

**THE PERMANENT STRUCTURED COOPERATION  
ON SECURITY AND DEFENCE (PESCO)  
AS AN INSTRUMENT OF THE COMMON SECURITY  
AND DEFENCE POLICY OF THE EUROPEAN UNION**

On February 7, 1992, the Treaty on European Union was signed in Maastricht, the Netherlands. Art. 11 of this Treaty, as one of the pillars of integration, has defined the Common Foreign and Security Policy, which covers all areas of foreign and security policy. In 1999, the Common Foreign and Security Policy was supplemented by the European Security and Defence Policy, after what the European Security Strategy was adopted in 2003. On the First of December, 2009, with the entry into force of the Lisbon Treaty, the Common Foreign and Security Policy was named «Common Security and Defence Policy». Also, in order to implement certain provisions, the post of High Representative of the Union for Foreign Affairs and Security Policy appeared. These novels were extremely importance for the further development of EU law, particularly, in the sphere of foreign policy relations.

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According to Y. Barabash and O. Tragniuk, traditionally in the security question, the European Union relied entirely on NATO's political and defence mechanism. As is known, collective security with common tough defensive commitments in Europe is present only in the North Atlantic Alliance (the system of collective defence unites the states of a certain region and is directed against an external enemy). But under the current conditions, the EU intends to strengthen its own ability to address both European and international security concerns. [1]

As a response to external threats and growing instability in the region, on June 28, 2016 at the European Council meeting, the EU Global Strategy «Shared Vision, Common Action: A Stronger Europe» was approved. The Ukrainian researcher O. Poshedin states that, the Strategy emphasizes that the only «soft» force is not enough in the modern world, therefore, it is necessary to increase the efficiency of the EU in the sphere of security and defence [2]. As the main security priorities are defence, combating terrorism, cyber security, energy and strategic communications, so the necessary prerequisites for implementation of European Union Common Security and Defence Policy are gradual synchronization and mutual adaptation; use of EU funds to support defence research, technology and multinational cooperation; involvement of the full potential of the European Defence Agency; development of the European defence industry.

In order to implement the 2016 Strategy and effective future response to external crises and the provision of security policy in Europe, the following documents were adopted: EU Global Strategy Implementation Plan on Security and Defence (dated 17.11.2016) and the European Defence Action Plan (dated 30.11.2016) [3]. The latter, in particular, involves the creation of a European Defence Fund and other actions to assist Member States to intensify research and more efficiently spend on joint defence capabilities, promoting a competitive and innovative defence industrial base, and contributing to strengthening the security of European citizens. Thus, as can be seen in recent years, legal instruments are being actively formed, which provides a solution to a wide range of issues in the area under consideration.

However, these documents did not become the only forms for implementing the 2016 Strategy. Art. 42 (6) and art. 46 of the Treaty on European Union [4] and Protocol No. 10 provide the possibility for group of EU Member States of introducing a Permanent Structured Cooperation for security and defence (PESCO). The treaty was signed on November, 13 by 25 EU countries (except

Denmark, Great Britain and Malta), which was approved by the Council of the EU on December 11, 2017.

Today, the latest step towards PESCO became the approval by the Council of the European Union on March 6, 2018 of the «Roadmap» [5] on the implementation of the program of military-strategic cooperation of the EU member states, which defines a strategic direction and guidance on how to structure further work in the implementation and management of the program, including the projects and the definition of steps to fulfil the obligations. This document establishes a timetable for the review and appraisal of the implementation of national implementation plans that define how PESCO States Parties intend to fulfil their obligations; provides for a timetable for the implementation of future European defence projects and the main provisions of the common set of project management rules that will be approved by the EU Council by the end of June 2018. In the annexes, it was decided to formally list the first 17 joint projects covering training, development of military capabilities and operational readiness for defence.

In the Constituent Treaties, the possibility of establishing such an association as PESCO is governed by Article 42 of the Treaty on European Union [4]: «Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article 46. It shall not affect the provisions of Article 43.» Art. 46 indicates the only requirement for States wishing to participate in PESCO: "...which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation...». These criteria are[6]:

- 1) co-operate and harmonise requirements and pool resources in the fields related to defence equipment acquisition, research, funding and utilisation, notably the programmes and initiatives of the European Defence Agency (e.g. Code of Conduct on Defence Procurement);

- 2) capacity to supply, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as a battle group, with support elements including transport (airlift, sealift) and logistics, within a period of five to 30 days, in particular in response to requests from the United Nations, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days;

3) capable of carrying out in the above timeframes the tasks of joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation.

From the above, it can be concluded that the association of the EU member states in the format of PESCO is to a certain extent reminiscent of optional formation, such as the euro area. It means that PESCO is also an example of «multi-speed integration»: individual countries may on their own remain outside this group, while others are not covered by such cooperation, because they do not fit the established criteria. In particular, not all countries were obliged to enter the euro as a national currency (for example, the Czech Republic, Hungary, Poland reserved the right to its national currency); PESCO also allows countries to stay outside this association (for example, Denmark has already stated that it will not be a member). The reason for such phenomenon is that the diversity of conditions for integration and the difference in levels of economic, political, legal and cultural development of the member states results in the use of different pace, tools and methods of legal regulation of integration processes.

Management of Permanent Structured Cooperation in the sphere of security and defence is carried out on two levels. The first level is the EU Council, which is responsible for overall policy and decision-making, including with regard to the assessment mechanism, to determine whether Member States are fulfilling their obligations. Only members of the PESCO have the right to vote, decisions are taken unanimously (except for decisions on suspension of membership and the admission of new members, which are adopted by a qualified majority). The second is the level of projection: each project will be guided by those Member States that will promote it, in accordance with the general project management rules, that will be developed at the general level. Due to this structure, which is not inherent to the European Union, the openness and efficiency within the EU should be ensured.

It is important to draw attention to the order of the refusal of the PESCO member country to participate in this cooperation. In c. 5 of Art. 46 of the EU Treaty [4] provided that a Member State must declare its entry into an EU Council which terminates its membership. Accordingly, as this rule has never been applied and is not detailed in other acts of the European Union, it is impossible to conclude that this one is simplicity.

In conclusion, PESCO is a new format of union in the European Union, which fully corresponds to the concept of «multi-speed integration». Despite the fact that the possibility of its creation had been predicted in the Lisbon Treaty in 2009, the need for the appearance of such formation became current just on the verge of 2016–2017, when the questions of overcoming terrorism and the growth of military and armed conflict were on the agenda of almost all countries over the World. It is anticipated that PESCO will inevitably become an enhanced cooperation of the EU member states in the sphere of defence.

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