




**Project ALCIDE**

Activating the Law Creatively  
to Integrate Defence in Europe

**Getting Serious about  
European Defence Integration:**  
The European Defence Community Precedent

**DCU**

Institiúid Bhaile Átha Cliath um an Dlí Eorpach  
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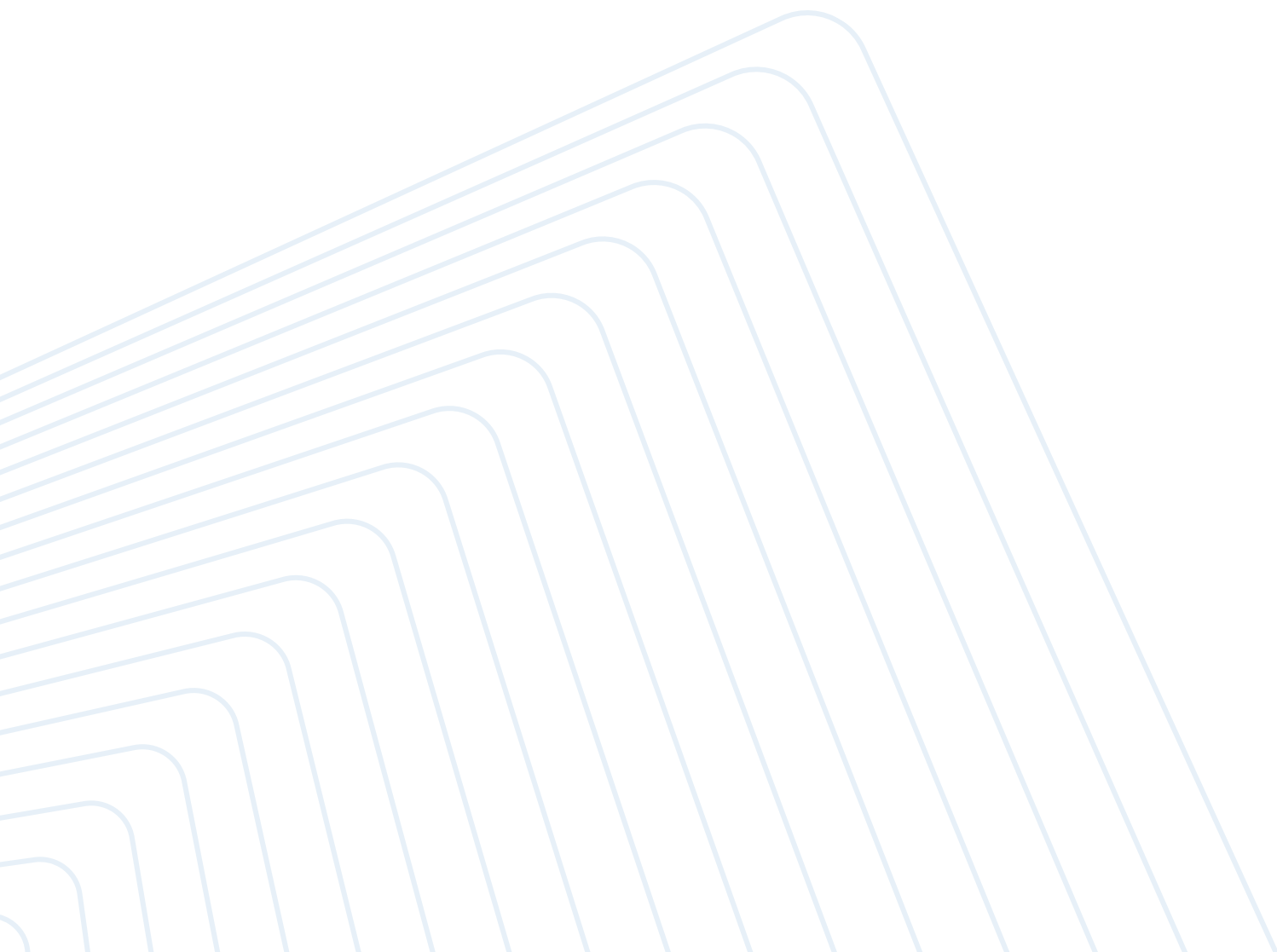
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# Executive Summary

Europe stands at a crossroads. Russia's aggression in Ukraine, mounting instability in the Middle East and North Africa, and the uncertain future of the transatlantic alliance have laid bare the vulnerabilities in Europe's defence architecture. At the same time, Europe's reliance on the United States is increasingly untenable—a reality underscored by fluctuating U.S. commitments under a second Trump Presidency. With security threats escalating and European autonomy at stake, the time for rethinking the European defence architecture has come.

We are a group of legal scholars, historians, economists and political scientists, and policymakers. We propose taking the European Defence Community (EDC) as a benchmark to move forward. The EDC is a ground-breaking yet unrealized project of the foundational period of European integration: the EDC treaty was signed by Belgium, the Netherlands, Luxembourg, Germany, France, and Italy in 1952, but ratified by only the first four countries. The EDC envisioned a common European army funded by a shared budget, governed by supranational institutions, and connected to NATO.

Legally, the EDC treaty could still enter into force today with the ratification of the two countries which did not do so in the 1950s – France and Italy. International and national constitutional law would both support this. Moreover, the EDC architecture remains viable as the treaty offers the most comprehensive blueprint to date for European defence integration. In terms of governance, it would avoid the deadlock created by veto rights; and balance executive leadership with democratic legitimacy and accountability through a parliamentary assembly and a court, upholding the rule of law. The EDC's shared budget and joint procurement mechanisms would address the fragmentation of Europe's defence industry. Importantly, the EDC is open

to the accession of new member states, which is crucial in a Union with now 27 members. In addition, the EDC would be integrated with NATO and offers a basis to facilitate strategic collaboration with post-Brexit Britain, an important player in European defence.

Nevertheless, reviving the EDC treaty would raise multiple challenges. While ratification by Italy and France is certainly not an easy path, the EDC treaty itself leaves several issues unaddressed. The EDC does not address nuclear weapons, a pivotal aspect of contemporary defence, nor the development of a foreign policy. Nor does it mention the need for civil societies to become actors of defence, be it against military aggression or pandemics or extreme climate events, as stated by former Finnish President Sauli Niinistö in his [recent report](#). Moreover, the original signatories of the EDC treaty were only six states, which would exclude most of the current EU member states, including countries in Central and Eastern Europe that have the highest military spending in proportion to GDP, and that know the Russians best. Furthermore, there would be issues related to the institutional connection between the EDC and the current EU. These are difficult issues.

Yet these are the challenges which Europeans must face anyway, if they are to become less dependent on the US security guarantee and wanted to assume greater shared responsibility for their own defence. Several changes can be made to adapt the EDC, including by approving amendments to the original treaty text, admitting new member states and checking that new members do not invoke any “rebus sic stantibus clause.” If our governments and the EU Commission are serious about “strategic autonomy” and a “geopolitical Europe”, they must move beyond trying to make piecemeal progress, and begin a more fundamental debate about defence now.

# 1 Introduction

The world has become more dangerous, and the European Union (EU) is facing unprecedented challenges. Russia's large-scale aggression of Ukraine brought back conventional warfare to the European continent for the first time since the end of World War II. Conflicts are growing in the Middle East and North Africa. And the future of the transatlantic alliance is ever more uncertain. Since 1955, when the Federal Republic of Germany joined the North Atlantic Treaty Organization (NATO), the United States (US) has played a large role in the defence of the European continent, primarily against threats posed by Russia (then the Soviet Union). This arrangement allowed European states to consolidate their democracies. And while European nations substantially contributed to deterrence in the Cold War (e.g., West Germany spent well over 3% on defence and had large standing forces), average European defence spending fell hugely in the last 30 years to only 1.3% of GDP in 2014, the date of the Russian attack on Crimea.

As US commitments towards European defence become more uncertain than ever, it is necessary to think about alternative paths to shield Europe from foreign threats, and thus achieve deeper defence integration. Indeed, some European leaders and subsequent US administrations have asked European countries to take greater care of their defence. With the return to Donald Trump to the White House, the US will certainly do so even more forcefully.

Since 2022, the EU and its member states have taken important steps to strengthen their defence policy. Besides the increase in military budgets at national level – the EU as a whole now spends above 2% of its GDP on defence – a new defence industrial policy has slowly been rolled out at the EU level, with funding for the joint procurement and production of weapons, and a strategy to grow the European defence industry technological base. Yet, despite these developments, the EU and its member states still lack the common mindset, the institutional setting, and military capabilities to credibly deter foes, and autonomously defend the European continent. In short, as multiple analysts have pointed out, Europe is not ready for war.

This paper aims to contribute to the debate on the future of European defence integration. Specifically, **this paper looks at the European Defence Community (EDC) as the most comprehensive blueprint for defence integration.** The EDC was established in 1952, at the heyday of the Cold War, by six European states: Belgium, France, West Germany, Italy, Luxembourg and the Netherlands (the founding countries of the European Community of Coal and Steel, and later the European Economic Community). The EDC aimed to create a common European army, funded by a common budget, and governed by accountable supranational institutions. Moreover, the EDC was integrated into NATO, was open to the accession of new member states, and secured a mutual defence pact with the UK. Yet, because not all of the six states that signed the EDC ratified the treaty, it never entered into force.

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This paper explains three main reasons why it is useful to focus on the EDC in the current geopolitical context. First, from a legal point of view, the EDC could be revived today. Because the EDC was formalized in a Treaty signed by six states, and already ratified by four of them, it would be technically possible for the Treaty to enter into force today, with the ratification of the two missing contracting parties – Italy and France. Second, from a political point of view, a possible revival of the EDC Treaty would raise open issues, which are not easy to solve, but deserve to be laid out – most crucially, substantive questions about the number of member states, the parliamentary control mechanisms, the relation with the US, and nuclear deterrence.

Third, from a historical point of view, the EDC constitutes the most sophisticated attempt to date to create a European defence union. The EDC would integrate such a union into the transatlantic alliance. As such, **the EDC is a prototype that could guide political leaders today in overcoming the clear deficiencies of the current national and EU27 defence arrangements.** In short, European countries must go beyond trying to make piecemeal progress and begin a more substantial debate about defence, including new institutional arrangements.

The paper is structured as follows: Section 2 overviews the core features of the EDC. Section 3 briefly summarizes its history. Section 4 explains why it would be possible, legally, to revive the EDC. Section 5 highlights what would be some of the EDC's benefits. Section 6 lays out the difficult issues connected to the revival of the EDC, while Section 7 explores the limits

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of the alternatives. Finally, Section 8 concludes by encouraging policymakers to move beyond the current technical discussion on defence integration in an age of global powers' rivalry.

## 2 Core Features of the European Defence Community

The core features of the EDC result from a Treaty negotiated by its six founding member states and concluded in May 1952. The EDC Treaty is composed of 132 articles, and several Protocols, including a Military Protocol, a Financial Protocol, a Jurisdictional Protocol 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 EDC to the state parties of NATO Treaty. Article 1 of the EDC Treaty states: "By the present Treaty the High Contracting Parties institute among themselves a European Defence Community, supranational in character, consisting of common institutions, common armed forces and a common budget." The **aim of the EDC** is defensive, and its actions firmly rooted within the framework of NATO. Indeed, the EDC is connected to NATO, which the Washington Treaty created just a few years earlier, and shares the same logic of its mutual defence pledge. Pursuant to Article 2(3) EDC Treaty "Any armed aggression directed against any one of the member States in Europe or against the [EDC] shall be considered as an attack directed against all of the member States."

The core provisions of the EDC Treaty concern the creation of the "European Defence Forces" (EDF) through the attribution of all armed forces by member states to the EDC. 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, but states remain in charge of police forces, and civil protection. As made clear in Article 15, the EDF "shall consist of conscripted personnel and of professional personnel", "shall wear a common uniform", and "shall be organized." In particular, Article 18 states that the competent Supreme Commander of NATO (SACEUR) shall "be empowered to satisfy himself that the [EDF] are organized, equipped, trained and prepared for use in a satisfactory manner". Moreover, the same clause states that during wartime SACEUR "shall exercise with regard to the [EDF] ... the full powers and responsibilities of Supreme Commanders."

In **institutional terms**, the EDC Treaty established a balance of powers between a collegiate executive, a bicameral legislature and a court – partially overlapping with the bodies of the European Coal and Steel Community (ECSC), which has become the EU. Executive power is vested in a Commissariat, to be composed of nine members appointed for six-year terms by common accord of the member states, and chosen for their general competence. The Treaty also establishes a Council composed of representatives of the member states, to which the Commissariat shall report at periodic intervals. The EDC Treaty moreover involves in the Community two institutions from the ECSC – the Assembly (forerunner of today's European Parliament) and the Court (the EU Court of Justice). The Assembly plays an important part in securing the accountability of the Commissariat. The Commissariat shall make an annual general report concerning its activity to the Assembly, which can issue a “motion of censure.” The Court instead, must ensure the rule of law in the interpretation and application of the Treaty and implementing regulations, and is vested with unlimited jurisdiction to review the legality of the acts of the other institutions.

In terms of **military capabilities**, the EDC Treaty set provisions for the ground, air, and naval forces of the EDF. Article 71 provides: “With the unanimous concurrence of the Council, the Commissariat shall establish the plans for the organization of the Forces.” The key provisions of the EDC 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 [SACEUR].” According to 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 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 European Defence Forces (infantry battalions, armored groups, mechanized groups, as well as air squadrons) and their hierarchical centralized and territorial command structures. At the same time, the EDC Treaty reaffirms the obligation for the EDF to comply with

customary international law on the law of wars.

In terms of **financing**, the EDC Treaty endows the EDC with a common budget, comprising all annual receipts and expenditures. Pursuant to Article 87, the budget must be prepared by the Commissariat, in consultation with the governments of the member states, having regard to the military needs of the European Defence Forces. The Council must be unanimous in approving the total volume of the budget, but need reach only a two-third majority to approve the distribution of expenditures. Moreover, the Assembly has a crucial role in also approving the budget approved by the Council. The EDC budget – whose execution shall be ensured by the Commissariat – is designed to cover the cost of the European Defence Forces, 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]” – i.e., for the purpose of developing an industrial defence production program. Pursuant to Article 105 EDC Treaty the Commissariat may identify “an insufficient supply of raw materials, lack of equipment” and notify the Council, which can, by unanimous vote, authorize measures “to ensure the placing and execution of orders within the time limits provided in the program” – effectively a form of defence production priority rating.

The EDC Treaty concludes with a series of **general provisions**. Articles 112 and 113 codify a principle of sincere cooperation between the EDC and the member states. Article 123, instead, introduces 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. Lastly, the EDC Treaty sets out conventional rules on amendment, duration, accession and entry into force of the treaty itself. Regarding amendments, Articles 125 and 126 identify a simplified and regular amendment procedure, both requiring unanimity. 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.” Finally, Article 132 states that 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.”

### 3 History of the EDC

The EDC emerged from a plan drawn up by the French Defence Minister (and subsequent Prime Minister) René Pleven, with a notable contribution by Jean Monnet. The establishment of the EDC was driven by the outburst of the Cold War, and notably the beginning of the Korean War in 1951. The EDC also aimed to address the thorny issue of the re-militarization of Germany. While the US and the UK were quickly pushing for German rearmament to deal with the growing Soviet threat, France proposed to create a supranational authority to supervise a European common army of 100,000 troops, including Germans, through a common budget and under the democratic control of the European Assembly. From this point of view, the EDC built on the successful experiment of the European Coal and Steel Community (ECSC) created by the Treaty of Paris in 1951, for the shared management of core factors of military production.

Following negotiations which lasted over a year, the Treaty instituting the **EDC was formally signed** on 27 May 1952 in Paris, at the Quai d’Orsay, by the high contracting parties, including statesmen like Schuman, Adenauer, De Gasperi, Van Zeeland, Bech and Stikker. Moreover, the **EDC Treaty was quickly ratified in four states**. The German Constitutional Court (BVerfG) denied standing to a challenge of the constitutionality of the EDC Treaty in a judgment delivered on 7 March 1953, paving the way to the ratification by the German Bundestag on 19 March 1953, and the German Bundesrat on 15 May 1953. The Netherlands ratified the EDC Treaty on 23 July 1953, Belgium on 26 November 1953, and Luxembourg on 7 April 1954. However, on 30 August 1954, the parliamentary

assembly of the French Fourth Republic voted 319-to-264 to approve a procedural motion that postponed *sine die* the ratification of the EDC.

Several factors explain what happened in France in 1954. Opposition to the EDC gained more and more traction both in French public opinion and in the French National Assembly between 1951 and 1954. The national elections of June 1951 saw both the decline of pro-European parties, such as the Mouvement Républicain Populaire (MRP) and the Socialists, and the rise of declared opponents to the European army, such as the Gaullists and the Communists. The political personnel changed, and some people known to be less favorable to the EDC entered the government. The *anticédistes* made several arguments: they were against any form of German rearmament; they criticized the supranational character of the project; they feared US domination of the EDC, especially the role played by NATO; and they feared the EDC would weaken the Franco-British relationship – based on an illusion of strength that would shatter in the Suez crisis two years later. At the time, the arguments of the *cédistes* appeared comparatively weak. Notably, with Josef Stalin’s death in 1953, the prospect of a Soviet aggression in 1954 did not seem as realistic as in 1951.

Whatever its political reasons, the failure of the EDC put European integration on a different track: in 1955 West Germany joined NATO, and in 1956 the Rome Treaty established the European Economic Community (EEC), leading European cooperation to advance in areas other than military affairs. Yet the demise of the EDC may have been called too soon.

## 4 Legal Feasibility of Reviving the EDC

The Treaty establishing the EDC was signed by all six founding Member States and fully ratified by four of them. As one of us has explained in detail (see [Federico Fabbrini, \*European Law Journal\*](#)), from a legal viewpoint, therefore, the EDC Treaty could be revived: with the ratification of the two missing states, France and Italy, it could enter into force – today. Arguments of public international law and constitutional law support this conclusion.

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From a **public international law** point of view, once a treaty is signed and ratified, it remains alive 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 law – 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”. 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”. Finally, the VCLT also provides rules on the denunciation of treaties, or the withdrawal therefrom, with Article 65 VCLT introducing 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. Thus, it appears that the EDC Treaty – while not in force – still technically

binds the four 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 required by Articles 56 and 65 VCLT – the treaty remains alive for them.

From a **domestic constitutional law** point of view, moreover, nothing would prevent Italy or France from voting on the ratification of the EDC Treaty today. In the case of Italy, the issue is legally unproblematic, as Article 11 of the Italian Constitution of 1948 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, “the 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 Deputati and the Senato della Repubblica.

In France, the 1958 French Constitution is open to the conclusions of international agreements, and since 1992, it includes specific provisions on membership in the EU, highlighting the normative openness of the French Constitution to dialogue with supranational organizations and to limit French sovereignty in their favor. Moreover, there is no written rule – either in the Constitution, or in the regulations of the National Assembly or the Senate – that would prevent Parliament from considering the EDC Treaty anew. The current standing order of the National Assembly 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. The French Senate – which is the second house of Parliament – has similar rules. Most importantly, the French Parliament that failed to ratify the EDC Treaty in 1954 was the National Assembly of the Fourth Republic, established by the Constitution of

1946. With the approval and the entry into force of the Constitution on 4 October 1958, France has become a new Republic – the Fifth Republic. At the international level, this does not challenge the validity of its signature of the EDC Treaty in 1954, given the principle of the continuity of the state, but this surely entitles the new French Parliament to consider the EDC Treaty for the first time.

In conclusion, if France and Italy voted in favour of the Treaty, the EDC could legally be revived and enter into force today, seven decades after

its drafting. In fact, it is not uncommon that a significant lag of time may lapse between the signature of a treaty and its entry into force, and there are several precedents of this in international law. Moreover, the same is also true in some constitutional orders. For example, the Twenty-Seventh Amendment to the US Constitution, whose constitutional amendment process reflects features typical of international law, took over 200 years to be ratified. This bodes well for the efforts to revive the EDC Treaty, which has remained dormant for a mere 72 years.

## 5 Benefits of the EDC

The EDC Treaty creates a fully-fledged setting for a common army, embedded in democratic, supranational institutions, and funded by a common budget. It gives a clear answer to the conundrum of the EU-NATO relationship, choosing to integrate European defence into NATO, and is open to accession of other member states. As such, the EDC would activate the law creatively to integrate defence in Europe, killing several birds with one stone.

First and foremost, the EDC designs an advanced governance structure that takes the issue of **democratic legitimacy** seriously. Decisions about war and peace are the most consequential ones public authorities may ever take within a representative democracy, as they concern questions of life and death and possibly imply huge sacrifices on the side of citizens. Such decisions thus require the appropriate functioning of democratic legitimation and accountability mechanisms. The EDC creates a federal-like, governance regime. As mentioned, the EDC vests executive power in a college (called the Commissariat), appointed by the common accord of national governments, and responsible to both a Council (representing member states), and an Assembly (representing citizens). Moreover, the EDC gives full power of judicial review to a Court, thus ensuring that any action of the EDC institutions and the EDF would be subjected to judicial scrutiny. Such guarantees do not exist in settings of defence integration that remain intergovernmental.

Second, the EDC treaty provides for credible and effective European military **capabilities**. Conventional warfare requires critical mass, adequate materiel, and a clear line of command and control. From this point of view, by combining the armed forces of six states into a single EDF and subjecting it to a unitary command, the EDC paved the way for a military force with the capability to deter foes and defend the European territory against attacks. At the same time, by vesting the EDC with clear authority to develop a defence industrial policy – and indeed transferring to the EDC an exclusive power to steer the defence industry – the EDC Treaty addressed one of the most outstanding problems of contemporary European defence: the fragmentation of its defence industrial market.

Third the EDC also envisioned a common **budget** to fund the EDF, with Article 15 of the Financial Protocol allowing for common debt financing. While admittedly important decisions on the funding of the EDC were left by the Treaty to the unanimous decision of national governments in Council, the EDC offered a platform for common borrowing and spending.

Fourth, the EDC solves the question of the link with NATO, embedding the European Defence Forces within the **transatlantic alliance**. In fact, the EDC is intrinsically connected to NATO. As mentioned above, the EDC carries out its task within the framework of NATO, and in case of armed aggression is subjected to its military leadership. This reflects the wish

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of the majority of European states – so far – to maintain a partnership with the US. However, this link is also one of the main reasons why the treaty was initially rejected in France and nobody knows how the transatlantic relationship will develop in the future. After his election in November 2024, Donald Trump publicly threatened two NATO countries, Canada and Denmark (over Greenland). During the 2024 campaign, Trump also threatened to withhold support from countries that would not increase their defence spending. These scenarios were never imagined until recently.

Finally and relatedly, the EDC also builds a bridge to the UK. Despite its departure from the EU, the UK remains an ally and a key player in the field of European defence. Indeed, the EDC Treaty included a side agreement to set up a mutual defence pact between the EDC and the UK. This is in line with the efforts that have been made since Brexit to rebuild a defence partnership between the UK and the EU, but the EDC is more ambitious than what can be done within the EU treaty framework, given the EU's limited competences in military affairs.

## **6 Challenges of Reviving the EDC**

Legally, only two more ratifications would be necessary to make the EDC treaty enter into force. This is one of the reasons that convinced us to write this paper, but we realize that important challenges remain. On the one hand, the ratification of the EDC Treaty in Italy and France would certainly not be an easy path. In Italy, the memory of the EDC is associated to the legacy of Alcide De Gasperi, who is being celebrated on the 70<sup>th</sup> anniversary of his death as a great statesman. Moreover, the current Government of Giorgia Meloni enjoys a solid parliamentary majority, but its position towards European integration has been

ambiguous, as evident by the refusal to ratify the Treaty amending the European Stability Mechanism (ESM), despite this being approved by every other Eurozone member state.

In France, instead the failure of the EDC in 1954 has left a deep political scar, with both the left and the right hailing that moment as a victory. Because of the bold opposition of General de Gaulle, who put all his weight against the ratification, the EDC is seen by many French politicians as evil. Furthermore, while the current Prime Minister, François Bayrou, is the heir of the political tradition of Robert Schuman and the MRP, which

championed the EDC, he opposed Sarkozy's decision to join again the integrated NATO command. The French Parliament that emerged from the snap elections of June-July 2024 is deeply divided, and the Rassemblement National would certainly be adamantly against any transfer of sovereignty. The existence of France's the nuclear arsenal, created after 1954, adds another major difficulty (see below).

On the other hand, there are issues connected to both the context and to the content of the EDC Treaty. First, in terms of **geopolitics**, the global balance of power has changed in several ways since 1952. While the US emerged after the Cold War as the hegemonic power, new developments such as the rise of China have challenged that dominance. At the same time, political developments in the US itself have called into question the role that the US has played in the international legal order since the end of World War II, even more since Donald Trump's re-election. At this stage, nothing is clear. On the one hand, the "America First" movement calls for reducing the external projection of the US, and focusing more policy resources at home, in line with a neo-isolationist approach. This could make such a project of European defence more attractive for the Americans. On the other hand, the new President has called for the US to operate more aggressively, and even lawlessly in foreign affairs, including by seizing territories, or even states, that may be of strategic value to the US. This state of affairs raises difficult questions for Europeans in general, and the revival of the EDC in particular. The EDC envisions putting the new European Defence Forces under NATO command in wartime. Since by convention, SACEUR – the Supreme NATO Commander Europe – has always been an American general, this arrangement could come under stress should, hypothetically, the US hollow out NATO or undermine it, or it invade the territory of a EU member state. While these scenarios may be unlikely, they poses the question whether the EDC treaty should be adjusted for extreme situations in case the transatlantic partnership unraveled. Again, these questions are already open. We must answer them in a way or another.

Secondly, also warfare has changed since 1952. The EDC Treaty required military draft, as was the norm at the time. Conflicts now are also fought through cyber, space, as well as a

sprawling form of disinformation through the digital world – and the EDC Treaty is silent on all those issues. Crucially, then, the EDC Treaty leaves unaddressed a fundamental question: that of **nuclear deterrence**. When the EDC Treaty was concluded, none of its contracting parties had nuclear weapons. Since 1960, however, France has developed its own nuclear arsenal. The question of how to handle the issue of nuclear deterrence under the EDC is quite tricky. On a formal level, the EDC Treaty only speaks about the integration of army, air

Political developments in the US itself have called into question the role that the US has played in the international legal order since the end of World War II, even more since Donald Trump's re-election. At this stage, nothing is clear.



force, and (to a lesser extent) navy forces – so nuclear forces could be kept out, remaining in the hands of nation states. Yet, it is obvious that the nuclear deterrent is a key component of a credible European defence. The purpose of this paper is not to decide on such an issue but to make clear that this key question needs to be addressed. President Macron declared himself ready to open a debate on "everything... looking at what really protects us, in a credible way ... including anti-missile defence, long range armament and nuclear weapons for the ones having it or hosting American weapons on their soil". The president also added that "there is a European dimension in the French vital interests"; France would keep "its specificity" but is "ready to contribute more to the defence of the European territory" (interview with Les Dernières Nouvelles d'Alsace, 27.04.2024).

Third, even though the EDC treaty focuses on military affairs, we should not ignore the fact that defence policy goes hand in hand with foreign policy and other tools such as trade or monetary policies, and civil preparedness. At this stage, the EU has an exclusive competence in trade and monetary policy, but not all member states are part of the EMU (even if only Denmark formally has an opt-out). The external role of the Euro has always been played down: our currency is not present, as such, at the IMF, nor do we have a fully-fledged banking and capital markets union. Foreign policy would have to be strengthened to form a coherent and consistent framework of action in which a European defence policy and EDC would develop. The fragmentation of power puts the EU in a vulnerable position vis-à-vis other global players - not only the US but also China, India and Russia. In particular, the flaws of the common foreign policy could constitute an obstacle to the credibility of any defence project, as the lack of common position on Israel/Gaza is showing.

Fourth, another fundamental issue of the EDC concerns its **membership**. The EDC treaty was concluded in 1952 by six Western European states. As a result, in case it were to enter into force, it would not automatically include most other EU member states, especially countries from Central and Eastern Europe that currently spend more of their national budgets on defence, and that are more familiar with the Russian threat. As mentioned before, the EDC Treaty is open to the accession of new member states. One could even imagine that countries such as Poland, the Nordics and the Baltics would quickly seek to join and be admitted. Admittedly, the process of European integration is ripe with examples in which an *avant-garde* of member states has moved forward, often through agreements concluded on the side of the EU, paving the way for other states to join. After all, this is how the Schengen

free-movement zone and the Euro were both created. The same method could be used in the field of defence, allowing member states who are willing and able to advance in this field, going beyond what is possible in the framework of the current EU treaties, and circumventing those states whose veto may block any ambitious initiative in the current framework of the EU at 27. In any case, the purpose of using the EDC is not to mark a return to a small Europe but to relaunch defence integration.

Finally, the revival of the EDC raises also questions of **coordination** with the EU. As explained before, the EDC was modelled on the ECSC, and borrowed several institutions from it. Yet the ECSC later evolved into the EU, with the result that several of the institutions envisioned by the EDC are now EU institutions. This is especially the case for the European Parliament, the heir of the Assembly, and the European Court of Justice. In many ways, this is a positive thing, as it creates institutional bridges between the EDC and the EU. Moreover, there are important precedents of some EU institutions, including the European Commission and the European Court of Justice performing tasks on the basis of treaties concluded outside the EU legal order – think of the European Stability Mechanism and the Fiscal Compact. Yet, clearly, some measures of institutional adjustment would be needed if the EDC were to enter into force, especially regarding whether the Assembly of the EDC could be a sub-composition of the European Parliament. Democratic legitimacy requires – as already observed during the euro crisis, and even more for defence issues – that we imagine variable geometry in existing and potential institutions. Certainly, countries that do not participate in a joint initiative should not be allowed to participate in such decisionmaking. The same questions apply to the European Court of Justice.

## 7 What Are the Alternative Options?

This paper acknowledges the difficulties highlighted in the prior section. However, we should not make the mistake of thinking that such challenges would arise only if we take the unusual decision to revive a 70-year-old treaty. These are actually the questions the current debate should tackle while European governments often put their heads in the sand. There would be ways to address the challenges identified above.

The bottom line, in fact, is that the EDC Treaty has already been negotiated, drafted, signed – and can enter into force with just two ratifications. This could create a momentum, an easier path than the 27 votes it would take to amend the EU treaties, or to operationalize its timid defence clauses by unanimous agreement of its member states, or indeed to draft from scratch a new intergovernmental treaty among willing member states.

The possible entry into force of the EDC treaty could go hand in hand with an intergovernmental conference, which approves amendments to the original text, and admits new member states. A possibility in this respect may be for the very member states of Central and Eastern Europe, for instance Poland as the country hosting the Presidency of the Council, to launch an initiative to revive and join the EDC. Incidentally, a request by Central and Eastern EU member states to join the EDC could put pressure on France and Italy to ratify the treaty, and also offer an opportunity to Germany, Belgium, the Netherlands and Luxembourg to reaffirm their commitment to the EDC today. As mentioned above, while the parliaments of these four countries democratically ratified the EDC treaty, they did so many years ago. Although public international law rests on the principle that ‘pacta sunt servanda’, treaty obligations must be honoured, it also recognizes the principle of ‘rebus sic stantibus’: After a

fundamental change of circumstances, a party may withdraw from or terminate the treaty. Since the accession of new member states to the EDC would need to be ratified by all six founding members, this would offer the opportunity to the current Parliaments of these four countries to reaffirm their support for the EDC project today, and thus lend additional legitimacy to the project.

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## 8 Conclusion

Europe faces unprecedented security threats. Europeans expect the EU to take a bolder stance in world politics. Indeed, **73 percent** of Europeans want the EU to take more responsibility internationally. Defence should be put at the top of the political agenda, alongside other threats to Europe's future stemming from a loss of competitiveness or climate change. As the recent Niinistö report pointed out, Europe must increase its preparedness for various threats, including

pandemics, extreme climate events, and war. Currently, however, discussions are often lost in the details, missing the bigger picture and avoiding the thorniest issues, such as deeper cooperation among EU member states, democratic legitimacy, budget, means to tackle disinformation and hybrid war or nuclear weapons. This paper has sought to contribute to the debate by exploring how to finally bring to life the EDC as the most sophisticated blueprint for defence integration.