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DEPARTMENT OF
EUROPEAN LEGAL STUDIES

Research Paper in Law

01 / 2026



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European Legal Studies
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RESEARCH PAPERS IN LAW

1/2026

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Reviving the 1952 European Defense Community: Strategic Benefits, Legal Issues and Political Challenges

Federico Fabbrini*

1. Introduction

The European Union (EU) suddenly faces a brave new world. Since 2022, when Russia launched its large scale aggression against Ukraine conventional warfare has returned to the European continent—for the first time since the end World War II— forcing the EU and its member states to confront the reality of military power.¹ Moreover, since 2025, when Donald Trump returned to the presidency of the United States (US), transatlantic relations have been dramatically unsettled, depriving the EU of its main security provider: indeed, the new US national security strategy, released in early December 2025, confirmed that President Trump regards Europe as an adversary, is no longer committed to the North Atlantic Treaty Organization (NATO), and to supporting Ukraine.² Furthermore, US military actions – from the large-scale war in Iran, to the attacks against alleged drug boats in the Caribbean, to the intervention to depose the Venezuelan President Nicolas Maduro, to threats of occupying Greenland – have confirmed that reality follows rhetoric in the new US approach to foreign affairs. This poses a fundamental challenge to the EU. Shielded for decades by the American security umbrella, the EU had grown so accustomed to peace that it seemed to forget that war had never truly ceased elsewhere in the world since 1945. The EU had largely downplayed Russia’s occupation and annexation of Crimea in 2014, and many member states even deepened their economic dependence on Moscow. Yet Russia’s full-scale invasion of Ukraine in February 2022, combined with Trump’s return to the White House in January 2025, dramatically demonstrated that “the end of history”³ envisioned by Francis Fukuyama at the conclusion of the Cold War had not materialized. The question of how to defend Europe has once again moved to the forefront of European politics.⁴

In the first half of 2025, the EU institutions developed a plan—ReArmEU—to strengthen European security amid growing transatlantic uncertainty. The plan suspended EU fiscal rules through the coordinated activation of the national safeguard clause of the Stability and Growth Pact to promote greater defense spending.⁵ It also establishes a new EU fund, SAFE (Security Action for Europe), worth 150 billion euros raised by the Commission on the financial markets, and to be transferred as loans to member states to support national defense financing.⁶ At the same time, fiscal rules have been suspended at the national level too—most notably in Germany, where a fast-tracked constitutional reform approved in March 2025 amended the

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¹ For an analysis of how the EU responded to the war in Ukraine see F. Fabbrini, *The EU Constitution in Time of War: Legal Responses to Russia’s Aggression against Ukraine* (OUP 2025).

² US National Security Strategy, November 2025.

³ See F. Fukuyama, *The End of History and the Last Man* (Free Press 1992).

⁴ See S. Blockmans, Editorial, “The Birth of a Geopolitical EU” (2022) *27 European Foreign Affairs Review* 155.

⁵ European Commission communication accommodating increased defense expenditure within the Stability and Growth Pact, 19 March 2025, C(2025) 2000 final.

⁶ Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument.

balanced-budget rule to allow higher defense spending.⁷ In addition, several European states strengthened bilateral defense ties,⁸ while France and the United Kingdom (UK) launched a “coalition of the willing” to provide Ukraine with security guarantees against Russia in the absence of US support.⁹

These developments have already received significant policy and scholarly attention.¹⁰ There is however another relevant happening that has fallen below the radar: in Spring 2025 – building on academic proposals calling for a revival of the European Defence Community (EDC) to integrate European defense after Trump’s re-election¹¹ – draft legislation has been tabled in the lower house of the Italian Parliament with a view for Italy to ratify the 1952 EDC Treaty¹². This political initiative came from MP Del Barba, who is a member of *Italia Viva*, a party founded by former Italian Prime Minister Matteo Renzi, which at European level sits in the *Renew* group. Discussion about the EDC Treaty have in any case gone mainstream in the Italian press,¹³ and there is support for it within the *Partito Democratico*, the Italian member of the mainstream centre-left Socialists & Democrats (S&D),¹⁴ as well as allegedly within *Forza Italia*, the Italian member of the mainstream centre-right European Peoples Party (EPP). This has brought back the EDC on the table.¹⁵

As it will be remembered, the EDC was formally established through a Treaty signed in Paris on 27 May 1952 by representatives of the six founding member states: France, Germany, Italy, Belgium, the Netherlands and Luxembourg¹⁶. The EDC was conceived at the dawn of the European integration project in a context strikingly similar to today’s. At that time, too, Europe’s security was threatened by Russia—then the USSR—and the US commitment to Europe’s defense appeared uncertain, as the Korean War diverted American attention toward Asia. It was in this setting that the same countries that had established the European Coal and

⁷ Gesetz zur Änderung des Grundgesetzes (Artikel 109, 115 und 143h), BGBl. 2025 I Nr. 94 vom 24.03.2025, available at: <https://www.recht.bund.de/bgbl/1/2025/94/VO.html>

⁸ See e.g. Treaty of Nancy between the French Republic and Poland, 9 May 2025; and Treaty of Kensington between the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany, 17 July 2025

⁹ K. Starmer, PM remarks at international leaders' summit press conference, 2 March 2025, <https://www.gov.uk/government/speeches/pm-remarks-at-international-leaders-summit-press-conference-2-march-2025>

¹⁰ See Editorial Comments, ‘ReArm Europe/Readiness 2030: European Defence in Time of War’, (2025) 62 *Common Market Law Review* 1019

¹¹ See F. Fabbrini, ‘European Defense Integration after Trump’s Reelection: A Proposal to Revive the European Defence Community Treaty and its Legal Feasibility’ (2024) 30 *European Law Journal* 614; as well as F. Fabbrini, S. Goulard, K. Caunes, C. de Vries, D. Genini, H. James, A. Kaminski, E. Keller, N. Kirst, F. Mayer, E. Murlon-Druol, G. Wolff, *Getting Serious About European Defence Integration: The European Defence Community Precedent*, Dublin European Law Institute, 2025: <https://alcideproject.eu/wp-content/uploads/2025/02/ALCIDE-Policy-Brief.pdf>

¹² Proposta di legge d’iniziativa del deputato Del Barba presentata alla Camera dei Deputati (XIX legislatura) nella seduta del 3 aprile 2025, Ratifica ed esecuzione del Trattato che istituisce la Comunità europea di difesa, A.C. n. 2342, <https://www.camera.it/leg19/126?leg=19&idDocumento=2342>

¹³ See M. Ferrera, ‘Una spinta alle sfide della UE’, *Il Corriere della Sera*, 24 February 2025; T. Nannicini, ‘Stati Uniti d’Europa la risposta ai nuovi bulli’, *La Stampa*, 3 March 2025

¹⁴ See G. Tonini, ‘Né predatori né prede. La strategia del toro europeo’, *Landino*, 15 November 2025.

¹⁵ See also F. Fabbrini, *L’esercito europeo: difesa e pace nell’era Trump* (il Mulino 2026), and F. Fabbrini, ‘Ratificare oggi la Comunità europea della difesa del 1952’ (2025) *Diritto dell’Unione europea* 281, from which this article is adapted.

¹⁶ Treaty establishing the European Defence Community, Paris, 27 May 1952. An unofficial English language translation of the treaty was made in 1952 by the US Senate Foreign Relations Committee and is available here: <https://aei.pitt.edu/5201/1/5201.pdf>

Steel Community (ECSC) a year earlier,¹⁷ decided to create a new organization focused explicitly on the defense of (Western) Europe. The EDC initiative came from France, primarily to address the problem of German rearmament.¹⁸ In fact, with the onset of the Cold War, the so called Plevin plan – from the name of the French Prime Minister that proposed it, even though it was written by Jean Monnet – was openly supported by both the US and the UK. The EDC was a natural extension of the 1948 Brussels Treaty,¹⁹ which had established a mutual defense pact among the UK, France, and the Benelux countries, and was by design meant to be the European pillar within NATO, which had been set up by the 1949 Washington Treaty.²⁰

Between 1953 and 1954, the EDC Treaty was fully ratified in four out of the six signatory states – the Netherlands, Luxembourg, Belgium and Germany, in this case through a process that also involved a constitutional reform championed by the Adenauer Government.²¹ Italy had no opposition to the treaty but delayed its ratification hoping to use this as a bargaining chip to reclaim the city of Trieste, whose status at the time was unsettled.²² However, in a famous vote in August 1954, the Parliamentary Assembly of the French Fourth Republic approved a procedural motion that postponed *sine die* the ratification of the EDC.²³ Technically, therefore, France did not reject the EDC Treaty; politically, however, it foreclosed its entry into force at the time, profoundly shaping the path of European integration. The following year, in 1955, Germany was integrated into NATO,²⁴ and since then the US have played a key role in securing the defense of Europe; instead with the 1957 Treaties of Rome establishing the European Economic Community (EEC) and European Atomic Energy Community (EURATOM), European integration took an economic direction. Yet, despite the *échec* of the 1954, the fact that legislation has now been introduced in the Italian Parliament in 2025 to ratify the EDC Treaty suggests that this project is not dead, and it could be revived today.

The purpose of this article is therefore to examine in depth the legal and political issues connected to the proposal of reviving the EDC Treaty. The article claims that from an overall strategic point of view, the EDC provides a superior answer to the security challenges that Europe faces, and would have several advantages compared to the current alternatives, including the ReArmEU plan and the coalition of the willing. Moreover, the article underlines how from a legal point of view the EDC Treaty could enter into force with the ratification of the two states that did not ratify it in the 1950s: Italy and France. From a public international law perspective, the treaty is still valid for the states that have ratified it, even if it has not entered into force; in fact, in comparative terms there are precedents of treaties that took decades to enter into force after their signature. Moreover, from an EU law perspective there are no obstacles to the validity of the EDC, while the constitutional law of France and Italy pave the way to its approval too. The article however underlines that the prospect of reviving the EDC

¹⁷ Treaty establishing the European Coal and Steel Community, Paris, 18 April 1951, 261 U.N.T.S. 140.

¹⁸ D. Clay Large, *Germans to the Front: West German Rearmament in the Adenauer Era* (University of North Carolina Press 1996).

¹⁹ Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence, Brussels, 17 March 1948, 19 U.N.T.S. 51

²⁰ North Atlantic Treaty, Washington DC, 4 April 1949, 34 U.N.T.S. 243

²¹ See K. Lowenstein, 'The Bonn Constitution and the European Defense Community Treaties' (1955) 64 *Yale Law Journal* 805.

²² P.L. Ballini, 'La mancata ratifica italiana del trattato della Comunità europea della difesa', in P.L. Ballini (ed), *La Comunità Europea di Difesa (CED)* (Rubettino 2009) 395.

²³ L. Ducerf, 'La crise de la Communauté Européenne de Défense en France (1950-1954)', in P.L. Ballini (ed), *La Comunità Europea di Difesa (CED)* (Rubettino 2009) 325.

²⁴ See F. Schorkopf, 'Bonn and Paris Agreements on Germany (1952-1954)' (2019) *Max Planck Encyclopedia of Public International Law* <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e254?d=%2F10.1093%2Flaw%3Aepil%2F9780199231690%2F9780199231690-e254&p=emailA%2F%2FdJKZZDouVo&print>

faces political challenges, due to opposing interests and ideologies, and raises difficult questions, including relating to the French nuclear *force de frappe*. Yet, the article emphasizes that these issues are not exclusive to the EDC: rather, they are difficulties that any serious effort at integrating European defense nowadays would face.

As such the article proceeds as follows. Section 2 lays out the strategic benefits of the EDC, and its advantages in securing European defense at an uncertain time. Section 3 discusses the legal feasibility of reviving the EDC from an EU law, public international law, comparative law, and constitutional law perspectives. Section 4 discusses the political challenges that the EDC raises, and highlights how solving these will be indispensable to meaningfully move beyond the status quo in EU defence integration.

2. Strategic benefits

The EDC Treaty offered a comprehensive response to Europe's security challenge by creating an integrated European army. More specifically, it envisioned a common army, funded by a common budget and governed by supranational institutions. The EDC integrated all the armed forces of the participating member states into a common army,²⁵ with a common uniform²⁶ and military code, subjected to a unitary command.²⁷ Moreover, the EDC established a democratically legitimate supranational organization capable of taking decisions on existential issues such as war and peace. Executive powers were entrusted to a nine-member Commissariat,²⁸ accountable to both a Council (representing states)²⁹ and a Parliamentary Assembly (representing citizens),³⁰ and subject to the judicial oversight of a European Court of Justice.³¹ The EDC also provided for close coordination with NATO,³² placing EDC forces under the NATO Supreme Allied Commander Europe (SACEUR) in cases of aggression,³³ while maintaining a mutual defense pact with the UK,³⁴ and remaining open to the accession of other European states.³⁵ Furthermore, the EDC was financed by a common budget,³⁶ and to secure the supply of military equipment, the Treaty granted the Community exclusive authority over defense industrial policy.³⁷ The EDC thus endowed the Community with full military capabilities, adequate fiscal resources, and institutional links with both the UK and the US, deliberately crafting itself as the European pillar of NATO.

Given its supranational features, the EDC significantly differed from the proposals currently in the process of being implemented – all of which however have revealed several weaknesses.³⁸ The ReArmEU plan relies primarily on higher national defense spending and is only modestly supported by the new common fund, SAFE. This in turn has been legally

²⁵ EDC Treaty Art. 9

²⁶ Id. Art. 15

²⁷ Id. Title III and Military Protocol

²⁸ Id. Title II, Chapter I

²⁹ Id. Title II, Chapter III

³⁰ Id. Title II, Chapter II

³¹ Id. Title II, Chapter IV

³² Id. Art. 5

³³ Id. Art. 18

³⁴ Id. Annex Treaty between the United Kingdom and the Member States of the European Defence Community

³⁵ Id. Art. 129

³⁶ Id. Title IV and Financial Protocol

³⁷ Id. Title V

³⁸ See S. Blockmans, Editorial, "Europe's Defense Trilemma" (2025) 30 *European Foreign Affairs Review* 145.

challenged before the CJEU on legal basis grounds by the European Parliament,³⁹ and, in any case offers EU financing solely in the form of loans, which member states have to repay to the Commission with interests. ReArmEU, thus, has quickly exposed deep asymmetries in the member states' ability to increase defense expenditures—especially for heavily indebted countries constrained by financial markets that limit their borrowing capacity. Moreover, by encouraging decentralized defense spending—since member states may draw on SAFE funds without resorting to joint procurement until 2026⁴⁰—the plan risks further fragmenting Europe's defense market,⁴¹ without significantly enhancing the EU's deterrence capacity. At the same time, the European attempts to build a “coalition of the willing” to support Ukraine have proven largely aspirational. Not only have European states failed to mobilize sufficient resources to create a credible reassurance force, but the hegemonic dynamics that dominate intergovernmental cooperation within the coalition have blocked real progress.

From a strategic viewpoint, therefore, the EDC would have several comparative advantages—if brought into force—over the current proposals. From a financial standpoint, the EDC would have a common budget, thus overcoming the asymmetries created by ReArmEU, and could finance itself also through the issuance of common debt. By granting the Community exclusive powers to procure and supply military equipment, it would also resolve the inefficiencies and duplications arising from Europe's fragmented defense industry—issues that became embarrassingly evident during the EU's response to the war in Ukraine in its failure to procure at least 1 million rounds of ammunitions for Ukraine in a year. From an operational perspective, the EDC would integrate all national armed forces into a single army under unified command and control, providing the deterrence and defense capabilities that the “coalition of the willing” currently lacks. At the same time, it would establish supranational bodies with the legitimacy and accountability needed to make binding decisions, avoiding both the paralysis characteristic of the EU's foreign and defence policy and the dominance of powerful states seen in extra-EU intergovernmental coalitions.

Politically, the idea of relaunching the EDC also offers clear advantages. It aligns with recent public opinion data showing strong support for a robust European defense policy. The April 2024 Eurobarometer found that 77% of Europeans favor a common defense and security policy among EU countries, while 71% agree that the EU must strengthen its capacity to produce military equipment.⁴² The September 2025 Eurobarometer revealed that almost all citizens (90%) want member states to address global challenges together, and a large majority (77%) believe the EU needs more resources to prevail in a rapidly changing geopolitical landscape.⁴³ Experimental surveys conducted in Italy, France, Germany, the Netherlands, and Spain show that citizens in these countries—four of which were founding members of the original EDC—prefer defense architectures featuring common EU-level governance, joint procurement of military equipment, and the replacement of national defense spending with EU-level expenditure.⁴⁴ One major concern regarding the current European rearmament plan is that reliance on national budgets could ultimately reduce social spending to fund defense outlays.

³⁹ Case C-883/24, *Parliament v Council*

⁴⁰ SAFE Regulation, Art. 4(3)

⁴¹ See B. Ballester, 'The Costs of Non-Europe in Common Security and Defence Policy', European Parliamentary Research Service, 2013, https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/494466/IPOL-JOIN_ET%282013%29494466_EN.pdf

⁴² Standard Eurobarometer 101 - Spring 2024, <https://europa.eu/eurobarometer/surveys/detail/3216>.

⁴³ EU-wide survey: Citizens seek enhanced EU role in protection amid global shifts, Press Releases, 3 September 2025, <https://www.europarl.europa.eu/news/en/press-room/20250827IPR30018/eu-wide-survey-citizens-see-enhanced-eu-role-in-protection-amid-global-shifts>.

⁴⁴ F. Nicoli, B. Burgoon, D. van der Duin, 'Citizen Support for a European Defense Union: An International Conjoint Experiment on Security Cooperation in Europe' (2025) 69 *International Studies Quarterly* 1.

In this respect, the EDC offers a solution: by centralizing defense expenditure at the European level, it would expand member states' fiscal space to invest in health, welfare, and education—making it far more appealing to public opinion.

The EDC also provides clear institutional advantages. First, as a treaty modeled on the ECSC—the forerunner of today's EU—the EDC is based on rules and institutions that already resemble, or even directly correspond to, those of the current EU, thereby facilitating institutional linkage between the EU and the EDC. Second, it would allow a core group of member states to integrate their defenses within the EU and NATO framework, as all six original signatories of the EDC Treaty are members of both organizations. The EDC's connection to NATO would mitigate fears of an irreparable rift with the US, while its openness to new members would enable other EU states to join the initiative for a European army. As a treaty among a subset of EU member states, the EDC could function similarly to other *inter se* international agreements—such as the Schengen Agreement⁴⁵, the Fiscal Compact⁴⁶, or the Treaty establishing the European Stability Mechanism⁴⁷—all of which represent forms of deeper cooperation among groups of EU countries. In this sense, the EDC Treaty would be the latest example of member states using such intergovernmental agreements as the avant-garde of European integration.

Finally, from a legal standpoint—and this is of key practical importance—since the EDC Treaty had already been ratified by the Netherlands, Belgium, Luxembourg, and Germany, it could enter into force with ratification by only two additional member states: Italy and France, the countries that did not ratify it in the 1950s. Political challenges notwithstanding, this is an extraordinarily low threshold compared to the 27 unanimous ratifications required to amend the EU Treaties or to implement its modest provisions related to defence. Moreover, since Germany had ratified the EDC Treaty through a constitutional amendment,⁴⁸ and the German Constitutional Court had already considered and dismissed challenges to the EDC Treaty, a potential jurisdictional obstacle has already been removed.⁴⁹ A further advantage is that the EDC would allow willing European countries to advance toward a common army while bypassing vetoes from states—such as Hungary under the leadership of Prime Minister Viktor Orbán—that act as *de facto* Russian proxies within the EU, undermining unity and weakening support for Ukraine. Through the EDC, European countries committed to deeper defense integration could move forward without being blocked by the unanimity requirement

⁴⁵ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ [2000], L 239/19, 22.9.2000. The Schengen Agreement was subsequently incorporated into the EU legal framework.

⁴⁶ Treaty on stability, coordination and governance in the Economic and Monetary Union, 2 March 2012.

⁴⁷ Treaty establishing the European Stability Mechanism, 2 February 2012.

⁴⁸ Gesetz zur Ergänzung des Grundgesetzes. Vom 26. März 1954. Bundesgesetzblatt, Teil I, p 45, http://www.documentarchiv.de/brd/1954/grundgesetz-art73-79-142a_ges.html This revision amended Article 79(1) GG, the eternity clause, to allow the transfer of military sovereignty to supranational organizations, and most importantly inserted a new Article 142a into the GG which stated that nothing in the constitution precluded the ratification of the EDC Treaty. Article 142a was then removed in the late 1960s as part of a broader constitutional cleanup. No specific discussion of the EDC took place at the time, and it seems the consensus was simply that the clause was outdated and no longer relevant.

⁴⁹ Over the past two decades, the German Constitutional Court has developed a rather Euro-skeptical body of constitutional jurisprudence. See in particular *BVerfG 123, 267* (2009), the judgment on the Lisbon Treaty, on which see S. Cassese, 'L'Unione europea e il giunzaglio tedesco' (2009) *Giornale di Diritto Amministrativo* 1003. In more recent times, however, the German Constitutional Court has partially revised its stance, especially in response to the Covid-19 pandemic. See *BVerfG 2 BvR 547/21* and *2 BvR 798/21*, judgment of 6 December 2022, discussed in E. Kempf and K. Linos, 'Shaming the Court: How the German Constitutional Court Reversed Itself to Greenlight EU Fiscal Federalism', (2024).

that currently paralyzes EU decision-making.

3. Legal Issues

The proposal to revive the EDC raises a number of legal questions; however, the central argument of this article is that such a revival is legally feasible—under EU law, international law, comparative law, and constitutional law.

3.1. EU Law

First, it is worth pointing out that reviving the EDC would be compatible with EU law. Since the 1992 Maastricht Treaty, the EU has possessed a Common Foreign and Security Policy (CFSP), which today also includes a Common Security and Defence Policy (CSDP). However, the CFSP and CSDP were conceived from the beginning as special competences, in which the ordinary rules of the community method do not apply.⁵⁰ In fact, since their origin, the CFSP and CSDP have been policies in which the Member States maintain full sovereignty, and the intergovernmental nature of the CFSP and CSDP has been preserved over time.⁵¹ Pursuant to Article 41(1) TEU, “the common security and defence policy shall be an integral part of the common foreign and security policy”, and pursuant to Article 41(2) TEU, “the common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.” The TEU, furthermore, recognizes that for member states which are part of NATO that organization remains the centerpiece of their security architecture, while also acknowledging that some member states embrace principles of neutrality. As a result of these constitutional constraints, the EU has thus far made only very limited progress in developing a common defense.⁵²

However, EU law allows Member States (all or a group of them) to conclude international agreements *inter-se* (among themselves) in policy areas that are not the exclusive competence of the EU itself. This emerges from the textual analysis of primary EU law, from practice, and from the case law of the CJEU. From a textual point of view, the Maastricht Treaty, which first granted the EU competence in the field of CFSP and CSDP, included a clause – Article J.4(5) – which explicitly stated that the provisions of the TEU regarding security and defense “shall not prevent the development of closer cooperation between two or more Member States on a bilateral level [...] provided such cooperation does not run counter to or impede that provided for in this Title.” This clause was maintained (as Article 17(4) TEU) by the Treaties of Amsterdam and Nice but was subsequently removed from the TEU during the rewriting process resulting in the 2003 Constitutional Treaty (CT). Following the failure of the CT, it was also omitted from the 2007 Lisbon Treaty, which nevertheless preserved a large portion of the changes introduced by the CT. Indeed, the CT introduced the instrument of Permanent Structured Cooperation in the field of defense (PESCO) into primary EU law, which, since the Lisbon Treaty, is now regulated under Article 42(6) TEU.

Article 42(6) TEU allows Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area to establish PESCO, in accordance with the more detailed rules contained in Article 46 TEU and, above all, Protocol No. 10, annexed to the Treaties. PESCO is essentially a form of enhanced cooperation among those Member States that aspire to integrate their defense within the framework of the

⁵⁰ P. Koutrakos, *The EU Common Security and Defence Policy* (OUP 2013) 252.

⁵¹ See D. Thym,, ‘The Intergovernmental Constitution of the EU’s Foreign, Security and Defense Executive’ (2011) *EuConst* 466.

⁵² S. Blockmans and P. Koutrakos (eds), *Research Handbook on the EU’s Common Foreign and Security Policy* (Elgar 2018).

EU; it was therefore designed as a tool to facilitate agreements between Member States within the field of defense inside the EU, rather than outside of it.⁵³ PESCO, however, was for a long time blocked by the United Kingdom's veto and was therefore only made operational after Brexit—the United Kingdom's decision to withdraw from the EU in 2016. In 2017, the Member States launched PESCO,⁵⁴ and subsequently authorized a series of operational projects.⁵⁵ Nonetheless, PESCO has proven to be largely irrelevant from a practical standpoint, partly as a consequence of the fact that 26 out of 27 Member States (everyone except Malta) joined the initiative, thereby reducing its impact. Furthermore, the establishment of PESCO has not deprived EU Member States of the power to conclude *inter-se* agreements in the field of defense.

In fact, practice highlights how even after the removal of Article J.4(5) of the Maastricht Treaty by the CT and the Lisbon Treaty, Member States have continued to conclude bilateral or multilateral agreements in the field of defense.⁵⁶ Among the various examples of bilateral agreements, one should especially recall the Lancaster House Treaty, concluded in London, in November 2010 between France and the United Kingdom (a Member State at the time), through which the parties committed to deepening their military, industrial, and strategic cooperation; and the Treaty of Aachen concluded in January 2019 between France and Germany, by which the parties entered into a mutual defense pact in the event of an armed attack, updating the 1963 Elysée Treaty. Under the latter, moreover, the two countries had already agreed during the famous Saint-Malo Summit of December 1998 to strengthen European defense, paving the way for the significant decisions of the Cologne⁵⁷ and Helsinki European Councils in 1999.⁵⁸ Above all, it is also necessary to mention the Treaty of Strasbourg, which established Eurocorps:⁵⁹ this international agreement—initially concluded by France, Germany, Belgium, Luxembourg, and Spain in November 2004, and entering into force in February 2009—consolidated a previous Franco-German initiative⁶⁰ and created a common military capability that has been made available to both NATO and the EU. Specifically, the Treaty of Strasbourg regulates the functioning of Eurocorps, assigning it the role of carrying out common defense missions and other so-called Petersberg tasks. The Treaty also established a common headquarters in Strasbourg, which serves to command operational missions. The fact that the Treaty of Strasbourg was concluded just a few months after the aforementioned revision introduced by the CT confirms the will of Member States to maintain autonomy in concluding *inter-se* agreements to advance integration in the field of defense.

In fact, the case law of the CJEU has fully legitimized this possibility, provided that certain conditions are met. To date, there have been no CJEU rulings specifically regarding *inter-se* agreements between Member States in the field of defense; however, in the landmark

⁵³ See S. Blockmans, 'The EU's Modular Approach to Defence Integration: An Inclusive, Ambitious and Legally Binding PESCO?' (2018) *CMLRev* 1785.

⁵⁴ See Decision (CFSP) 2017/2315 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States, OJ 2017 L 331/57.

⁵⁵ See Decision (CFSP) 2018/340 establishing the list of projects to be developed under PESCO, OJ 2018 L 65/24.

⁵⁶ See A. Miglio & G. Perotto, 'EU law and Inter Se Agreements in Defence Matters: Mapping the Interplay' (2022) *Perspectives on Federalism* 1-9.

⁵⁷ Cologne European Council, Presidency Conclusion, 3-4 June 1999, Annex III, par. 1.

⁵⁸ Helsinki European Council, Presidency Conclusion, 10-11 December 1999, par. 28.

⁵⁹ Treaty between the French Republic, the Federal Republic of Germany, the Kingdom of Belgium, the Kingdom of Spain and the Grand Duchy of Luxembourg relating to the Eurocorps and the status of its Headquarters, 22 November 2004, 2595 U.N.T.S. 21.

⁶⁰ Conseil franco-allemand de défense et de sécurité, *Déclaration sur la création d'un corps d'armée franco-allemand à vocation européenne - 59ème Sommet franco-allemand à La Rochelle*, 22 May 1992.

Pringle judgment of 2012, the CJEU ruled that the ESM was compatible with the EU Treaties.⁶¹ As will be recalled, this treaty was concluded at the height of the euro crisis to create a financial assistance instrument that would provide loans to Eurozone Member States that had lost access to financial markets. The choice to create an *ad hoc* instrument outside the framework of the EU Treaties was motivated both by financial reasons, due to limited resources in the EU budget, and by political-legal reasons, as Germany—under pressure from its own Constitutional Court—insisted on maintaining national parliamentary control over the decision to grant loans to debtor countries. The intergovernmental nature of the ESM, however, raised doubts regarding its compatibility with EU law. This prompted the Supreme Court of Ireland to make a preliminary reference to the CJEU, asking, among other things, whether a Member State could ratify the ESM Treaty in light of the TEU provisions regarding the EU’s exclusive competences, EU economic policy, the role of EU institutions, and the principle of sincere cooperation.

In its judgment, however, the CJEU recognized the full legality for Member States to conclude an *inter-se* treaty, provided they “comply with the obligations that European Union law imposes on them.”⁶² Specifically, the CJEU stated that the ESM Treaty was not incompatible with Articles 3(1)(c) and 127 of the Treaty on the Functioning of the EU (TFEU), which grant the EU exclusive competence over monetary policy;⁶³ nor with the provisions relating to economic policy—Articles 2(3), 119, 120, 121, and 126 TFEU.⁶⁴ Above all, the CJEU rejected the argument that the ESM was incompatible with Article 122 TFEU,⁶⁵ which also allows the Council to provide macro-financial assistance in conditions of necessity; it further stated that the ESM does not even contravene the prohibition on financial bailouts and monetary financing codified in Articles 125 and 123 TFEU. According to the CJEU, this is a consequence of the strict fiscal conditionality associated with ESM aid.⁶⁶ The CJEU further held that, “the Member States are entitled, in areas which do not fall under the exclusive competence of the Union, to entrust tasks to the institutions, outside the framework of the Union [...] provided that those tasks do not alter the essential character of the powers conferred on those institutions by the EU and FEU Treaties”⁶⁷ – thus opening the door to the involvement of the Commission, the ECB and the CJEU itself in the ESM.

The CJEU’s decision in *Pringle* is particularly significant: if it is possible for Member States to conclude *inter-se* agreements in the field of EMU—which is one of the EU’s most normatively dense policy competences—then *a fortiori* it is possible for Member States to conclude *inter-se* agreements in the field of CFSP and CSDP, which, as previously mentioned, remain purely intergovernmental domains. Indeed, as stated by Jean-Claude Piris (former Legal Counsel to the Council of the EU and one of the primary authors of the Treaty of Lisbon, among others), the CSDP “is an area where neither the EU treaties, nor other international commitments [...] present obstacles” to legally binding cooperation between an avantgarde of member states.⁶⁸ In this sector, the EU Member States essentially maintain sovereignty, and bilateral or multilateral agreements already exist.⁶⁹ Therefore, the EDC would constitute only the latest iteration of these forms of *inter-se* cooperation. At the same time, as mentioned in the introduction to the article, the possibility of using international agreements between Member

⁶¹ Case C-370/12, *Thomas Pringle v Government of Ireland and Others* [2012] EU:C:2012:756, para.109.

⁶² *Id.*, par. 109.

⁶³ *Id.*, par. 97

⁶⁴ *Id.*, par. 108.

⁶⁵ *Id.*, par. 116

⁶⁶ *Id.*, par. 142

⁶⁷ *Id.*, par. 158.

⁶⁸ J.C. Piris, *The Future of Europe: Towards a Two Speed EU?* (CUP 2012), 124.

⁶⁹ J.C. Piris, ‘The European Union in Crises: What Should the Member States Do?’ (2022) 7 *European Papers* 969;

States has been repeatedly utilized in the past to advance the project of European integration.⁷⁰ Subject to institutional coordination mechanisms between the EDC and the EU (to be addressed in the section 4), there are thus no constitutional or legal impediments under EU law to the EDC Treaty's entry into force.

3.2. Public international law

Second, from the perspective of public international law, the EDC Treaty was ratified by four of the six signatory countries—namely, the Netherlands, Belgium, Luxembourg, and Germany—and once a treaty has been signed and ratified, it is not considered void for the states that have expressed their consent to be bound by it, even if it has not yet entered into force. The 1969 Vienna Convention on the Law of Treaties (VCLT)⁷¹, which codifies customary international law in this field,⁷² is explicit on this point. Article 14 VCLT states that “the consent of a State to be bound by a treaty is expressed by ratification when: (a) the treaty provides for such consent to be expressed by means of ratification.” Furthermore, Article 18 provides that a state is obliged to refrain from acts that would defeat the object and purpose of a treaty prior to its entry into force. Article 55 also clarifies that “unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.”

The VCLT also establishes rules governing denunciation of, or withdrawal from, treaties. Under Article 56, a contracting party may denounce a treaty provided that “a right of denunciation or withdrawal may be implied by the nature of the treaty.” Moreover, Article 62 introduces the doctrine of fundamental change of circumstances (the *clausula rebus sic stantibus*), according to which “a fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless: (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.” The formulation of this rule clearly shows that the VCLT favors the continuing validity of treaties over time and establishes that, as a general rule, a change of circumstances does not authorize termination or withdrawal. Finally, Article 65 sets out a mandatory procedure for treaty denunciation or termination, including the notification to other parties of the intention to withdraw.

From these principles it follows that the EDC Treaty—although not in force—technically remains binding upon the four states that ratified it. Since the Netherlands, Belgium, Luxembourg, and Germany ratified the EDC Treaty in accordance with Article 14 VCLT and never denounced it as required by Articles 56 and 65, the treaty remains valid for them. The only argument these countries could invoke to terminate their obligations would be the *rebus sic stantibus* clause in Article 62: however, that clause is hardly applicable in this context. Although reviving the EDC more than seventy years after its ratification may seem politically surprising, from a strictly legal perspective there have been no changes in circumstances that would justify invoking Article 62. Indeed, the Netherlands, Belgium, Luxembourg, and Germany have continued their peaceful integration project with France and Italy since the 1950s, and today's EU treaties legally bind them to pursue both “an ever closer union”⁷³ and

⁷⁰ See B. De Witte, ‘Constitutional Challenges of Enlargement’, Report commissioned by the European Parliament Constitutional Affairs Committee, March 2019, 13-14.

⁷¹ Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, 1155 UNTS 331.

⁷² A. Cassese, *International Law in a Divided World* (OUP 1986), 189.

⁷³ TEU, Preamble.

“a common defence”⁷⁴—objectives that would be directly fulfilled by bringing the EDC Treaty into force.

Germany’s case deserves particular attention, as after the conclusion of the EDC Treaty the country joined NATO in 1955 and reunified in 1990. Yet neither of these events constitutes a fundamental change of circumstances under the VCLT. On the one hand, all five other EDC states were already NATO members at the time the treaty was signed, and the EDC was in any case designed to operate in close coordination with NATO, placing its European Defence Forces (EDF) under the command of NATO’s SACEUR in the event of aggression. On the other hand, German reunification occurred through the absorption of East Germany into the Federal Republic of Germany, as established by the so-called “Two plus Four Treaty” of September 1990 between the Federal Republic of Germany, the German Democratic Republic, and the four victorious powers of World War II (the US, the USSR, the UK, and France).⁷⁵ That treaty confirmed a united Germany’s NATO membership and reaffirmed its full participation in European integration. Reunification, therefore, expanded Germany’s territorial scope but did not alter its constitutional structure or international position. The Two Plus Four Treaty prohibits Germany from possessing nuclear weapons,⁷⁶ but nuclear armament was never contemplated by the EDC Treaty in any case.

A further question arises: Can a treaty enter into force after many decades have passed since its signature? Empirical evidence – what is called international law practice – indicates that it can. It is not uncommon for a significant lapse of time to occur between a treaty’s signing and its entry into force, particularly in the case of multilateral treaties that require a threshold number of ratifications. For instance, the European Convention on the Repatriation of Minors⁷⁷, adopted in the Council of Europe in 1970 and requiring three ratifications, entered into force only in 2015—45 years later. Similarly, the Special Protocol concerning Statelessness, concluded within the League of Nations in 1930 and requiring ten ratifications, entered into force in 2004—74 years after its adoption.⁷⁸ Even the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations⁷⁹, concluded in 1986 and requiring 35 ratifications, has not yet entered into force; yet no jurist questions its continuing validity.

3.3. Comparative Law

Third, from a comparative law standpoint, there is an instructive precedent showing that the passage of time does not in itself lead to *desuetude legis*: the case of the Twenty-Seventh Amendment to the US Constitution. While the US Constitution is not an international treaty, American jurists have long noted that, as the basic law for a union of states, it exhibits features typical of international law⁸⁰—especially concerning the ratification of constitutional

⁷⁴ TEU, Article 42.

⁷⁵ Treaty on the Final Settlement with Respect to Germany, Moscow, 12 September 1990, 1696 U.N.T.S. 124.

⁷⁶ *Id.*, Article 3.

⁷⁷ European Convention on the Repatriation of Minors, The Hague, 28 May 1970, ETS No. 71 <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=071>.

⁷⁸ Special Protocol concerning Statelessness, The Hague, 12 April 1930, 225 U.N.T.S. 435, <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280049d51&clang=en>.

⁷⁹ Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, Vienna, 21 March 1986, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXIII-3&chapter=23&clang=en.

⁸⁰ A. Bellia Jr e B.R. Clark, ‘The International Law Origins of American Federalism’ (2020) 120 *Columbia Law Review* 835.

amendments.⁸¹ Article V of the US Constitution requires that amendments be approved by two-thirds of both Houses of Congress and subsequently ratified—a term drawn directly from the law of treaties—by three-fourths of the state legislatures (a figure that has grown from the original 13 to today’s 50 states).

The text of the Twenty-Seventh Amendment—“No law varying the compensation for the services of Senators and Representatives shall take effect, until an election of Representatives shall have intervened”—was approved by Congress in 1789, at the dawn of the Republic, alongside the ten amendments that would form the Bill of Rights (ratified in 1791). The compensation amendment, however, was largely forgotten for nearly two centuries until a University of Texas student, in the 1980s, argued that it could still be ratified and launched a successful campaign to do so. Unlike other proposed amendments, it contained no time limit for ratification. In 1992—exactly 203 years, 7 months, and 10 days after its proposal—the required 38 state ratifications were achieved, and the amendment duly entered into force. This remains the most recent amendment to the US Constitution. The precedent is significant: since the American amendment process shares characteristics with treaty ratification, the fact that the Twenty-Seventh Amendment entered into force after more than two centuries demonstrates that a treaty may indeed be activated long after its adoption. By that standard, reviving the EDC Treaty—dormant for only 73 years—appears even more feasible.

3.4. Constitutional law

Finally, from the standpoint of national constitutional law, no insurmountable obstacles exist for France and Italy—the two countries that never ratified the EDC in the 1950s—to do so today. In Italy, the answer is straightforward. The De Gasperi government introduced a bill in 1952 to ratify the EDC Treaty, and the Scelba government reintroduced it after the 1953 elections.⁸² The relevant parliamentary committees approved the bill, but the full Chamber never voted before the French *échec*. Hence, Parliament has never voted on the EDC Treaty. According to Article 11 of the 1948 Italian Constitution, Italy is committed to promoting international organizations necessary for an order that ensures peace, while Article 80 requires parliamentary authorization by law for the ratification of political treaties. The EDC Treaty could therefore be submitted to Parliament for ratification by both the Chamber of Deputies and the Senate. Indeed, as mentioned in the Introduction, in 2025, a new bill has been tabled to authorize ratification and implementation of the EDC Treaty: since this required a prior admissibility check by the legal office of the Italian Parliament, it confirms that there are no internal legal obstacles to ratification.

In France, the situation is somewhat different since the National Assembly of the Fourth Republic debated but declined to ratify the EDC Treaty in 1954. Yet under the 1958 Constitution of the Fifth Republic, there are no legal barriers preventing reconsideration.⁸³ Article 53 provides that treaties relating to international organization, peace, commerce, or the finances of the State, among others, require authorization by statute before ratification and enter into force only after ratification or approval. Article 54 allows the President, the Prime Minister, the Presidents of the two Chambers, or sixty deputies or senators to refer a treaty to the

⁸¹ A.R. Amar, ‘Of Sovereignty and Federalism’ (1987) 96 *Yale Law Journal* 1425.

⁸² See the bill submitted to the Chamber of Deputies (First Legislature) by the Italian Prime Minister and Minister of Foreign Affairs Alcide De Gasperi during the session of 13 December 1952, ‘Ratifica ed esecuzione degli accordi internazionali relativi all’istituzione della Comunità europea della difesa’, A.C. n. 3077; and the bill submitted to the Chamber of Deputies (Second Legislature) by Prime Minister Scelba during the session of 6 April 1954, ‘Ratifica ed esecuzione degli Accordi per la Comunità europea di difesa’, A.C. No. 767.

⁸³ A translation into English of the Constitution of the Fifth French Republic is provided by the Élysée website <https://www.elysee.fr/en/french-presidency/constitution-of-4-october-1958>.

Constitutional Council before ratification; if the Council finds it contrary to the Constitution, authorization can only occur after a constitutional amendment. Article 55 further stipulates that duly ratified treaties have authority superior to ordinary laws, subject to reciprocity. Moreover, since 1992 the Constitution has included specific provisions on France's participation in the EU. After the 2008 amendments, Article 88-1 declares that "The Republic shall participate in the [EU] constituted by States which have freely chosen to exercise some of their powers in common by virtue of the Treaty on European Union and of the Treaty on the Functioning of the European Union, as they result from the treaty signed in Lisbon on 13 December, 2007." Article 88-5 requires a referendum on the accession of new states to the EU unless Parliament authorizes ratification through the constitutional amendment procedure.

Moreover, there is, no written provision⁸⁴ – neither in the Constitution, nor in the laws governing the functioning of Parliament,⁸⁵ nor in the internal rules of the National Assembly or the Senate – that prevents Parliament from reconsidering the EDC Treaty. The current rules of the French National Assembly⁸⁶ govern, in Articles 128 and 129, the mechanisms by which the Assembly votes on international treaties, and stipulate that the Assembly adopts or rejects the bill authorizing the ratification of a treaty without voting on its individual articles, and that the ratification procedure is suspended if the treaty has been submitted to the Constitutional Council. Similarly, the rules of the Senate⁸⁷ – which, as the second chamber of Parliament, occupies a constitutionally subordinate position relative to the National Assembly – provide in Article 47 that, if the Senate is called to vote on a bill authorizing the ratification of an international convention, it may not vote on the specific articles of the treaty, but only on the overall approval. Indeed, under Article 47 decies, the Senate, at the request of the government or its President, among others, may decide to vote on a bill authorizing the ratification of an international treaty without discussion.

Most importantly, the French legislature that declined to ratify the EDC was that of the Fourth Republic (under the 1946 Constitution). By virtue of the Constitutional Act of 3 June 1958⁸⁸, that Assembly authorized General Charles de Gaulle to draft a new Constitution, which—once approved by referendum—created the Fifth Republic on 4 October 1958. While this did not affect the international validity of France's 1954 signature of the EDC Treaty – given the international law principle of continuity of state – it clearly entitles the legislature of the Fifth Republic to consider, for the first time, a bill authorizing ratification of the EDC Treaty. Although the matter would likely be referred to the Constitutional Council beforehand, that body has traditionally shown deference in reviewing European treaties and has never blocked their approval.⁸⁹

4. Political Challenges

Needless to say, however, the legal feasibility of reviving the EDC does not equate to its political feasibility. Indeed, there are various political obstacles and challenges that may arise

⁸⁴ See J.L. Pezant, 'Quel droit régit le Parlement?' (1993) 64 *Pouvoirs* 63 ss (emphasizing that today the parliamentary rules are, for the most part, codified in writing).

⁸⁵ Ordonnance n° 58-1100 du 17 novembre 1958 relative au fonctionnement des assemblées parlementaires, (mis à jour), JORF n° 10335 du 18 novembre 1958, www.assemblee-nationale.fr/connaissance/reglement.pdf

⁸⁶ *Ibid.*

⁸⁷ Règlement du Sénat, www.senat.fr/fileadmin/Seance/Documents/Historique_du_Reglement_du_Senat/49_18012024.pdf

⁸⁸ Loi constitutionnelle du 3 juin 1958 portant dérogation transitoire aux dispositions de l'article 90 de la Constitution, JORF n° 130, du 4 juin 1958, <https://www.legifrance.gouv.fr/download/securePrint?token=f7mWii2iVcHt!4k@GaJN>

⁸⁹ See M. Wendel, 'Lisbon Before the Courts: Comparative Perspectives' (2011) 7 *EuConst* 96.

along the proposed path, and they deserve mention.

First, from an ideological standpoint, the EDC represents a project of European integration of a federal nature—something viewed with deep suspicion by nationalist and Eurosceptic movements that are now well established across all EU countries.⁹⁰ Certainly, the rhetoric of sovereignty often clashes with reality: if sovereignty means an absolute power not subject to higher constraints⁹¹, then European countries today are *not* sovereign in military terms. They lack the capacity to act independently on the international stage and are part of an Atlantic Alliance dominated by the US. From this perspective, in fact, the EDC would strengthen Europe's sovereignty by reducing its dependence on the US and NATO, while enhancing its leverage vis-à-vis Russia and China. Yet, as it is well known, demagogic slogans lamenting the loss of national sovereignty whenever more powers are transferred to Europe can easily prevail in political debates, leading to paradoxical outcomes—namely, keeping Europe as it is now, in a position of subordination to the great powers.

Second, in terms of interests, one must not underestimate the existence of economic and industrial lobbies opposed to strengthening Europe's defense capacity. The fragmentation of Europe's technological and industrial defense base prevents economies of scale and increases production and procurement costs. However, it also allows national defense companies—those with privileged ties to their own armed forces and defense ministries—to enjoy quasi-monopolistic advantages. Realistically, these actors would resist the integration and consolidation of the defense industry envisaged by the EDC. Furthermore, although NATO countries' armed forces are now highly internationalized and accustomed to interdependent operations, there remain sectors within military and diplomatic institutions that are jealous guardians of national sovereignty and—out of inertia or narrow-mindedness—struggle to conceive of the creation of a European army.

In any case, for the EDC Treaty to enter into force, it would have to be ratified by the two countries that have yet to do so—Italy and France. As mentioned earlier, in Italy a parliamentary bill proposing ratification of the EDC Treaty has recently been submitted to the Chamber of Deputies. The government led by Prime Minister Giorgia Meloni has however so far remained silent on the issue. In France, by contrast, the matter is even more complex politically. Historically, the EDC's failure in 1954 left a long-lasting political legacy that still shapes the positions of both the Gaullist right and the communist and socialist left. These political traditions have strong anti-American tendencies, making the EDC politically unappealing since it ties a European army to the Atlantic Alliance, subordinating the EDF to NATO's SACEUR—that is, as things currently stand, to the US. Ironically, therefore, the very feature that would make the EDC most attractive to the majority of EU countries—its role as Europe's pillar within NATO and guarantor of the transatlantic relationship—is precisely what continues to make it problematic in France.

Of course, under President Emmanuel Macron, France currently has perhaps the most pro-European leader in its history. It was Macron himself who, in two major speeches delivered at the Sorbonne in 2017 and 2024, outlined a sweeping vision for Europe's future.⁹² Nonetheless, Macron—essentially for the first time in the history of the Fifth Republic, apart from periods of cohabitation—does not command a parliamentary majority to implement his

⁹⁰ C. De Vries, *Euroscepticism and the Future of European Integration* (OUP 2018).

⁹¹ See, e.g., G. Buijs, "‘Que les Latins appellent maiestatem’ : An Exploration into the Theological Background of the Concept of Sovereignty", in N. Walker (ed.), *Sovereignty in Transition* (Hart 2003), 229; J. Ziller, 'Sovereignty in France: Getting Rid of the Mal de Bodin', in N. Walker (ed.), *Sovereignty in Transition* (Hart 2003), 261.

⁹² E. Macron, Discours pour une Europe souveraine, unie, démocratique, Sorbonne, 26 septembre 2017, <https://www.elysee.fr/emmanuel-macron/2017/09/26/initiative-pour-l-europe-discours-d-emmanuel-macron-pour-une-europe-souveraine-unie-democratique>; E. Macron, Discours sur l'Europe, Sorbonne, 24 avril 2024, <https://www.elysee.fr/emmanuel-macron/2024/04/24/discours-sur-leurope>

political agenda. Indeed, following the early parliamentary elections held in June 2024 after the European elections, the French National Assembly is now deeply divided among three major political blocs of roughly equal size. The result has been unprecedented political instability: since the summer of 2024, France has seen four successive governments. The first, led by Michel Barnier, lasted barely three months; the second, under centrist François Bayrou, became the first in Fifth Republic history to lose a confidence vote, on 8 September 2025; the third, led by Sébastien Lecornu, resigned after less than a month—making it the shortest-lived government in French history. President Macron subsequently reappointed Lecornu as Prime Minister, but it remains uncertain how long this new government can endure. Although figures such as Bayrou belong to the centrist Catholic tradition descending from Robert Schuman—one of the EDC’s founding fathers—the arithmetic of the French Parliament requires consensus-building and coalition politics for the passage of any bill, including treaty ratifications. Such practices, however, remain largely alien to France’s political culture.

In addition to these difficulties lies another objective obstacle complicating France’s potential ratification of the EDC: the nuclear question. (With the 1957 Treaties of Rome, the founding countries also established the EURATOM, which still exists, but deals only with civilian nuclear energy.) When the EDC Treaty was signed and ratified in the early 1950s, none of the six founding states possessed nuclear weapons. Under President de Gaulle’s leadership—and with the goal of asserting France’s autonomy from NATO and the US nuclear deterrent—France developed its independent *force de frappe* in the 1960s. French nuclear doctrine is based on a concept of general deterrence and grants the President—directly elected by the people—the ultimate authority to use nuclear weapons in defense of the nation’s vital interests. In recent years, President Macron has affirmed that France’s nuclear deterrent has “a genuinely European dimension,”⁹³ and France and the UK have strengthened the bilateral guarantees associated with their respective nuclear forces⁹⁴. Moreover, in recent times President Macron even offered to partially enlarge French nuclear deterrence,⁹⁵ albeit with a deal which is less generous than that currently operating under the US-NATO nuclear sharing agreement. Nonetheless, the existence of a national nuclear arsenal significantly complicates the EDC’s goal of merging member states’ armed forces, and there are clearly no easy solutions to this problem.

A formalist and minimalist approach might be to exclude the nuclear force from the EDC’s scope: after all, the EDC Treaty speaks of integrating the armies, air forces, and—to a lesser extent—the navies. The nuclear force could therefore remain national and French. Still, it is evident that—with or without the EDC—the French nuclear issue remains a Gordian knot for the development of a genuine European defense. The “European dimension” of France’s nuclear deterrent does not make it a *European* deterrent. If France truly wishes to strengthen Europe’s strategic autonomy, it must eventually confront the issue of transferring nuclear sovereignty from the national to the European level. After all, Germany did so with its monetary sovereignty: through the Maastricht Treaty, in order to create Economic and Monetary Union, Germany relinquished its strong national currency, the *Deutsche Mark*—which had dominated exchange rate policy—and transferred monetary authority to a shared federal institution, the European Central Bank. In defense policy, France should have the courage to make a similar leap forward for Europe in the nuclear realm, in exchange for some payoffs (just as Germany managed to re-unify in exchange for moving to the euro).

⁹³ E. Macron, Discours sur la stratégie de défense et de dissuasion devant les stagiaires de la 27ème promotion de l’école de guerre, 7 février 2020, <https://www.elysee.fr/emmanuel-macron/2020/02/07/discours-du-president-emmanuel-macron-sur-la-strategie-de-defense-et-de-dissuasion-devant-les-stagiaires-de-la-27eme-promotion-de-lecole-de-guerre>

⁹⁴ See Northwood Declaration on Nuclear Cooperation, July 2025.

⁹⁵ E. Macron, Discours sur la dissuasion nucléaire, 4 mars 2026, <https://uk.diplomatie.gouv.fr/fr/discours-du-president-sur-la-dissuasion-nucleaire>

Beyond the nuclear question, it should also be noted that the EDC Treaty fails to address other forms of warfare that are now widespread. As a document written in the early 1950s, it reflects its time and, for example, does not touch upon chemical or biological warfare, space warfare, or hybrid, cyber, and technological warfare. The battlefields of Ukraine have recently revealed the extraordinary importance of drones (unmanned aerial vehicles), which—through advances in artificial intelligence—may soon be capable of autonomous decision-making. Moreover, in recent months, Russia has tested the resilience of several NATO eastern flank countries through non-linear measures—ranging from attacks on critical infrastructure and information manipulation to interference in electoral processes. Although such actions do not constitute aggression under Article 5 of the NATO Treaty, they have nonetheless raised serious concerns and even led Poland and Estonia, in September 2025, to invoke Article 4 of the NATO Treaty, triggering urgent consultations among allies who felt threatened.⁹⁶ From this perspective, if the EDC Treaty were to enter into force, it would merit updates to align it with the realities of modern warfare.

Beyond these political challenges, the idea of reviving the EDC also entails institutional complexities. From an institutional standpoint, the EDC would become an organization separate and distinct from the EU. However, since the EDC descends from the ECSC—which preceded the EEC and later the EU—various EDC institutions correspond to EU ones, creating coordination issues. To be fair, the EDC Council (the body representing the member states) could readily coincide with the EU Council—albeit in a reduced composition, as is the case with the Eurogroup, which brings together only countries that have adopted the euro. Moreover, Article 273 TFEU grants the CJEU jurisdiction “in any dispute between Member States which relates to the subject matter of the Treaties if the dispute is submitted to it under a special agreement between the parties.” It would therefore be possible to assign to the CJEU established under the TEU the judicial functions envisaged by the EDC Treaty. The EDC Commissariat, however, would have to be a body distinct from the European Commission. Similarly, the EDC Parliamentary Assembly—indirectly elected under the EDC Treaty, as the European Parliament (EP) was before 1979—is too different from today’s EP to merge their legislative functions. The EDC would therefore require its own Parliamentary Assembly, separate and distinct from the EP—much like NATO has its own Parliamentary Assembly. This conclusion is reinforced by the fact that, initially, only six EU member states would belong to the EDC.

This raises one final important issue—of a geographical nature. As an agreement among the six founding states, the EDC’s entry into force would immediately exclude most of today’s 27 EU member states, including not only 15 of the 21 eurozone countries but, more importantly, all the Central and Eastern European states that feel most threatened by Russian aggression and have invested the most in their defense. Naturally, as mentioned earlier, the EDC Treaty is open to accession by other European countries. In principle, even Ukraine could apply to join, though this seems unrealistic given its wartime condition. In any case, the possibility for states willing to cede sovereignty to a supranational military organization to join the EDC could allay fears among Eastern member states of being excluded from this initiative. Indeed, to bridge the geographical divide between Eastern and Western Europe, one could imagine Eastern countries—such as Poland or the Baltics—proactively seeking to join the EDC, thereby setting in motion a virtuous dynamic and pressuring Italy and France to complete ratification. In any case, the idea of reviving the EDC should not be an attempt to recreate a “Europe of the Six,” but rather a mechanism to break the current impasse and advance European defense in an increasingly hostile world.

In conclusion, while the EDC Treaty appears to offer the most satisfactory solution to

⁹⁶ NATO, ‘Statement by the North Atlantic Council on recent airspace violations by Russia’, 23 September 2025, https://www.nato.int/cps/en/natohq/official_texts/237721.htm?utm_source=socmed&utm_medium=multi&utm_campaign=230925%26NAC%26airspace

the challenges facing European defense today, the prospect of bringing it back to life triggered by parliamentary action in Italy faces a range of difficulties. That said, politics is highly volatile, and electoral considerations can shift overnight. Moreover, the Trump presidency remains erratic and thus unreliable from a European standpoint. Above all, the truth is that there are no easy paths to a genuine European defense. So the challenges that the EDC prospect faces are shared by any proposal that seeks to seriously integrate European defence. For now, none of the options on the table—from the European Commission’s ReArmEU plan and the related amendment of fiscal rules in Germany to the coalition of the willing led by France and the UK—seems capable of providing Europe with credible defense and deterrence capabilities while also ensuring democratic legitimacy in the use of force. From this perspective, the EDC remains a superior model capable of addressing the challenges facing the EU. Without underestimating the obstacles that would have to be overcome if this path were chosen, it is worth emphasizing once more that only two additional ratifications would suffice to bring the EDC into force—with Italy already taking steps in this direction. By all accounts, the two ratifications required to revive the EDC Treaty is less than the unanimity at 27 required to either implement the modest provisions of the TEU on CSDP, or to amend the EU Treaties, or indeed to negotiate a new defense treaty from scratch.