

# Democratization First

## The Community Method in CFSP as a Precondition for a European Defense Policy

**Annegret BENDIEK**

Ever since the intervention of NATO in Kosovo, the EU is considering to renovate its foreign, security and defense policy and to remodel it according to standards set by its member states.<sup>1</sup> In 1999 the EU member states established its European Security and Defense policy which found its way into the Lisbon treaty through the Common Security and Defense Policy (CSDP) under the legal roof of the Common Foreign and Security Policy (CFSP). Some of the EU's heads of state and government have recently proposed initiatives to streamline decision-making outside the treaty provisions, and a number of security experts are pleading for majoritarian decision-making and for more flexible forms of integration that allow implementing decisions even if they are opposed by some of the member states.

All of these initiatives share the ambition of more efficient decision-making and a more effective projection of European power abroad.<sup>2</sup> For realizing this goal they propose a strategy of administrative integration outside of the legal framework of the EU without any participation of the European Parliament. Whilst efficient and effective policy-making is a worthwhile goal, it must not compromise the European values. One of the most significant strengths of the EU is its concern for human rights and the rule of law as a guiding principle for its foreign and security policies. This concern is closely connected to the EU's institutional structures. The EU abstains from pure power politics only because its decision-making is conducted under the normative umbrella of the European treaties and their emphasis on human rights as well as inside its institutional order of judicial and parliamentary oversight. Bypassing the treaties, the European Court of Justice (ECJ), and the European Parliament (EP), would mean nothing less than betraying its attributes as a normative power.

**Dr. Annegret Bendiek**  
is Senior Associate in  
the EU/Europe  
Division at Stiftung  
Wissenschaft und  
Politik (SWP).

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ISBN: 979-10-373-0057-7

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### How to quote this publication:

Annegret Bendiek,  
"Democratization  
First: The Community  
Method in CFSP as a  
Precondition for a  
European Defense  
Policy", *Éditoriaux de  
l'Ifri*, Ifri, 9 September  
2019.

### Ifri

27 rue de la Procession  
75740 Paris Cedex 15  
Tel.: (0)1 40 61 60 00  
Email: [accueil@ifri.org](mailto:accueil@ifri.org)

**Website:**  
[www.ifri.org](http://www.ifri.org)

## Understanding the democratic peace right

The EU itself is essentially the result of a multilateral negotiation process and is committed to democratic peace, human rights and the international rule of law also in its external action. This promise to act multilaterally based on CFSP treaty provisions and *unanimous decision*-making procedures legitimize the Union's action precisely in contrast to the classical power politics of individual states. The intergovernmental orientation of the European security and defense policy makes good sense because it prevents individual states or groups of states to implement controversial policies. The introduction of majority voting in CFSP, however, would allow for exactly this. Policies would become possible that are not backed by all member states. Military operations or even crisis interventions must remain under full control of national parliamentarians as long as they are the only European politicians under full public scrutiny. If the European Parliament were equipped with full supervisory and legislative powers in CFSP, however, things would change. National parliamentary control would be substituted by equivalent European parliamentary controls. Although not all national parliaments in the EU have the power to control foreign and security policy, member states that do, like the Scandinavian, the Netherlands or Germany, however, would certainly oppose any loss of parliamentary supervisory powers.

## Trends of executive self-empowerment outside the EU treaty

The recent initiative by the French government for a European Intervention Initiative (EI2) aims at launching missions and operations more quickly in the future. This initiative took a more concrete form last November 2018 following the ministerial meeting and Military European Strategic Talks (MEST) setting the political guidance and technical processes. So far, ten countries—Belgium, Denmark, Estonia, Finland, France, Germany, the Netherlands, Portugal, Spain, and the United Kingdom—have signed a Letter of Intent, and others may soon join.<sup>3</sup> The EI2 is set up outside both the NATO and EU frameworks and is meant to take another step toward a more effective European defense strategy. Primarily a military-to-military “strategic workshop,” it’s not intended to become a separate

intervention force but rather to help participating states better anticipate future crises and plan operational cooperation together. Strategically, another idea for informal cooperation outside the EU treaty structure came up among the big member states. The basic premise behind the introduction of a European Security Council is that the EU should have a new structure for strategic reflection and deliberation on foreign, security and defense policy, a forum that would not include every EU member state. Supporters argue this would help Europe act more quickly and more decisively when a crisis or challenge emerges that requires action. Any deepening of the CSDP that goes beyond the intergovernmental cooperation within the CFSP decision-making structure empowers the executives without any parliamentary involvement.

The EU states developed European foreign policies through so-called coalitions of the willing. The political weight of large EU states made a substantial contribution to conflict resolution in the past: Crisis management in the Balkans, negotiations in the EU+3 with Iran on its nuclear program and the Minsk Agreements in the so-called Normandy format have all come about through groupings outside the formal CFSP procedures. Coalitions of the willing are a thoroughly respected practice of European foreign policy. Even the EU's High Representative for Foreign and Security Policy, Federica Mogherini, tolerates flexible integration as long as all member states are informed, the actions of the groups of states serve the treaty objectives and the formats are flexible and inclusive.

The parliaments in Europe generally have little influence on the CFSP and are further weakened by the new informal executive powers. The EP and the national parliaments have no powerful oversight mechanism in place to follow these informal arrangements in European foreign policy-making. The interparliamentary assembly for CFSP consisting of the national parliamentarians only has an advisory role. The EP does not have its own security policy committee but a subcommittee only. In contrast, according to e.g. the German constitution, the German Bundestag must always have a defense committee.

## Flexible integration within the EU treaty structure

Beyond this current trend of the so-called delegalization in European foreign and defense cooperation outside the treaty provisions, some steps towards a security and defense union have been agreed on inside the formal procedures under the EU treaty framework. In December 2017 the permanent structured cooperation (PESCO) was introduced and until now 34 projects for military and defense cooperation have been initiated by the 26 heads of states and governments. Under PESCO the industrial defense cooperation will be triggered once the newly established European defense fund will be integrated within the multiannual financial framework (2021-2027) of the EU, where the European Parliament will have a strong oversight.

In CFSP, the EU Treaty provides for so-called enhanced cooperation. Irrespective of the total number of member states, at least nine states must come together here in order to initiate a joint project. The fact that the European Council must take a unanimous decision makes enhanced cooperation a blunt sword: so far not a single CFSP decision has been taken in this way. EU procedures, bodies and instruments are available for this purpose. If this were the case, the European Parliament would simply have to be informed; it has no say.

Some politically willing EU member states are calling for the introduction of qualified majority procedures in the CFSP with the aim of excluding national solo attempts and obliging all member states to act jointly vis-à-vis third parties. In September 2018 the European Commission invited leaders to agree at the Summit in Sibiu on 9 May 2019 to broaden the scope of Qualified Majority Voting in CFSP, by using Article 31(3) TEU, the so-called "passerelle clause" according to which the European Council may authorize (by unanimity) the Council to act by qualified majority in certain CFSP cases.<sup>4</sup>

Even though the President of the Commission and a few member states have spoken out several times in favor of the general implementation of qualified majority decisions in CFSP, their introduction is hardly realistic. It would require a treaty amendment, including successful referendums at least in individual Member States. Moreover, there are constitutional reservations, as the

German Federal Constitutional Court already formulated them in the Lisbon ruling: It referred to the Bundestag's responsibility for integration in EU affairs.

### **The way forward: the Community Method**

Flexible integration in European foreign and security policy is going hand in hand with a parliamentary incapacitation of the Bundestag and thus contradicts the idea of the parliamentary army. Critical media support would be made extremely difficult if decisions were no longer taken by national parliaments in public deliberation, but rather made in the institutional wrangling of competences between single EU governments, the Commission, the Council and the European Parliament. If the EP actually had a say in the CFSP/CSDP, this would strengthen the acceptance of a transfer of sovereignty to the EU level.

The peace power reaches its limits where the validity of the canon of values described above or the idea of the EU as a community based on the rule of law is rejected. The Community method is a decision-making procedure which enables the EU to function transparently, efficiently and democratically. It is based on the interaction between three independent institutions: the European Commission, the European Parliament and the Council of Ministers. The CFSP/CSDP differs from classical foreign and security policies of the member states. The non-implementation of decisions once taken and of majority decisions in this understanding amounts to a constitutional crisis. At the same time, the Community method is overlaid by fragmented intergovernmental fora on foreign and security policy in which only a limited number of Member States are represented - and where European law and the formal procedures of the CFSP do not apply.

The Community method is also an exclusive project insofar as only those who identify with the fundamental ideas of the EU as a peace power on the basis of the rule of law can belong to it<sup>5</sup>. The peace power remains an expression of an overarching belief in the ideas of enlightenment, human rights and republican democracy meant to overcome the ideological narrow-mindedness of nationalism. The future of the peace power does not lie in the past of the nation state and in the return to alleged "core competencies", but in the revitalization of the community method for the CFSP. The community

approach requires necessarily parliamentarization, though, both as derived from the legal community, as well as to prevent European policy from diving into the nontransparent elitist policy circles that encounter increasing resistance among the population, as was the case at the G20 summit in Hamburg in 2018.

The seemingly plausible demand for flexible integration in European foreign, security and defense policy is anything but effective for the CFSP based on the European treaties. Quite the contrary, it limits parliamentary and judicial control and oversight and thus is in contrast to the idea that the best - and only reliable - guarantee of peace is democratic control of security and defense policy decisions. If the CFSP/CSDP lacks accountability and oversight, Europe risks becoming a danger to the EU's community of law. For a flexible Europe in foreign and security policy and any transfer of important decision-making powers with possible effects on war and peace, parliamentary control mechanism are thus without sound alternative. We should be highly careful to limit the democratic control mechanisms at the same time as we consider becoming more militarily active. The European experience of the past underlines that military activism can easily go wrong if conducted outside the realm of democratic and fully controlled politics.

The recent calls for the militarization of the CFSP/CSDP and flexible integration require a comprehensive democratization of European foreign and security policy. It would need a EP that is not subordinate to the European Council, but can set its own agenda and take decisions independently in the CFSP/CSDP. As long as we are not prepared to democratize European foreign and security policy, flexible integration in foreign and security policy outside the treaties cannot be on the agenda without an overall treaty reform. Only in this way we will remain committed to democratic peace.

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1. A. Bendiek, "A Paradigm Shift in the EU's Common Foreign and Security Policy: From Transformation to Resilience", *SWP Research Paper*, No. 11, SWP, October 2017.

2. A. Bendiek, R. Kempin and N. von Ondarza, "Qualified Majority Voting and Flexible Integration for a More Effective CFSP?", *SWP Comment*, No. 25, SWP, June 2018.

3. Letter of intent concerning the development of the European Intervention Initiative (EI2), 25 June 2018.

4. These relate to (1) positions on human rights issues in international fora; (2) decisions to establish sanctions regimes; and (3) decisions on civilian Common Foreign and Security Policy missions.

5. A. Bendiek, "The EU as a Force for Peace in International Cyber Diplomacy", *SWP Comment*, No. 19, SWP, April 2018.