<sup>46</sup> Fabbrini (n 4) 54.

<sup>47</sup> Council of the European Union, 'European Peace Facility' (Consilium) <https://www.consilium.europa.eu/en/policies/european-peace-facility/> accessed 14 January 2026.

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In fact, MSs have wide possibilities of discretion. Council Decision 2021/509, establishing the EPF, states in Article 5 that “a member state which has abstained in a vote on a Council decision [...] is not obliged to contribute to the funding of that operation”. Furthermore, according to Article 27 of the Decision a “member state which has indicated its intention to abstain from the adoption of an assistance measure [...] may identify other assistance measures to which it will make an additional contribution”.<sup>48</sup>

Due to the limited size of the EPF, and its complex governance arrangements, the Commission proposed the establishment of the Macro-Financial Assistance Instrument (MFA+) at the end of 2022 to provide steady and timely financial aid to Ukraine.<sup>49</sup> The MFA+, enshrined in Regulation 2022/2463, entails €18 billion of new common debt off the EU budget, and not MSs’ transfers, to relieve Ukraine’s sinking state budget. Similarly to what briefly mentioned above for the EPF, the MFA+ relied on the willingness of MSs. Indeed, because initially this instrument required an amendment of the Multi-Financial Framework (MFF), that meant that MSs could veto the proposal, as enshrined in Art. 312 TFEU.<sup>50</sup> To avoid this circumstance, which arose due to Hungary’s opposition, the Council of the EU enacted a legal workaround where the MFA+ would not use the MFF, but rather finance the instrument through MSs guarantees provided by 26 MSs pro-quota.<sup>51</sup>

Fabbrini concludes that the Union’s financial response to the Russo-Ukrainian conflict entails a trend towards “the consolidation of fiscal capacity in the EU”, on the same models implemented for the Covid-19 pandemic.<sup>52</sup> However, as already partially highlighted, the governance and treaty constraints of the EU remain particularly debilitating. The unanimity conditions, strict constraints on defence spending, and the diverging political stances of MSs often cripple the willingness of the vast majority. These issues will be discussed more in depth in the last section of this paper.

However, before concluding this current section dedicated to the post-Ukraine momentum, it is of paramount importance to highlight the staggering increase in the use of the “industrial back door” for defence policy, allowed under Art. 173 TFEU, as already seen before 2022, and therefore included in the Union’s budget. In fact, with such article in mind, in the fall of 2023, the European Defence Industry Reinforcement through Common Procurement Act (EDIRPA) was finalized, with a value of €310 million. The instrument is set to reinforce common defence procurement and strengthen Union defence industrial capabilities in light of the current geopolitical events.<sup>53</sup> Under the same legal basis, the Regulation on Supporting Ammunition Production (ASAP) was concluded.<sup>54</sup> This piece of legislation aims at strengthening the responsiveness and ability of the European Defence Technological and Industrial Base (EDTIB).<sup>55</sup> The measure allocates €513 million under the MFF for the increase of MSs’ stocks in “explosives, powder, shells, missiles, and testing and refurbishment certification”.<sup>56</sup>

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<sup>48</sup> Decision 2021/509 (European Peace Facility), arts 5 and 27.

<sup>49</sup> Fabbrini (n 4) 54.

<sup>50</sup> Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47, art 213.

<sup>51</sup> Fabbrini (n 4) 54.

<sup>52</sup> *Ibid.* 56.

<sup>53</sup> Regulation (EU) 2023/2418 of the European Parliament and of the Council establishing an instrument for the reinforcement of the European defence industry through common procurement (EDIRPA) [2023] OJ L 2418, preamble.

<sup>54</sup> Regulation (EU) 2023/1525 of the European Parliament and of the Council on supporting ammunition production (ASAP) [2023] OJ L 185/7.

<sup>55</sup> *Ibid.* art 1.

<sup>56</sup> Davide Genini, ‘How the War in Ukraine Has Transformed the EU’s Common Foreign and Security Policy’ (2025) *Yearbook of European Law* 1 <https://doi.org/10.1093/yel/yeaf003>, 14.

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The impetus to invest into the EDTIB at Union level continued with the first European Defence Industrial Strategy (EDIS) white paper in 2024, considered the manifest of the EU defence industry for the next ten years, followed by the ReArm Europe Plan-Readiness 2030 White Paper.<sup>57</sup> For instance, the ReArm Plan aims at leveraging more than €800 billion through national fiscal flexibility, a new €150 loan instrument called Security Action For Europe (SAFE), and attract private capital,<sup>58</sup> making it “the EU’s most ambitious and financially conspicuous defence programme ever”.<sup>59</sup> Another proposal has recently been put forward, this time not through the “industrial back door”, but through mobility competences of the EU based on Art. 91 and Art. 100 TFEU, for the future creation of a “Military Schengen” mobility plan.<sup>60</sup>

Overall, the post-2022 defence policy of the Union has seen a surge in the usage of older off-budget instruments such as the EPF, the creation of new ones such as the MFA+, hinting at an increased quasi-fiscal capacity, and the staggering intensification of funding and resources for the EDTIB. All of these community measures, many being “legal workarounds”, were born out of an extremely hindering legal constraint, the infamous Art. 41(2) TEU prohibiting defence and military spending to be charged to the Union budget, and therefore reflect several inherent criticalities in EU defence policy. These will be discussed in the section below.

### 3. Flaws and Prospects of European Defence Integration

#### 3.1 Intergovernmental Governance and the Structural Limits of EU Action

The first point to be stressed in relation to criticism of EU defence policy is the governance model envisaged by the Treaties. Starting from provisions such as Art. 41 TEU, leading into the intergovernmental decision-making processes, these are structural constraints which inevitably and greatly thwart the Union’s ability to respond to geo-strategic events.<sup>61</sup>

As already partially mentioned earlier, the instruments and legal workarounds that the EU strengthened or put forward after the war in Ukraine have been suffering exactly from these kinds of structural limits. The intergovernmental power dynamics, entailing unanimity votes, caused prolonged delays and stalemates on key decisions. For instance, the EPF experienced delays due to the exercise of a veto by a MS, which temporarily prevented the mobilization of resources for Ukraine.<sup>62</sup> Somewhat the same thing happened with the MFA+, which came at a stalemate due to a single MS’ veto, prompting the Commission to amend the proposal’s financing scheme, while also “coincidentally” approving the pending MS’ National Recovery and Resilience Plan.<sup>63</sup> Additionally, due to the MSs’ decision not to empower the Commission to issue priority orders under the ASAP, the EU failed to deliver the expected ammunition,<sup>64</sup> and did so only eight months

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<sup>57</sup> Ibid. 15.

<sup>58</sup> European Parliamentary Research Service (EPRS), *ReArm Europe Plan/Readiness 2030* (PE 769.566, April 2025) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/769566/EPRS\\_BRI\(2025\)769566\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/769566/EPRS_BRI(2025)769566_EN.pdf)

<sup>59</sup> Genini (n 59) 15.

<sup>60</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council on establishing a framework of measures to facilitate the transport of military equipment, goods and personnel across the Union COM (2025) 847 final, 2025/0847 (COD), 19 November 2025.

<sup>61</sup> Federico Fabbrini, ‘European defence integration after Trump’s re-election: A proposal to revive the European Defense Community Treaty and its legal feasibility’ (2024) 30(4) *European Law Journal* 618.

<sup>62</sup> Bruno Bilquin, ‘European Peace Facility – For Ukraine, but not only’ (EPRS Briefing PE 772.833, April 2025)

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/772833/EPRS\\_BRI\(2025\)772833\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/772833/EPRS_BRI(2025)772833_EN.pdf) accessed 6 February 2026.

<sup>63</sup> Fabbrini (n 4) 54.

<sup>64</sup> Fabbrini (n 64) 618.

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later than anticipated.<sup>65</sup> These examples, among many others over recent years, point into the direction that the EU's designation as a "military worm" is mostly structural, and not contingent.

### *3.2 Industrial Fragmentation, Economic Incoherence, and the Lack of Technological Development*

The second aspect to be addressed when discussing European Defence are the flaws of the EDTIB. First of all, defence markets are quasi-monopsonies, where there is one major buyer, namely the State, and multiple sellers. In the EU, several MSs tend to acquire military equipment from their national firms. This drives a fragmented supply side, loss of scale efficiency, and interoperability challenges.<sup>66</sup> These issues are also reiterated in the 2024 Draghi report, where the European defence industry's fragmentation is said to cause a lack of scale, a necessary feature for a capital-intensive sector and long investment cycles. Additionally, the industrial fragmentation, which caused standardisation and interoperability issues, arose visibly when trying to support Ukraine's war effort. Infamously, EU MSs have provided ten different types of howitzers to Ukraine, and operate twelve types of battle tanks.<sup>67</sup>

Apart from industrial fragmentation, economic coherence is a second key aspect of EDTIB. Experts argue that defence cannot be financed through "fiscal improvisation, nor delegated to private markets", as currently seen with the patchwork of national spending, uncoordinated borrowing, and excessive faith in community initiatives.<sup>68</sup> Indeed, due to the absence of common European defence spending, the focus should be on aggregating demand and integrating industrial assets. The lack of demand aggregation among members makes it harder for the industry to predict long-term necessities and increase supply.<sup>69</sup>

The last major issue is the lack of investment prioritization and Research & Development (R&D). In fact, the defence sector is in strong need of investments. In particular, defence R&D investments take place nationally, while most new military equipment and technologies require a wider European cooperation, as no MS has the resources to finance, develop, and issue all the necessary infrastructure for these technologies on its own. The technology in question includes drones, hypersonic missiles, directed-energy weapons, defence artificial intelligence, and seabed and space warfare.<sup>70</sup>

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<sup>65</sup> Vadim Kushnikov, 'EU Delivers 980,000 Out Of Promised 1 million Shells to Ukraine' (Militarnyi, 11 November 2024) <https://militarnyi.com/en/news/eu-delivers-980-000-out-of-promised-1-million-shells-to-ukraine/> accessed 6 February 2026.

<sup>66</sup> Judith Arnal and Steven Blockmans, 'From Free-Riders to Front-Loaders: Why the EU's defence awakening must be matched by economic coherence' (CEPS Policy Brief No 2025-01, April 2025) 6 [https://cdn.ceps.eu/wp-content/uploads/2025/04/2025-01\\_FP\\_Defence-procurement.pdf](https://cdn.ceps.eu/wp-content/uploads/2025/04/2025-01_FP_Defence-procurement.pdf) accessed 6 February 2026.

<sup>67</sup> Mario Draghi, *The Future of European Competitiveness: A Competitiveness Strategy for Europe (Part A)* (European Commission 2024) 59 [https://commission.europa.eu/document/download/ec25076a-bd42-45a8-8e6d-55767b7e2c90\\_en](https://commission.europa.eu/document/download/ec25076a-bd42-45a8-8e6d-55767b7e2c90_en) accessed 6 February 2026.

<sup>68</sup> Judith Arnal and Steven Blockmans (n 69) 12.

<sup>69</sup> Mario Draghi (n 70) 60-61.

<sup>70</sup> Ibid. 61.

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### 3.3 Shaky Atlantic Relations and the Need for a New Pathway in European Defence

So far, the discussion in this section has focused on the internal political and economic issues arising from the EU's constraining legal structure. However, it is hard to ignore in current times the increasingly unstable and struggling relations with the US, the leader of NATO, which has been the major European defence guarantor for over six decades.<sup>71</sup> After the Ukraine war, Trump's presidency has so far highlighted the need for a stronger responsibility of the EU and its MSs in their own defence. Indeed, the US president has often spoken out against European NATO members, defined the Alliance as a moot investment,<sup>72</sup> and imposed retaliative tariffs on the EU.<sup>73</sup>

The extremely demanding era that the EU is going through requires extensive and critical political decisions. As mentioned in the introduction, the EU sits at a critical juncture in its history. The Community defence instruments and policies implemented in the last few years are unprecedented, however, they are the product of crippling legal and structural obstacles which cannot be avoided unless the EU embarks on a different path. The historical precedent is there, the EDC, as discussed at the beginning of this paper. Left aside as a taboo and failed experiment, it could serve as an inspiration for the EU to become a more credible defence and security provider. In the words of Mario Draghi: *"We must decide: should we simply keep being a great single market, subject to others' priorities? Or should we take the necessary steps to become a great power?"*<sup>74</sup>

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<sup>71</sup> Fabbrini (n 64) 618-619.

<sup>72</sup> Elizabeth Melimopoulos, 'I won't use force' for Greenland: Key takeaways from Trump's Davos speech' Al Jazeera (22 January 2026) <https://www.aljazeera.com/news/2026/1/22/i-wont-use-force-for-greenland-key-takeaways-from-trumps-davos-speech> accessed 6 February 2026.

<sup>73</sup> Jennifer Clarke, 'What tariffs has Trump announced and why?' BBC News (27 January 2026) <https://www.bbc.com/news/articles/cn93e12rypgo> accessed 6 February 2026.

<sup>74</sup> Mario Draghi, Speech at the University of Leuven (2 February 2026) as reported in Draghi a Leuven: "Europa rischia di diventare subordinata divisa e deindustrializzata" Sky TG24 (2 February 2026) <https://tg24.sky.it/economia/2026/02/02/draghi-leuven-discorso-europa> accessed 6 February 2026 (author's translation).

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## Conclusion

This research report has attempted to examine the EU's on-going struggle to conciliate its growing strategic ambitions, awakened by the war in Ukraine and the deteriorating relationship with the US, with a legal framework that unavoidably constraints its defence and security standing. Starting from the failure of the EDC, and the subsequent economic turn experienced since the 1957 Treaties of Rome, defence has been at the margins of EU political discussions. While the treaties concluded during the 1990s up to the current Lisbon framework reintroduced the defence and security discourse into EU legislation and politics, the instruments implemented preserved a strongly intergovernmental system of decision-making, based on unanimity and the prohibition of EU-funded military or defence expenditure.

Despite this hindering legal and political set up, the Union developed a thick web of legal workarounds, such as the use of the “industrial back door” under Art. 173 TFEU for on-budget financing of the EDTIB, or other off-budget instruments like the EPF, particularly after 2022. Nonetheless, these mechanisms show structural weakness and marked flaws. With a rapidly shifting geopolitical environment, and strained transatlantic relations with the US, traditional security guarantor for Europe, the EU and its MSs sit at a critical juncture of their history. They may stay on the same path, managing defence through legal improvisation and uncoordinated commitments, or confront directly the legal foundations of the Union and strengthen its Treaties for a coordinated and united defence. Without such reckoning, leaving aside its economic prowess, Europe may be destined to remain a “military worm”, and a marginal actor in world politics.

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