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European Defense Integration after Trump's Re-Election: A Proposal to Revive the European Defense Community Treaty and its Legal Feasibility

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Abstract

Donald Trump's re-election as President of the United States and Russia's aggression of Ukraine pose unprecedented challenges to transatlantic relations and European security, as the EU is unprepared to take care of its defense. This paper explores how the law can be activated creatively to achieve defense integration in Europe and proposes to revive the 1952 European Defence Community (EDC) Treaty. Specifically, the paper claims that, in strictly legal terms, the EDC can be brought into operation today – simply with the ratification by 2 states: France and Italy – and provides comprehensive arguments from public international law, comparative law, and domestic constitutional law to make the point. Needless to say, legal feasibility does not equate with political feasibility, and the paper mentions several of the obstacles and challenges along this path. Yet, shedding light the EDC has two advantages. On the one hand, the paper emphasizes how the EDC – with a common army, funded by a common budget and governed by supranational institutions – constituted an articulated response to the problem of securing European security, superior to the current CFSP framework. On the other, it identifies a differentiated path to achieve greater European defense integration, which appears more likely than amendment of the EU treaties, requiring agreement by 27 member states.

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1. Introduction

Russia's aggression of Ukraine and the re-election of Donald Trump as President of the United States (US) pose existential challenges for the European Union (EU). The return of large-scale conventional warfare on the European continent, for the first time since the end of World War II, shattered European expectations of perpetual peace and forced the EU and its member states to face the reality of hard power. As a peace project, the EU had succeeded for over 75 years in making inter-state war among its member states not only unthinkable, but impossible. At the same time, the re-election of Donald Trump raises question about the US security commitment to Europe through the North Atlantic Treaty Organization (NATO). Thanks to the US peace dividend, the EU had grown so accustomed to the reality of peace to the point of forgetting that since 1945 war had never stopped somewhere around the world. Indeed, the EU had largely minimized Russia's occupation and annexation of Crimea in 2014, and many member states had continued building significant dependencies on it.

Russia's large-scale military invasion of Ukraine in February 2022, however, proved dramatically that history has not ended and brought back to the table the question of how to defend Europe. The EU has responded forcefully to Russia's illegal aggression of Ukraine: among others, it rolled out multiple sanctions against Russia, provided weapons to Ukraine, launched a military assistance mission and invested in the production of ammunition. As a result, integration in the field of Common Foreign and Security Policy (CFSP) has advanced more in the last 30 months than in the prior 30 years. Nevertheless, the EU response to the war has also revealed structural limitations: given the intergovernmental features of CFSP, and constitutional constraints on the use of EU budget for defense, the EU was slow in mobilizing resources, failed to reach the goal of delivering 1m rounds of ammunitions to Ukraine in a year, and did not develop any military deterrent against Russia. In fact, the war in Ukraine has so far rather strengthened the role of NATO, backed by the US military deterrent, as the dominant security provider in Europe.

Yet, Donald Trump's re-election as President of the US in November 2024 fundamentally challenges the EU dependence on the US for its security. During his 2016-2020 presidency, Trump had shown disdain for NATO, and on the campaign trail he had openly called into question US commitment towards the mutual defence pledge, while Vice President JD Vance has explicitly proposed ending US military and financial support for Ukraine in its defensive war against Russia. Hence the conundrum where the EU finds itself: at a time when conventional military threats are mounting, and when the transatlantic relationship is more

uncertain than ever, what path can Europe pursue to achieve defense integration, given the constraints existing within the current treaty framework?

This paper addresses this question from a legal viewpoint, suggesting that the law can be activated to achieve defense integration in Europe and proposing to revive the European Defense Community (EDC). As is well known, the EDC was conceived in the early 1950s – at the beginning of the European integration process. Also at that time, however, the security of Europe was under threat by Russia (then the United Socialist Soviet Republics – USSR). With the Korean war already raging in Asia, in 1952 six countries – France, Italy, West Germany, Belgium, the Netherlands and Luxembourg, the same states that the year before had founded the European Coal and Steel Community (ECSC) with the 1951 Treaty of Paris – established a new organization, partially interplaying with the ECSC, but explicitly focused on defending Western Europe. The initiative to establish a EDC was taken by France, also as a way to deal with the problem of the re-militarization of Germany. Given the start of the Cold War, however, it was openly supported by the US, as well as by the United Kingdom (UK): indeed, the EDC was in continuity with the 1948 Brussels Treaty – creating a mutual defense pact between the UK, France, and the Benelux – and contributed to strengthen the European pillar within NATO, which had just been recently created with the 1949 Washington Treaty.

As this paper highlights, the EDC Treaty, signed on 27 May 1952, constituted an articulated response to the problem of securing European security: it created a common army, funded by a common budget and governed by supranational institutions; Moreover, it foresaw a close coordination with NATO, subjecting in wartime the armed forces of the EDC to the Supreme Commander of NATO; and it was open to accession by other Western European states beyond its 6 founders. As such, the EDC endowed the Community with complete military capabilities, adequate fiscal resources, and proper institutional structures to face the threat of war, while linking European defense to the transatlantic partnership.

The paper claims that, in strictly legal terms, the EDC can be revived and brought into operation today – simply with the ratification by 2 states: France and Italy. As is well known, in 1954 by the French National Assembly famously voted to postpone ratification of the EDC Treaty, a procedural artifice that substantively constituted a rejection thereof. Nevertheless, in the two years before, the treaty had been ratified by Germany, the Netherlands, Belgium and Luxembourg, which never rescinded their votes. From a public international law perspective, once a treaty is signed and ratified, it is not dead for the states that have expressed their consent to be bound by it – even if the treaty has not yet entered into force. Indeed, international treaties usually require a number of ratifications before becoming operational, and a significant lag of

time may lapse between the signature of a treaty and its entry into force. Moreover, from a constitutional law perspective, nothing prevents France and Italy from ratifying the EDC Treaty today: while there may be rules that prohibit Parliament from voting again on a treaty it has rejected, in France, the (purely procedural) vote against the EDC Treaty was taken by the Parliament of the Fourth Republic. This means that the National Assembly of the Fifth Republic – a new political regime – could very well vote anew the EDC Treaty in accordance with its existing constitutional requirements.

Admittedly, this paper takes a legal approach to the question of the feasibility of reviving the EDC Treaty. I am fully conscious, however, that the legal feasibility of a measure does not equate with its political feasibility. Indeed, there are numerous obstacles and challenges that would emerge along the proposed path: among others the failure of the EDC treaty ratification in France in 1954 has left a collective trauma and political mythologies from the Gaullist parties to the extreme left, and right wing forces currently in government in Italy may not find the plan attractive. Moreover, pressures against this move may come from vested state and industrial interests, and the prospect may not enthruse the 4 member states which ratified the EDC 70 years ago. Furthermore, even reviving the EDC Treaty by itself could raise issues, as more than 20 member states, including euro area partners are not included (in particular, it would exclude the EU countries of Central and Eastern Europe that know Russia best). Moreover, the EDC is closely linked to NATO which could be a problem in case of an American step back.

With that said, the point should not be missed that the EDC Treaty would also bring about a number of advantages. The EDC is a supranational organization, allaying the fears of national (and especially French) hegemony in CFSP; it is also connected to NATO, which would allay fear of decoupling from the US; and it is open to accession by other members, which would allay fear by Eastern European states to be left behind. From a legal point of view, most importantly, the EDC could come into force by the ratification of 2 member states – which is incredibly less than the 27 ratifications it would take to amend the current EU Treaties to advance pan-European defense integration.

As such, this paper is structured as follows. Section 2 overviews the EU response to the war in Ukraine, highlighting the difficulties that the EU faces in achieving defense integration given structural constraints in the current EU Treaties. Section 3 sheds light on the EDC Treaty, examining its core substantive and institutional features. Section 4 summarizes the EDC's history and explains that the EDC Treaty can legally be revived today, providing comprehensive arguments from both international and comparative law, and domestic

constitutional law to make the point. Section 5, finally, concludes by underlining both the advantages that would result from the entry into force of the EDC Treaty today, as well as the multiple political challenges that result from this proposal.

2. The War in Ukraine & the Challenge of Defense Cooperation

2.1. EU responses to the war

While Russia's illegal aggression of Ukraine came largely as a shock for the EU, it elicited strong responses, at least after the 2022 large-scale invasion. The EU has been, and remained, remarkably united in condemning Russia's full-scale invasion of Ukraine, and mobilized its machinery of government to respond to the challenge of the war. As leaders of the EU institutions and heads of state and government of the member states affirmed in the Versailles Declaration of March 2022, the war in Ukraine "constitutes a tectonic shift in European history."¹ Consequently, since spring 2022 the EU has adopted ground-breaking measures in multiple domains.

To begin with, in the field of CFSP and Common Security & Defense Policy (CSDP), the EU has strengthened its diplomatic stance, military posture, and defense production capacities.² The EU clarified its foreign policy strategy, by adopting a Strategic Compass;³ it strengthened its military action, by delivering lethal weapons to the Ukrainian army and launching a military assistance mission to support it (EUMAM Ukraine);⁴ and it boosted its defense production, especially through a short-term Act in Support of Ammunition Production,⁵ as well as a European defence industrial reinforcement through common

¹ Informal meeting of the Heads of State or Government, Versailles Declaration, 10-11 March 2022, para. 6.

² Federico Fabbrini, "European Defense Union ASAP: The Act in Support of Ammunition Production and the development of EU Defense Capabilities in Response to the War in Ukraine" (2024) 29 *European Foreign Affairs Review* 67.

³ Council of the EU, 'A strategic compass for security and defense - For a EU that protects its citizens, values and interests and contributes to international peace and security', 21 March 2022, Doc. 7371/22.

⁴ Council Decision (CFSP) 2022/2245 of 14 November 2022 on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces trained by the European Union Military Assistance Mission in support of Ukraine with military equipment, and platforms, designed to deliver lethal force, OJ 2022 L 294/25.

⁵ Regulation (EU) 2023/1525 of the European Parliament and of the Council of 20 July 2023 on supporting ammunition production (ASAP), OJ 2023 L 185/7.

procurement Act (EDIRPA),⁶ and now a proposed European Defence Industrial Strategy (EDIS), designed to increase EU military readiness through a responsive and resilience European defense industry.⁷

Moreover, in the field of justice and home affairs, the EU has taken various measures to inflict a cost on Russia, express solidarity to Ukraine, and redress the injustice of the war.⁸ Between February 2022 and June 2024, the EU adopted 14 rounds of sanctions, including secondary sanctions, and made the violations of restrictive measures a new EU crime;⁹ it launched new initiatives to investigate and prosecute the war crimes committed by Russia; and paved the way to the seizure of the extraordinary profits resulting from the Russian frozen assets to compensate Ukraine for the damages it had suffered.¹⁰

At the same time, the EU has set up several new tools to address the economic consequences of the war, and to help the Ukrainian government face the fiscal problems resulting from Russia's aggression.¹¹ Specifically, the EU deployed brand new common funding mechanisms, including a European Peace Facility,¹² initially worth €5.6 billion, and now increased to €17 billion, a Macro-Financial Assistance Instrument for Ukraine (MFA+) 2023,¹³ worth €18 billion, and ultimately a Ukraine Facility (UF) for 2024-7,¹⁴ worth €50 billion, of which €17 billion in grants and the rest in loans.

⁶ Regulation (EU) 2023/2418 of the European Parliament and of the Council of 18 October 2023 on establishing an instrument for the reinforcement of the European defence industry through common procurement (EDIRPA), OJ 2023 L 1.

⁷ European Commission & High Representative, Joint Communication "A new European Defense Industrial Strategy: Achieving EU readiness through a responsive and resilient European Defense Industry", 5 March 2024, JOIN(2024) 10 final.

⁸ Federico Fabbrini, "'To Establish Justice': The EU Response to the War in Ukraine in the Field of Justice and Home Affairs" (2024) 49 *European Law Review* 358.

⁹ Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union OJ 2022 L 308/18.

¹⁰ Council Decision (CFSP) 2024/577 of 12 February 2024 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ 2024 L 577; and Council Regulation (EU) 2024/576 of 12 February 2024 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ 2024 L 576.

¹¹ Federico Fabbrini "Funding the War in Ukraine: the European Peace Facility, the Macro Financial Assistance Instrument and the Slow Rise of a Fiscal Capacity in the EU" (2023) 11 *Politics and Governance* 52.

¹² Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility and repealing Decision (CFSP) 2015/528, OJ 2021 L 102/14.

¹³ Regulation (EU) 2022/2463 of the European Parliament and the Council of 14 December 2022 establishing an instrument for providing support to Ukraine for 2023 (macro-financial assistance +), OJ 2022 L 322/1.

¹⁴ Regulation (EU) 2024/792 of the European Parliament and the Council of 29 February 2024 establishing the Ukraine Facility, OJ 2024 L 1.

Finally, under the pressure of the war, the EU has promised Ukraine membership in the EU.¹⁵ In June 2022 the European Council gave Ukraine candidate status,¹⁶ in December 2023 it authorized the start of the accession negotiations,¹⁷ and in June 2024 it eventually began the enlargement talks.¹⁸ This historic decision revived the enlargement process after more than a decade of stalemate – opening the prospect of EU membership also for Moldova, Georgia and the 6 states of the Western Balkans. At the same time, in the awareness that accession could stretch for a number of years, the EU also promoted the creation of a new European Political Community (EPC), bringing together 47 countries of the wider Europe, as a new framework for continental cooperation.

2.2. Structural constraints

Though the EU steps taken in response to Russia's aggression of Ukraine are remarkable, they also reveal a number of limits, which are largely the consequences of structural constraints in the EU constitutional architecture. The EU Treaties introduce substantive limits to EU defense action and set up institutional mechanisms of inter-governmental decision-making that hamper the EU's ability to react swiftly and forcefully to geo-strategic events.

On the substantive side, for instance, Article 41(2) TEU states that “expenditure arising from operations having military or defence implications” cannot be charged to the EU budget. Moreover, Article 42 TEU enshrines a provision to protect the neutrality of some of its member states, making explicit that CFSP and CSDP “shall not prejudice the specific character of the security and defense policy of certain Member States.”

On the institutional side, furthermore, the EU Treaties entrench mechanisms of intergovernmental decision making which require unanimity votes. Contrary to, say, monetary policy, which has been fully federalized, defense policy remains limited to national coordination. According to Article 31 TEU, the Council must take all decisions concerning CFSP, including sanctions, by unanimity – save for the possibility of the constructive abstention by a member states, which was used to set up the EUMAM Ukraine and provide weapons to Ukraine under the EPF. Moreover, pursuant to Article 312 TFEU, all decisions concerning EU

¹⁵ See e.g. Roman Petrov & Christoph Hillion, “‘Accession through War’ – Ukraine’s Road to the EU” (2022) 59 *Common Market Law Review* 1289.

¹⁶ European Council conclusions, 23-24 June 2022, EUCO 24/22.

¹⁷ European Council conclusions, 14-15 December 2023, EUCO 20/23, para. 15

¹⁸ European Council conclusions, 27 June 2024, EUCO 15/24.

expenditures have also to be taken by member states unanimously in the Council. And the same is true under Article 49 for any decision concerning enlargement.

Given these constraints, it is unsurprising that the EU response to the war challenge has suffered several blows. Due to idiosyncratic opposition by a single member state, the EU has been slow in adopting several important rounds of sanctions against Russia, and was forced to delay key financial support measures for Ukraine, while the overall amount it has been authorized to spend in defense production has been negligible. Moreover, given the decision by the member states not to empower the Commission to issue priority rated orders in the ASAP, the EU has spectacularly failed to meet its self-imposed target of delivering at least 1 million rounds of ammunition to Ukraine in a year.¹⁹ Furthermore, the EU has failed to take any meaningful preparation for enlargement.²⁰ Finally, the EU has not yet implemented the plan, made in the 2022 strategic compass, to establish a Rapid Reaction Force of (only!) 5000 men by 2025. In fact, notwithstanding the existence of a mutual defense clause in Article 42(7) TEU, the EU has not developed any credible military deterrence against Russia. Rather, the war has so far reinvigorated the leading role of the NATO as the centre piece of European security – a pattern visible in the decision of Finland and Sweden, two historically non-aligned countries, to join the transatlantic defence alliance in 2023-4.²¹

This is of course not coincidental. Despite the creation of CFSP since the 1992 Treaty of Maastricht,²² the business of providing the defense of Europe has been outsourced since the mid-1950s to NATO and the US. In fact, while Article 42(2) TEU currently envisions a future in which the EU will have a common defense, the intergovernmental governance of CFSP with the requirements of unanimous decision in the European Council by all 27 member states, make it impossible to effectively integrate defense policy in the EU, and reach the end destination of a common defense.

For six decades, of course, the division of labor between NATO, under US leadership, taking care of defense, and the EU (including its predecessor, the European Economic Community) focusing on integration in all other policy domains, was apparently a good deal: Europeans could spend more money for social, welfare and education. At the same time for countries like Germany or Italy, it was a good way to get accepted again in the western club. For very small countries deprived of sufficient means, it was even better.

¹⁹ HR/VP Josep Borrell, press remarks, 31 January 2024.

²⁰ Goulard, *L'Europe enfla si bien qu'elle creva* (Tallandier 2024).

²¹ See Bildt, "NATO's Nordic Expansion", *Foreign Affairs*, 26 April 2022.

²² Koutrakos, *The EU Common Security and Defence Policy* (Oxford University Press 2013) 252.

Yet, the reality is that this state of affairs is increasingly untenable. For more than a decade, the US has shifted its strategic focus to China, and consequently both Democratic and Republican administrations have been consistently asking European states to shoulder a greater burden of their security costs. In 2014, following Russia's illegal annexation of Crimea, under the leadership of President Obama, NATO set a target of 2% of GDP national defence spending on the military,²³ but European countries largely failed to abide by this rule.²⁴ While in office President Trump complained about this state of affairs and flirted with leaving NATO. In the run-up to the US November 2024 presidential elections, Trump has however made clear that if re-elected he would not support allies who do not pay their dues to the US, effectively destroying the credibility of the transatlantic mutual defense pledge. Indeed, Trump running mate, JD Vance, openly spoken against NATO and the against continuing US support for Ukraine.²⁵ Trump's decisive win in the November 2024 elections, combined with Republican control of Congress, which ensures unitary government, mean that its policy priorities can now be fully implemented, in domestic as in foreign policy.

Given the ongoing challenges, the need for Europeans to take their fate in their hands, the structural obstacles to integrating defense in the framework of the current EU Treaties, it is urgent to envision alternatives. This paper claims that the EDC Treaty can be a solution to today's problems.²⁶

3. The European Defense Community Treaty

The EDC Treaty²⁷ is composed of 132 articles, and several Protocols – a Military Protocol, a Financial Protocol, a Jurisdictional Protocol, a Protocol on Military Criminal Law, a Protocol relative to Luxembourg, a Protocol on remunerations of the civil and military personnel and their pension rights, as well as a Protocol concerning relations between the EDC and NATO and an Additional Protocol concerning guarantees of assistance from the member states of the

²³ See Summit Declaration Issued by the Heads of State and Government Participating in the Meeting of the North Atlantic Council in Wales, 5 September 2014, para 14.

²⁴ See Fabbrini, "Do NATO Obligations Trump European Budgetary Constraints?" 9 *Harvard National Security Journal* 121 (2018).

²⁵ Vance, "The Math on Ukraine doesn't Add Up", Op-Ed, *The New York Times*, 12 April 2024.

²⁶ See also Gianniti, "La défense européenne: une réflexion à partir du Traité CED" Astrid Rassegna, June 2024 (discussing the potentials of the EDC treaty as a model to deepen defense cooperation in the EU)

²⁷ For the purpose of this article, I am using the English version of the Treaty in the 1952 unofficial translation of the Committee on Foreign Relations of the US Senate, available here: <https://aei.pitt.edu/5201/1/5201.pdf>.

EDC to the state parties of NATO Treaty – which according to Article 127 have the same status of the treaty itself. The EDC Treaty, moreover, is accompanied by a Treaty between the Member States of the EDC and the UK, establishing a mutual defense pledge between the parties, as well as a Convention on the status of the European Defense Forces (EDF) and the tax and commercial regime of the EDC. This section overviews the EDC Treaty content, focusing on its substantive, institutional, budgetary and procedural provisions.

3.1. Substantive provisions

The Preamble of the EDC Treaty proclaims the resolution of the parties “to contribute to the maintenance of peace, particularly by ensuring the defense of Western Europe against any aggression, in cooperation with the free nations, in the spirit of the United Nations Charter, and in close liaison with organizations having the same purpose.” To this end, the Preamble immediately identifies the contracting parties goal to integrate “their Defense Forces within a supranational European organization”, emphasizing that “such integration will result in the most rational and economic utilization of the resources of their countries, as a result, particularly, of the establishment of a common budget and a common armament programs.” Finally, the Preamble notices that the creation of a common army will not weaken national patriotism, but rather consolidate and reconcile it “in a broader framework”, and underlines the contracting parties awareness that the EDC constitutes “a new and essential step on the road to the formation of a united Europe”.

Title I of the EDC Treaty lays out the “Fundamental principles” of the organization. Article 1, in particular, states that “By the present Treaty the High Contracting Parties institute among themselves a European Defense Community, supranational in character, consisting of common institutions, common armed forces and a common budget.” As made clear in Article 2, “The objectives of the Community shall be exclusively defensive”. The same provision, moreover, immediately underlines that the tasks of the EDC will be carried out “within the framework of the North Atlantic Treaty.”²⁸ In fact, Article 5 also remarks that the EDC – which has “legal personality”²⁹—“shall cooperate closely with [NATO].” Crucially, then, like Article V of NATO Treaty, Article 2(3) EDC Treaty states that “Any armed aggression directed against any one of the member States in Europe or against the [EDF] shall be considered as an attack directed against all of the member States.” This provision should be read in conjunction with

²⁸ Art 2(2).

²⁹ Art 7.

Article 120 which clarifies that “the present Treaty is applicable to the European territories of the member states”. Moreover, while Article 3 enshrines the principle that the EDC would fulfil its mission “with due respect to public liberties and the fundamental rights of the individual”, Article 6 underlines that the EDC “does not involve any discrimination among the member States.”

From a substantive viewpoint, the core provisions of the EDC Treaty are included in chapter II of Title I, which is titled “The European Defense Forces”. Pursuant to Article 9, “The Armed Forces of the Community ... shall be composed of contingents placed at the disposal of the Community by the member States with a view to their fusion.” In fact, the same provision also makes clear that “No member State shall recruit or maintain national armed forces”, except for those deployed outside of Europe (at the time of drafting the treaty. essentially French, and to a lesser extent, Belgian and Dutch colonies), or to act as bodyguard for the head of state.³⁰ Moreover, member states remain in charge of police forces³¹ and civil protection.³² As made clear in Article 15, the EDF “shall consist of conscripted personnel and of professional personnel”, “they shall wear a common uniform”, and “shall be organized.” In particular, Article 18 states that “The competent Supreme Commander responsible to [NATO] shall ... be empowered to satisfy himself that the [EDF] are organized, equipped, trained and prepared for use in a satisfactory manner”. The same provision, moreover, makes clear that “During wartime, the competent Supreme Commander of [NATO] shall exercise with regard to the [EDF] ... the full powers and responsibilities of Supreme Commanders”³³ – effectively subjecting the nascent common European army to NATO command.

3.2. Institutional provisions

From an institutional viewpoint, Title II of the EDC Treaty establish a tripartite system of government, with an collegiate executive, a bicameral legislature and a court – partially overlapping with the bodies of the ECSC (now EU). Article 19 vests executive power in a Commissariat, to be “composed of 9 members appointed for six years and chosen for their general competence.”³⁴ As indicated in Article 21 “the Governments of the member States shall

³⁰ Art 10.

³¹ Art 11.

³² Art 17.

³³ Art 18(2).

³⁴ Art 20.

appoint the members of the Commissariat by common agreement among themselves”, but “in the discharge of their duties, the members of the Commissariat shall neither solicit nor accept instructions from any Government.”³⁵ Pursuant to Article 25, “The Governments of the member States shall appoint the President of the Commissariat from among its members by agreement among themselves” and the President shall “coordinate the exercise” of the EDC’s tasks.³⁶ However, Article 24 states that “Decisions of the Commissariat are taken by a majority of members present”, with the President empowered to cast tie-breaking votes. In terms of function, the Commissariat shall take binding decisions, make binding recommendations, and issue non-binding opinions,³⁷ and “shall have at its disposal the civilian and military personnel necessary” to perform its tasks.³⁸

The EDC Treaty also establish a Council “composed of representatives of the member States,”³⁹ to which the Commissariat shall report “at periodic intervals.”⁴⁰ Pursuant to Article 39, “The general task of the Council is to harmonize the actions of the Commissariat with the policies of the Governments of the member States.” As a general rule, the Council, which “shall establish its rules of procedure,”⁴¹ decides “by a simple majority,”⁴² which is defined to mean in Article 43 either “an absolute majority of the representatives” or “in case of an equal division of votes [3-3], ... the votes of representatives of the member States which together place at the disposal of the [EDC] at least two-thirds of the total contributions of the member States” – effectively a form of double majority. On some specific issues, however, the EDC Treaty requires the Council to vote by qualified majority,⁴³ or by unanimity.⁴⁴ In particular, according to Article 39 the Council may by unanimous vote “issue directives for the action of the Commissariat.” Article 41 requires the Council – which is presided “for a term of three months by each member [State] in rotation”⁴⁵ – to “meet as often as necessary and at least every three months”; and Article 47 indicates that “The Council shall decide when it is appropriate to call a joint meeting with the [NATO] Council.”

³⁵ Art 20(2).

³⁶ Art 26(2).

³⁷ Art 27.

³⁸ Art 30.

³⁹ Art 40.

⁴⁰ Art 29.

⁴¹ Art 50.

⁴² Art. 39(4).

⁴³ Art. 43(2).

⁴⁴ Art 43(3).

⁴⁵ Art 40.

The EDC Treaty moreover involves in the new Community two institutions from the ESCS – the Assembly (the forerunner of today’s EP) and the Court (the European Court of Justice). The Assembly plays an important part in securing the accountability of the Commissariat. In fact, pursuant to Article 36, “The Commissariat shall each year make to the Assembly a general report concerning [its] activity” – and the Assembly can issue a “motion of censure”, which, if approved by two-thirds of the members present, forces the members of the Commissariat to resign. Moreover the EDC Assembly, is also invested in Article 38 – possibly one of the most famous provisions of the Treaty – with the task “to study problems to which the co-existence of different organizations for European cooperation ... give rise” and to propose within six months “elements of an ultimate Federal or confederal structure, based upon the principle of the separation of powers.” The Court instead, must “ensure the rule of law in the interpretation and application of the present Treaty and implementing regulations”,⁴⁶ and is vested with unlimited jurisdiction to review the legality of the acts of the other institutions,⁴⁷ including for failure to act,⁴⁸ as well as to adjudicate questions certified by national courts.⁴⁹ Moreover, the Court – whose rulings are binding and enforceable on the territories of the member States⁵⁰ -- is vested by the Jurisdictional Protocol of the role to hear cases “for the penal offenses which may be committed by the members of the EDF,”⁵¹ as well as cases concerning damages caused by action of the EDC.

In terms of military capabilities, Title III of the EDC Treaty set provisions for the ground,⁵² air,⁵³ and naval⁵⁴ forces of the EDF, with Article 71 stating that “With the unanimous concurrence of the Council, the Commissariat shall establish the plans for the organization of the Forces.” Moreover, Article 74 makes clear that “The Commissariat shall direct the training and preparation of the [EDF] according to a common doctrine and uniform methods.” The key provisions of the EDF Treaty on capabilities, however, are Article 77 and 78bis. According to the former, “The Commissariat shall determine the territorial deployment of the [EDF] within the framework of recommendations of the competent Supreme Commander [of NATO].” According to the Article 78bis(3), then, “As soon as the Treaty comes into effect, the units already in existence ... shall immediately come under the authority of the Community and shall

⁴⁶ Art 51.

⁴⁷ Arts 54, 57, 58.

⁴⁸ Arts 55-56.

⁴⁹ Art 62.

⁵⁰ Art 66.

⁵¹ Art 18 juncto Art 22(1)(c) Military Protocol.

⁵² Art 68.

⁵³ Art 69.

⁵⁴ Art 70.

be placed under the jurisdiction of the Commissariat, which shall exercise over them the powers granted it in the present treaty.” In practical terms, the Military Protocol provides detailed rules on the specific number of troops constituting the units of the EDF (infantry battalions, armored groups mechanized groups, as well as air squadrons) and their hierarchical centralized and territorial command structures. At the same time, Articles 80 and 81 of the EDC Treaty reaffirm the obligation for the EDF to comply with customary international law on the law of wars.

3.3. Financial provisions

From a financial viewpoint, Title IV of the EDC Treaty endows the EDC with a common budget, comprising all annual receipts and expenditures.⁵⁵ Pursuant to Article 87, the budget must be prepared by the Commissariat, in consultation with the Government of the member States, having regard to the military needs of the EDF. The Council shall approve “unanimously, the total volume of the budget,”⁵⁶ but “by a two-third majority, the distribution of expenditures.”⁵⁷ Moreover, according to the same provision, the Assembly has a crucial role in also voting the budget approved by the Council: in fact, by a simple majority of its member the Assembly can “propose the rejection of the entire budget.”⁵⁸ In that case, the Council must undertake “a second reading” and approve the proposition of the Assembly “by a two-thirds majority”. But “If the Council has not been requested to undertake a second reading ... the Assembly’s proposal shall be considered to have been adopted by the Council”⁵⁹ – effectively giving to the Assembly the ultimate say on the budget. Pursuant to Article 93, however, the revenues of the EDC are primarily “the contributions paid by the member States”, to be “fixed by the Council in accordance with the procedure adopted by [NATO].”⁶⁰ The Treaty moreover lays out provisions for auditing and controlling spending, including by establishing an independent Financial Controller,⁶¹ as well as an independent Accounts Commission.⁶²

The EDC budget – whose execution “shall be ensured by the Commissariat”⁶³ – is designed to cover the cost of the EDF, but as provided in Title V of the EDC Treaty, it shall be used also to provide “the common armament, equipment, supply and infrastructure programs of the [EDF]” – in other words for the purpose of developing an industrial defense production

⁵⁵ Art 86.

⁵⁶ Art 87(2)(a).

⁵⁷ Art 87(2)(b).

⁵⁸ Art 87(3).

⁵⁹ Art 87(4).

⁶⁰ Art 94.

⁶¹ Art 84.

⁶² Art 85.

⁶³ Art 91.

program. Pursuant to Article 105 the Commissariat may identify “an insufficient supply of raw materials, lack of equipment” and notify the Council which can unanimously decide on measures “to ensure the placing and execution of orders within the time limits provided in the program” – effectively a form of priority rating akin to that of the US Defense Production Act. Crucially, Article 107 states that the production of all war materiel, “are prohibited, except as authorized [by the Commissariat]” on the basis of certain specific criteria defined in the same provision – thus centralizing the management of defense production. Furthermore, Article 111 tasks the Commissariat to prepare, in consultation with the governments of the Member states, “plans for the mobilization of the economic resources of the member States” – to get ready for the hypothesis of a massive war effort.

3.4. Procedural provisions

The EDC Treaty concludes with a series of “General provisions”, enshrined in Title VII. Articles 112 and 113 codify a principle of sincere cooperation between the EDC and the member states, while recognizing also a commitment by the member states to provide to the Commissariat all information needed to accomplish its tasks.⁶⁴ Article 115 endow the EDC officials with the powers of public officials in the member states, while Article 116 – recalling a Protocol annexed to the treaty – grants to the EDC standard privileges and immunities. Also located in the final provisions of the treaty is Article 117, which regulates the infringement procedure, while Article 118 states that the “seat of the institutions of the Community shall be determined by agreement among the member States,” and Article 119 affirms that the languages of the EDC “shall be determined by unanimous decision of the Council.” One of the final provisions of the EDC Treaty is also Article 123, which is a state of emergency clause: pursuant to it, “In case of serious and urgent necessity, the Council shall assume, or confer upon the institutions of the Community or other appropriate organizations, temporary powers necessary to meet the situation” – for example in cases of armed aggression. Article 124, instead, empowers the Council, acting unanimously, to enable the Commissariat to act “In any case not provided for in the present Treaty in which [...action] appears necessary to ensure the proper functioning of the Community.”

Lastly, the EDF Treaty sets out conventional rules on amendment, duration, accession and entry into force of the treaty itself. With regard to amendments, Articles 125 and 126 identify a simplified and regular amendment procedure. The Council may decide by unanimity

⁶⁴ Art 114.

to adapt the “rules concerning the exercise by the Commissariat of the powers which are conferred upon it.”⁶⁵ Instead, ordinary amendments of the Treaty can be proposed by the Commissariat and a member state and “shall enter into force after having been ratified by all the member States in conformity with their respective constitutional processes.”⁶⁶ The EDC Treaty, moreover, is open to the accession of other countries: pursuant to Article 129, “Any European State may request to accede to the present Treaty”, and the Council “after having obtained the opinion of the Commissariat, shall act by unanimous vote, and shall also fix the terms of accession by unanimous vote.” Like the ECSC Treaty, Article 128 of the EDC Treaty states that “The present Treaty is concluded for a period of 50 years from the date of its entry into effect.” Contracting parties shall deposit their instrument of ratification to the government of France,⁶⁷ and the Treaty “shall enter into force on the date of the deposit of the instrument of ratification of the last signatory nation to accomplish this formality.”⁶⁸

4. The history of the EDC and the legal feasibility of reviving it

The Treaty instituting the EDC was formally signed in Paris, at the Quai d’Orsay, on 27 May 1952 by the Prime Ministers of the high contracting parties – Schuman, Adenauer, De Gasperi, Van Zeeland, Bech and Stikker. Article 131 EDC Treaty required all 6 member states to ratify the treaty in accordance with the constitutional rules of each member states – and 4 out of 6 states promptly ratified it. In Germany, the Constitutional Court (Bundesverfassungsgericht) upheld the constitutionality of the EDC Treaty in a judgment delivered on 7 March 1953,⁶⁹ paving the way to the ratification by the German Bundestag on 19 March 1953,⁷⁰ and the

⁶⁵ Art 125.

⁶⁶ Art 126.

⁶⁷ Art 131.

⁶⁸ Art 132.

⁶⁹ See 2 Be 4/52 – EDC Treaty decision, 7 March 1953 – BverfG 2, 143. The case is mentioned in Bill Davies, *Resisting the European Court of Justice: West Germany’s Confrontation with European Law, 1949-1979* (CUP 2012) 53.

⁷⁰ <https://www.cvce.eu/en/education/unit-content/-/unit/803b2430-7d1c-4e7b-9101-47415702fc8e/18449b06-2820-4de5-bc7c-1d50ca84ddc9/Resources>.

German Bundesrat on 15 May 1953. The Netherlands ratified the EDC Treaty on 23 July 1953,⁷¹ Belgium on 26 November 1953, and Luxembourg on 7 April 1954.⁷²

As is well known, however, for political reasons, the ratification process was delayed in Italy and France. In fact, Italy had no fundamental objections to the ratification of the EDC, but after the departure of De Gasperi, the new Italian government thought it could leverage its consent to the treaty to get concessions on the status of the city of Trieste – which then remained under limbo. Yet, on 30 August 1954 the Assembly of the French Fourth Republic voted to postpone the discussion on the instrument of ratification of the EDC Treaty by a 319-to-264 vote. This act, which prompted outrage in the other member states, effectively foreclosed approval of the EDC in France.

The failure of the EDC – alas not the first one in the European integration process, as evidenced by the failure of the European Constitutional Treaty fifty years later, in 2004,⁷³ once again due to a French no vote – put European integration on a different track: in 1955 West Germany joined NATO, and 1956 the Rome Treaty established the European Economic Community, leading European cooperation to advance in areas other than military affairs. Yet, the demise of the EDC may have been called too soon. From a legal viewpoint, the EDC Treaty could be revived. Since 4 states out of 6 voted for it, and never rescinded their ratification, it would only take France and Italy to also approve the Treaty for the EDC to become operational – today. This section advances arguments from international and comparative law, and constitutional law, to prove the point.

4.1. International and comparative law issues

From a public international law perspective, once a treaty is signed and ratified, it is not dead for the states that have expressed their consent to be bound by it – even if the treaty has not yet entered into force. The 1969 Vienna Convention on the Law of the Treaties (VCLT) – an agreement which is regarded as largely codifying customary international law⁷⁴ – is clear on the matter. According to Article 14 VCLT, “[t]he 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.” And pursuant to Article 18 VCLT a state has an obligation not to defeat

⁷¹ <https://zoek.officielebekendmakingen.nl/stb-1954-25>.

⁷² <https://legilux.public.lu/eli/etat/leg/loi/1954/04/24/n7/jo>.

⁷³ See NW Barber et al (eds), *The Rise and Fall of the European Constitution* (Hart 2019).

⁷⁴ See already Antonio Cassese, *International Law in a Divided World* (OUP 1986) 189.

the object and purpose of a treaty prior to its entry into force. At the same time, Article 55 VCLT clarifies that “[u]nless 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 provides rules on the denunciation of treaties, or the withdrawal therefrom. According to Article 56 VCLT, a contracting party may denounce a treaty, provided “a right of denunciation or withdrawal may be implied by the nature of the treaty”. Moreover, Article 62 enshrines the principle of “fundamental change of circumstances”, stating that “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.” As the abovementioned provision makes clear, however, the VCLT presumption is that a fundamental change of circumstance does not as a rule authorize termination or withdrawal. Furthermore, Article 65 VCLT introduces a mandatory procedure to denounce or terminate a treaty, which includes notifying the other parties of the intention to no longer be bound by the treaty.

In light of the above-mentioned principles, it appears that the EDC Treaty – while not in force – still technically binds the 4 member states that ratified it. Since Germany, Belgium, the Netherlands and Luxembourg ratified the EDC treaty – in accordance with Article 14 VCLT – and never denounced it – as foreseen by Articles 56 and 65 VCLT – the treaty is still alive for them. At the same time, no fundamental change of circumstances ex Article 62 VCLT seem to be applicable here, as Germany and the Benelux have continued their project of peaceful integration with France and Italy for over 70 years after the signing of the EDC Treaty. Otherwise, Germany’s accession to NATO in 1955, and the re-unification of Germany in 1990, have not changed the circumstances either: on the one hand, the EDC is in any case due to closely coordinate with NATO and the EDF shall act under the leadership of its supreme military commander; on the other hand, the 1990 so called 2 + 4 treaty has confirmed that the united Germany is part of NATO, and only prevented Germany from having nuclear weapons, but these are not required by the EDC treaty.

Admittedly, the obvious question is whether a treaty could come into force many years – several decades – after its signature. Nevertheless, it is not uncommon that a significant lag of time may lapse between the signature of a treaty and its entry into force. This is particularly

the case for multilateral treaties that require a number of ratifications before becoming operational.

In fact, from a comparative perspective, there is another remarkable precedent that can be mentioned to prove the point that time does not lead, by itself, to *desuetudo legis*: this is the case of the XXVII amendment to the US Constitution. Admittedly, the US Constitution is not an international treaty. Yet, as a significant body of literature has highlighted, the US Constitution – as the instrument of government of a union of states – presents features which are typical of international law.⁷⁵ This is especially the case with regard to the approval of constitutional amendments.⁷⁶ According to Article V of the US Constitution, to enter into force constitutional amendments have to be approved by 2/3 of the members of both houses of the federal Congress, and ratified by the legislatures of 3/4 of the federated states (a number that of course has increased from the original 13 states to, nowadays, 50 states).

The text of the XXVII amendment – which provides that “No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened” – was approved with the required majority by the US Congress in 1789 – the very dawn of the American republic. In fact, it was sent to the states together with what would become the first 10 amendments of the US Constitution – the Bill of Rights of 1791. However, the compensation amendment did not garner ratification in the Founding Era, and was forgotten for two centuries, until in the 1980s a student from the University of Texas wrote a paper for a government class claiming that the amendment could still be ratified, and launched a campaign to revive interest in it. Indeed, contrary to other proposed amendments which included a time-limit for their approval by the states, the compensation amendment did not do so. Eventually, in 1992, the necessary number of ratification by the legislatures of ¾ of the states – 38 out of 50 – was reached, and the compensation amendment entered into force. This amendment is today the latest revision of the US Constitution.

This precedent is significant: since the process of constitutional amendment in the US reflects features which are typical of international law, the fact that the ratification of the XXVII amendments took 202 years, 7 months, and 10 days, highlights that indeed much time may pass from the approval of a legal text to its formal entry into force. This bodes well for the efforts to revive the EDC Treaty, which after all has remained dormant for only 72 years.

⁷⁵ See e.g. Anthony Bellia Jr. & Bradford R. Clark, “The International Law Origins of American Federalism” (2020) 120 *Columbia Law Review* 835.

⁷⁶ See Akhil Reed Amar, “Of Sovereignty and Federalism” (1987) 96 *Yale Law Journal* 1425.

4.2. Domestic constitutional issues

If the EDC Treaty is still alive in the realm of international law for the 4 states that have ratified it in 1953-4, the question arises whether Italy and France can still ratify it. In the case of Italy, the issue seems to be legally unproblematic, as Article 11 of the Italian Constitution of 1948⁷⁷ compels Italy to participate to international organizations designed to secure peace, and the Italian Parliament was never called to vote on the EDC. Pursuant to Article 80 of the Italian Constitution “Parliament shall authorise by law the ratification of such international treaties as have a political nature, require arbitration or a legal settlement, entail change of borders, spending or new legislation”, so clearly the EDC Treaty could be put up for a vote of ratification by both the Camera dei Rappresentanti and the Senato della Repubblica. But what about France, considering that the Parliament of the Fourth Republic already considered the EDC Treaty in 1954 and voted to postpone its ratification? This is a domestic constitutional law issue, which should be answered positively for two reasons.

On the one hand, the 1958 French Constitution is open to the conclusions of international agreements.⁷⁸ Pursuant to Article 53, “[p]eace Treaties, Trade agreements, treaties or agreements relating to international organization, those committing the finances of the State, those modifying provisions which are the preserve of statute law, those relating to the status of persons, and those involving the ceding, exchanging or acquiring of territory, may be ratified or approved only by an Act of Parliament. They shall not take effect until such ratification or approval has been secured.” Moreover, according to Article 54, the President of the Republic, the Prime Minister, the Presidents of the two Assemblies and sixty deputies or sixty senators may refer a treaty before its ratification to the Constitutional Council: if the latter holds “that an international undertaking contains a clause contrary to the Constitution, authorization to ratify or approve the international undertaking involved may be given only after amending the Constitution.” Finally, once a treaty is duly ratified, it “shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party.”

⁷⁷ I am using the English translation of the Italian Constitution released by the Senate, here: https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

⁷⁸ I am using the English translation of the French Constitution released by the Conseil Constitutionnel, here: https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf.

In addition to general rules on the conclusion of international treaties, the French Constitution includes since 1992 specific provisions on membership in the EU. Following the revisions of 2008,⁷⁹ in particular, Article 88-1 currently states that “The Republic shall participate in the European Union 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.” Moreover, Article 88-5 foresees a requirement for a referendum on the ratification of any future treaty bringing about the accession of a new state to the EU, unless the Parliament with a super-qualified majority decides to vote the accession treaty with the procedure used for constitutional amendments. Specifically: “Any Government Bill authorizing the ratification of a treaty pertaining to the accession of a state to the European Union shall be submitted to referendum by the President of the Republic. Notwithstanding the foregoing, by passing a motion adopted in identical terms in each House by a three-fifths majority, Parliament may authorize the passing of the Bill according to the procedure provided for in paragraph three of article 89”, which regulates constitutional revisions.

On the other hand, there is no written rule⁸⁰ – either in the Constitution, or in the laws regulating the functioning of Parliament,⁸¹ or indeed in the standing orders of the National Assembly or the Senate – that would prevent Parliament from considering the EDC Treaty anew. The current standing order of the French National Assembly⁸² regulates in Articles 128 and 129 the mechanisms by which the Assembly votes on international treaties, and only states that the Assembly adopts or rejects the bill authorizing the ratification of treaty, without voting on its individual articles; and that the ratification procedure is suspended if the treaty has been referred to the Constitutional Council. Similarly, the standing order of the Senate⁸³ – which as a second house of Parliament finds itself in a constitutionally inferior position compared to the National Assembly – states in Article 47 that if the Senate is called to vote on a bill authorizing the ratification of an international convention, it cannot vote on the specific articles of the treaties, but only on its overhaul approval. In fact, according to Article 47 *decies*, the Senate,

⁷⁹ Loi constitutionnelle n° 2008-103 du 4 février 2008 modifiant le titre XV de la Constitution, JORF n° 30 du 5 février 2008.

⁸⁰ See Jean-Louis Pezant, Quel droit régit le Parlement ? (1993) 64 *Pouvoirs* 63 (emphasizing that parliamentary procedure is today primarily written)

⁸¹ See especially Ordonnance n° 58-1100 du 17 novembre 1958 relative au fonctionnement des assemblées parlementaires.

⁸² <https://www.assemblee-nationale.fr/connaissance/reglement.pdf>.

⁸³ https://www.senat.fr/fileadmin/Seance/Documents/Historique_du_Reglement_du_Senat/49_18012024.pdf.

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 debate.

Most importantly, the French Parliament that rejected the ratification of the EDC Treaty in 1954 is the National Assembly of the Fourth Republic, established by the Constitution of 1946. In fact, through the constitutional act of 3 June 1958⁸⁴ the Assembly of the Fourth Republic, derogating from the constitutional amendment procedure of the 1946 Constitution, entrusted General De Gaulle as then President of the Council of Ministers to draft a new constitution, and subject it to a popular referendum. With the approval and the entry into force of the Constitution on 4 October 1958 France has become a new Republic – the Fifth Republic: while this does not challenge at the international level the validity of its signature of the EDC Treaty in 1954, given the principle of the continuity of the state, it surely provides a clean slate for the Assemblée Nationale of the Fifth Republic to consider – for the first time – a bill on the ratification of the EDC Treaty. Most certainly, a reference to the Conseil constitutionnel would be expected on this ratification, but contrary to other courts, the French Constitutional Council has been traditionally deferential in reviewing *ex ante* EU-related treaties, and has never prevented their approval before.

Needless to say, the legal feasibility of ratification does not equate with its political feasibility. As is well known, following snap parliamentary elections called by French President Macron in June 2024, after the EP elections, the French National Assembly is now heavily divided between three political groups, of almost the same size. Contrary to what has happened for most of the French Fifth Republic (save for periods of cohabitation), therefore, the President does not enjoy a majority in Parliament to implement his agenda. This means the approval of bills (including ratification of treaties) would require consensus building and coalition politics – something at odds with the French political tradition. Yet, even in Italy, ratification of the EDC may be politically a long shot as the right-wing government led by Prime Minister Meloni, which has a significant parliamentary majority, is no friend of European integration.

With that said, however, politics nowadays is highly volatile, and circumstances could rapidly change and it is hard to underestimate the effects of the US Presidential elections. Without underestimating the challenges of pursuing this path, therefore, it is worth emphasizing that votes by 2 member states would suffice to make the EDC enter into force.

⁸⁴ <https://mjp.univ-perp.fr/france/co1946-2.htm>.

5. Conclusions

The world is dangerous. The war in Ukraine has exposed the limited defense capacity of the EU. When Ukrainian President Zelensky first travelled outside of the country since the start of the war, it went to Washington, where it asked for weapons, then to London, where it asked for weapons, and finally in Brussels, where it asked for membership: obviously this is the only weapons that the EU can offer today.

Yet, as this paper has argued, things need not be this way. In 1952 six EU member states had created a EDC – with a common army, funded by a common budget, and governed by supranational institutions. The EDC was a suitable format to defend the security of Europe in the framework of NATO, grow the continental defense industry, and provide a deterrent against foreign threats – as it were, from the UUSR back then as it is from Russia today. As the war in Ukraine continues and as the re-election of Donald Trump as President of the US challenges transatlantic relations and the future of NATO, it is time to activate the law creatively to achieve defense integration in Europe.

Specifically, this paper proposed to revive the EDC Treaty and explained that from a legal viewpoint this is feasible: while France failed to vote on it in 1954, 4 out of 6 states had already ratified it, and the treaty has not died for them. At the same time, a change of political regime – from the Fourth to the Fifth Republic – allow the French parliament to vote anew on the treaty, which can also be put to a vote for the first time in Italy. This would make the treaty operational today, and bring with it several advantages: The EDC would be supranational, giving the EU a genuine strategic autonomy while eliminating the risk of hegemony inside EU; The EDC would be by law interconnected to NATO, overcoming several of the fears of a decoupling from the US; The EDC would be open to all the European states that wish to join, but members would have a veto on the accession of uncooperative partners; finally the EDC would also automatically put in place a bridge with the UK, strengthening European security cooperation post-Brexit.

Needless to say, legal feasibility does not equate with political feasibility – and the paper has underlined several of the obstacles that would emerge along this path. Failure to ratify the EDC has left a traumatic legacy in France, and it is anything but sure that the current French Parliament would vote for it – especially after the June 2024 snap elections, which deprived President Macron of a relative majority in the National Assembly. Moreover, the limited enthusiasm towards European integration by the right-wing government of Italy poses a challenge, and the EDC treaty could cause unease both in the 4 member states that ratified it in

the 1950s as well as in all other EU member states which are outside it, particularly in Eastern Europe. Furthermore, the entry into force of the EDC would further increase the complexity of European governance, by adding an extra organization in the system of differentiated integration. Finally, even if the EDC were to enter into force, member states would need to take important decisions by unanimity, and relevant updates would be required to adjust the content of the treaty to new forms of war such as drones, cyber, disinformation, terrorism.

Yet, the bottom line is that the EDC can enter into force with just 2 votes – an incredibly more easy path than the 27 votes it would take to amend the EU treaties, or to operationalize its timid defense clauses by unanimous agreement of its member states. From this point of view, therefore, the revival of the EDC Treaty could be a wedge and a way to activate the law creatively to integrate defense in Europe.