



26 January 2004

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INSTITUTE NOTE

FLEXIBILITY FOR ESDP: WHAT IS FEASIBLE, WHAT ACCEPTABLE, WHAT DESIRABLE?

Paris, 12th January 2004

The Conference was intended as a ‘brainstorming’ exercise on the latest and future possible developments of ESDP. As such, organisers and participants alike adopted the analytical lens of ‘**flexibility**’ – mainly intended as shorthand for arrangements that may not involve/include all the member states of the enlarged EU – but did not aim at or come to any specific conclusions or recommendations.

I. The point of departure was an assessment of the past months, emphasising the fact that – in spite of the transatlantic and intra-European divisions over Iraq and the fiasco of the final session of the Intergovernmental Conference (IGC) in Brussels – ESDP has scored well on the wider EU board. In fact, it can now show a limited operational record as well as some key decisions such as the practical articulation of the ‘Berlin-plus’ agreement with NATO concerning military headquarters for future EU missions, the preparation of a “permanent financial mechanism” for funding them, and the setting up of the armaments agency already in 2004.

Even in the IGC, arguably, the state of play regarding ESDP was not bad at all, although it cannot formally be considered as an *acquis* thereof. Firstly, there was broad consensus on the creation of the “EU Foreign Minister”, although not all details concerning mandate and attributions of the new figure were finalised: indeed, the issue could well be revisited in the next phase of the IGC. Secondly, there was a tentative agreement on a new formulation for the **mutual assistance clause** (art. I-40.7 and art. III-214 of the Convention draft). Some attention was paid in the debate to the possible scope and practical implications of the expression “all the means in their power” as related to the assistance “obligation” for the member states. In fact, much as there are now explicit caveats for both NATO and non-allied members, the wording is quite robust and virtually constraining. It was also noted that such assistance clause was presented by the Convention as a possible form of “closer cooperation” among *some* member states only – i.e. a form of flexibility inside the Treaty – while the formulation informally agreed upon in early December makes it a provision concerning *all* of them.

II. The discussion then focussed on the latest version of art. III-213 concerning “**structured cooperation**” (now defined also as “permanent”). It was agreed that it is much more acceptable now for the member states in that it spells out clearly both the conditions for participation and the procedures for putting it in place. Someone observed that the redrafted article is much more about leadership and potential military ‘transformation’ than flexibility per se. Also, some questions were raised on the exact meaning of “participation in major European procurement projects” as a condition for inclusion – an issue that may become crucial for smaller and poorer member states, but has implications also for the ECAP exercise and the forthcoming armaments agency.

Furthermore, it was also noted that the requirements now enshrined in the ‘protocol’ represent, in fact, a combination of political and functional elements: they entail political willingness as much as military, industrial and budgetary criteria. Three main questions emerged in this respect, namely: a) whether more detailed benchmarks (with numbers and shares) should be introduced, and perhaps linked to or incorporated into the new Headline Goal for 2010; b) whether they should be enshrined in a ‘constitutional treaty’ at all (as it happened with EMU in the Maastricht Treaty); and, more generally, c) which elements are likely to prevail in the final decision. In fact, the eventual shape, size and composition of the pack of participating countries may well turn out to be different if the emphasis is put on political will rather than actual performance – and vice versa.

Finally, someone raised the issue of *unanimity* as a decision-making procedure inside such forms of cooperation: pooling assets and capabilities (including role specialisation) and enforcing budgetary convergence may lead to a point at which preserving a virtual veto right on their use becomes incompatible with the very logic of the exercise – and this, in turn, may ultimately affect national sovereignty and, possibly, require constitutional change in most EU countries.

III. At any rate, as it was underlined, ‘flexibility’ is almost a fact of life in the ESDP domain. This applies first and foremost to **armaments cooperation**, where fora and schemes have been mostly developed outside of the EU framework and in varying formats, either larger (WEAG) or smaller (OCCAR, LoI) than the Union’s membership. This is due to the uneven allocation of defence expenditure and capabilities among the member states, and to the diverging interests between the bigger arms producers and those who have little or no national industry and often buy their military equipment in the US. Two recent parallel developments may now change the overall landscape: on the one hand, the inclusion in the draft ‘constitutional treaty’ of an article establishing a EU agency “in the field of defence capabilities development, research, acquisition and armaments” (art. III-212); on the other, the decision to set up such an agency already “in the course of 2004”, i.e. well before the foreseeable entry into force (possibly even before the approval) of the new treaty. The latter, therefore, will partially forego and largely predetermine the former.

What is crucial, at least at this stage, is that such “agency” is *not* conceived – either in the draft treaty or in the preliminary political decision – as an exclusive undertaking: in principle, instead, it is open to all member states and, in its initial phase, is expected to act as a coordinating body for different existing exercises, including ECAP. However, it was argued, the logic and reality of European armaments cooperation may soon induce more differentiation, especially if the agency develops into a managing body for specific projects. The *foreseeable challenges* in this respect may well be: a) the compatibility of certain exclusive industrial arrangements with the letter of the Nice Treaty (that prevents i.a. “enhanced cooperation” in field of defence); and b) the compatibility of pluri-lateral arrangements for export, transfers, and trade in general with art.296 TEC and the rules and obligations of the single market. While the draft constitutional treaty may make the former easier, it is not expected to change much concerning the latter.

IV. Regarding crisis management **operations**, too, ESDP has so far displayed *very different formats* (with and without NATO, military and non-military) *and formations* (ranging from almost unanimous participation by present and future member states to the very limited one of ‘Artemis’), thus proving that ‘flexibility’ is already a reality. As a rule, the main criteria driving participation have been a) the political and/or symbolic value of the operation; b) its foreseeable intensity; c) the actual distance from the European theatre. Arguably, the first two were mainly political, the second (in part) and the third mainly functional: different mixes thereof have generated, in the end, different formations.

To a certain extent, it was noted, the current arrangements for ESDP operations - bar perhaps the financial ones – already take into account and allow such diversity and flexibility. However, the draft ‘constitutional treaty’ (art. III-211) introduces the possibility for the Council to “entrust the implementation of a task to a group of member states having the necessary capability and desire to undertake” it. The present wording is rather vague and does not clarify whether important parts of decision-making (such as oplan, rules of engagement etc.) would be delegated to the group or remain within the domain of the PSC in its entirety. In the latter case, the new article would add next to nothing to the respective functions currently attributed to the PSC and the “Committee of contributors”. In the former, instead, it might have an important impact on the way in which ESDP is managed, potentially increasing the flexibility of operational doctrine and implementation. Finally, the question was raised – and addressed with interesting nuances among the participants - as to whether the current arrangements are sufficiently flexible regarding the involvement of ‘third’ parties in EU operations, especially when such external contributors are sizeable regional actors: e.g. Russia, South Africa, or Nigeria.

V. The final round in the discussion dealt with the more general issue of **flexibility in the EU at large**. It was argued, for instance, that the margins for more ‘flexibility’ in the first pillar (codeword for “pioneer groups” here) are now ever more limited, as opposed to the 1970s or even the early 1990s: the *acquis* and the legal constraints in the treaties are such that separate arrangements among a few member states would risk creating a legal maze, unless enforced strictly within the existing treaty framework. It was also said that the margins would probably lie exactly where the UK wants to draw its “red lines”, but that they would be specific to a given policy only (for example taxation, or environment). Of course, there still is the possibility to resort to the so-called ‘Benelux clause’ for bi- or pluri-lateral integration, but without the right to claim to be acting on behalf of the whole Union. Yet a single and homogeneous “pioneer group” would hardly be able to act as one across the entire EU policy board, i.e. as a sort of “avant-garde” of European integration.

This said, it was underlined that ESDP has become unquestionably one of the most dynamic policy areas in the Union and, as already mentioned, is one that entails flexibility and differentiation almost by nature. The prevailing opinion among the member states so far, as well as among the participants, is that such flexibility should be practised inside the treaty rather than outside – and therefore should be somewhat ‘codified’.



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PROGRAMME

SEMINAR ON

Flexibility for ESDP: what is feasible, what acceptable, what desirable?

EUISS, 43 avenue du Président Wilson, Paris 16^o

12th January 2004

CONFERENCE ROOM B

- 09:00 *Arrival, registration and welcoming coffee*
- 09:30 **SESSION 1: Introductory Session**
Chair: Nicole Gnesotto
- Introduction*
WHERE WE STAND Antonio Missiroli
- Comments* Françoise de la Serre
Rafal Trzaskowski
- Open discussion*
- 10:45-11:00 *Coffee break*
- SESSION 2: 'Assets and capabilities'**
Chair: Mathias Jopp
- Introduction*
THE MILITARY DIMENSION Jean-Yves Haine
THE ARMAMENTS DIMENSION Burkard Schmitt
- Comments* Daniel Keohane
Pascal Meunier
- Open discussion*
- 13:00-14:00 *Buffet lunch*

- 14:00 **SESSION 3: ‘Missions and operations’**
Chair: Rob de Wijk
- Introduction*
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| POST-PETERSBERG | Martin Ortega |
| THE OPERATIONAL <i>ACQUIS</i> | Antonio Missiroli |
- Comments*
- | | |
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| | Pär Eriksson |
| | Jiri Sedivy |
- Open discussion*
- 15:45 **SESSION 4: Conclusions**
Chair: Nicole Gnesotto
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| THE WAY AHEAD | Philippe de Schoutheete |
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- 16:30 ***End of seminar — departure of participants***
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LIST OF PARTICIPANTS

SEMINAR ON

Flexibility for ESDP: what is feasible, what acceptable, what desirable?

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