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EDITORIAL

The EU's (not so) cheap talk on defence

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Abstract
This editorial critically examines the European Union's rearmament agenda, framed by the Commission's *Readiness 2030* plan and the Security Action for Europe (SAFE) Regulation, in response to geopolitical threats and possible US disengagement. While EU leaders present military investment as essential for safeguarding the 'European way of life', the measures proposed reveal a deep disjunction between rhetoric and reality. The plan falls short of establishing genuine strategic autonomy, as NATO remains central and procurement from US industries is reinforced, undermining the claim of independence. Moreover, by relying primarily on national spending and only modest EU financial instruments, the initiative risks entrenching asymmetries between Member States, strengthening national military–industrial complexes rather than building a coordinated European defence framework. By the same token, the legal dimension is equally fraught: the selective use of (national) escape clauses in the Stability and Growth Pact and the reliance on Article 122 TFEU for SAFE highlight the EU's increasing dependence on creative but legally precarious interpretations. Substantively, the rearmament effort may erode the European social model, as higher defence spending is likely to erode welfare and public investment. Ultimately, the project reflects continuity with past crises: lofty integrationist rhetoric coupled with measures that entrench fragmentation and fiscal imbalance.

I. Introduction

The European Union has made up its mind. In the face of a widely perceived 'existential threat' posed by Russian militarism and the possible disengagement of the United States of America from Europe, we are told that the time has come for rearmament through a massive military investment plan. 'Peace through deterrence' seems to us an apt leitmotiv to encapsulate the vision underpinning the European Commission's recent proposals. The motto captures the widespread belief among European leaders: that external powers – chiefly, Russia and China – pose a serious challenge to the European way of life and its core values, and that only through an unprecedented strengthening of defence and security capabilities can these threats be countered. As President of the European Commission Ursula von der Leyen put it, these are dangerous times, and Europe must be prepared to defend itself – alone, if necessary.[1]

[1]See her speeches of 18 March 2025 available at <https://ec.europa.eu/commission/presscorner/api/files/document/print/sv/speech_25_814/SPEECH_25_814_EN.pdf>; and of 9 July, <https://ec.europa.eu/commission/presscorner/detail/en/speech_25_1777>. On the latter occasion she said: 'We cannot rely on others to defend Europe. The defence of Europe is our responsibility'. See also the more recent speech of 10 September 2025 (State of the Union speech), available at <https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_25_2053>.

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In the presence of such a broad and cross-party consensus as that recorded at the European Council of 6 March 2025,[2] it is perhaps futile to object that it was precisely the obsession with deterrence that was at the origin of the protracted European conflict spanning from 1914 to 1945, a veritable new '30 years' war'.[3] Or that the goal of rearmament contradicts the original commitment expressed in the Schuman Declaration to make not only 'unthinkable' but also 'materially impossible' any war in Europe.[4] More topical considerations do not seem destined for greater success either. Is it really true that rearmament – and not a further investment in diplomacy – is the path that holds more promise? Is it really appropriate to increase the already conspicuous military spending (close to EUR 350 billion, almost 2 per cent of EU GDP)[5] without first rationalising existing spending, that is, creating the appropriate synergies between national defence systems?[6] Can such a decisive debate be undertaken without even a cursory reflection on the impact it would have on the rest of the world, not least in terms of the dangerous nuclear (dis) equilibrium prevailing at this time? By the same token, is rearmament really a priority objective in a Europe in which political forces with poor democratic credentials seem poised to gain the upper hand in many countries?[7] The latter question is perhaps especially pertinent given that the European Commission, and not only the opponents of rearmament, admits openly that increased military spending will, sooner or later, lead to cuts in social spending and public investment.[8] Moreover, such a view has been echoed in very explicit terms by the German Chancellor Friedrich Merz as this text was about to enter editorial production.[9]

All such questions, however, can be set aside for the purposes of this editorial, because, at least for the time being, the die seems to be cast.[10] This is why, rather than questioning the wisdom of a well-established policy choice, we examine its specific content and its implications on European institutional and socio-economic arrangements, with more than one eye set on constitutional

[2]European Council, 'Conclusions', 6 March 2025, available at <https://www.consilium.europa.eu/media/tzkadtec/20250306-european-council-conclusions-en.pdf>.

[3]A term originally coined by De Gaulle to emphasise the extent to which in the first part of the short 20th century a protracted European civil war unfolded. He used the term for the first time in a speech given on 18 July 1946. For the full text in French, see <https://www.cvce.eu/en/obj/address_given_by_charles_de_gaulle_bar_le_duc_28_july_1946-en-1c530dec-e337-4aa3-9e6f-293c5b440c27.html>.

[4]The full text can be accessed via <https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950_fr>.

[5]European Defence Agency, 'EU defence spending hits €343 bln in 2024, EDA data shows', 2 September 2025, available at <https://eda.europa.eu/news-and-events/news/2025/09/02/eu-defence-spending-hits-343-bln-in-2024-eda-data-shows>.

[6]A report for the European Parliament concluded that savings up to 57bn euro can be realized in the not distant future. See 'Improving the quality of European defence spending – Cost of non-Europe report' <https://www.europarl.europa.eu/RegData/etudes/STUD/2024/762855/EPRS_STU(2024)762855_EN.pdf>.

[7]The trend was very visible already pre-Covid. See A Ellinas, *Organizing Against Democracy: The Local Organizational Development of Far Right Parties in Greece and Europe* (Cambridge University Press 2020). It has only been amplified since. On what concerns the elections to the European Parliament, see, for example, SB Hobolt, SA Popa and W van der Brug 'European democracy in action? The 2024 European Parliament elections' (2025) Journal of European Public Policy 1, pre-print available at <https://doi.org/10.1080/13501763.2025.2542254>. See also I Hwang, 'Is the European Parliament a Key to Success for (All) Right-Wing Populist Parties? Two Different Pathways to Engaging with the EP' 60 (3) (2025) Government and Opposition 643.

[8]European Commission, 'Accommodating increased defence expenditure within the Stability and Growth Pact', 19 March 2025, C(2025) 2000 final, available at <https://defence-industry-space.ec.europa.eu/document/download/a57304ce-1a98-4a2c-aed5-36485884f1a0_en?filename=Communication-on-the-national-escape-clause.pdf> 6. The relevant quotation is referred below, in concrete in the text referring to n 33.

[9]A Berry, 'German welfare state "can no longer be financed" – Merz', DW Online, 23 August 2025, available at <https://www.dw.com/en/german-welfare-state-can-no-longer-be-financed-merz/a-73742270>; C Boutelet, 'In Germany, social welfare is "no longer sustainable"', Le Monde, 12 September 2025, available at <https://www.lemonde.fr/en/economy/article/2025/09/12/in-germany-social-welfare-is-no-longer-sustainable_6745324_19.html>.

[10]For example, the already cited speech before the European Parliament with the occasion of the session on the State of the Union, above n 1.

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norms and arrangements. Our intention, in line with the identity of this Journal, is to provide a legal but contextual analysis of the blueprint of European rearmament.

The text is structured in two parts. In the first, we highlight the persistent hiatus that exists between the aspiration to establish a true European defence and security union and the actual measures envisaged in the plan approved by the European Council[11] (the latter building on the blueprint put forward by the European Commission).[12] In the second part, we explore the legal dimension of the suspension of the Stability and Growth Pact and the introduction of the *Security Action for Europe (SAFE)* program. The conclusions allow us to distil the core elements of our argument: in our view, the rearmament plan, far from marking a decisive step toward the Union's strategic and military autonomy or delivering the desired deterrent effect, should be understood as a more modest initiative aimed at reinforcing national military–technological–industrial complexes. This initiative is situated in an institutional framework that is likely to face difficulties in ensuring effective coordination and balanced national defence spending, while simultaneously exacerbating the erosion of the European social model.

2. What does European rearmament stand for?

A. The disconnect between aspirations and reality

A first aspect of the rearmament plan that warrants attention concerns the extent of the transformation being pursued by the European Union. In their joint white paper for European defense – named *Readiness 2030*[13] – the European Commission and the High Representative for Foreign Affairs and Security Policy state in unequivocal terms that Europe stands at a critical crossroads. Two main possible paths are envisaged. On the one hand, Europeans could continue with a policy of muddling through, characterised by cautious and incremental adaptation to the emerging challenges. On the other hand, they could opt for a resolute shift, directly confronting the threats it currently faces.[14] Given the gravity and the magnitude of the external threats, the Commission and the High Representative clearly advocate for the latter course. They claim to be now convinced that the policy of small steps is a luxury that European governments can no longer afford.[15]

Based on this rhetorical premise, one could legitimately expect the Commission to go bold and advance decisively in the direction of strategic autonomy or, in more plain language, of state-building.[16] This would mean at least redefining the governance of EU defence and leveraging on defence to launch a plan of massive public investments aimed at strengthening European economic and social infrastructures.

However, when one moves from rhetorical declarations to the level of concrete initiatives, it quickly becomes apparent that radical change is not truly on the agenda.

[11]See European Council Conclusions, 6 March 2025, above n 2.

[12]'Commission Work Programme 2025', available at <https://commission.europa.eu/strategy-and-policy/strategy-documents/commission-work-programme/commission-work-programme-2025_en>; See also von der Leyen's speech at the Munich security conference, 14 February 2025, available at <https://www.eeas.europa.eu/delegations/ukraine/speech-president-von-der-leyen-munich-security-conference-2025_en?s=232>; And her statement of 5 March, available at <https://ec.europa.eu/commission/presscorner/detail/et/statement_25_673>. See also the State of the Union address of September 10, above n 1.

[13]European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'Joint White Paper for Defence, Readiness 2030', 19th March 2025, available at <https://defence-industry-space.ec.europa.eu/document/download/30b50d2c-49aa-4250-9ca6-27a0347cf009_en?filename=White%20Paper.pdf>.

[14]Ibid., 1.

[15]Ibid., 1, 3, 5.

[16]RD Kelemen and KR McNamara, 'State-building and the European Union: Markets, War, and Europe's Uneven Political Development' 55 (2022) Comparative Political Studies 963.

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Take, first, the governance of EU defence. As much as the Commission strives to affirm European strategic autonomy,[17] and as the reference to European sovereignty escalates in public discourse,[18] in practice the White Paper reaffirms the decisive importance of NATO,[19] a circumstance that realistically signals that now and in the near future European countries will not be able to do without the decisive assistance and leadership of the US (or do not want to renounce to such contribution and, consequently and unavoidably, dependence).[20] This choice allows the European institutions, rightly or wrongly, to continue to gloss over the issue of the government of European defence. In particular, it leaves unanswered the question of how the combined defence potential of a disparate group of states can be made credible in the absence of effective mechanisms for military coordination in the event of a real conflict. In other words, the fundamental question remains: how the imperial (more piously called hegemonic) role played by the United States will be discharged if the EU were to achieve full autonomy in defence and security? Put more bluntly, how will command be organised once the default option of assigning it to the 'foreign prince' (ie, the US) is no longer available?

In that regard, the set-up outlined by the Lisbon Treaty could only brave the waves if never tested in high-intensity warfare. This is rather unsurprising if we remember that it was designed to conduct *peace-keeping* or conflict prevention operations within NATO.[21] But if that is the case, then the deterrent potential of the Lisbon framework is minimal, if not virtually nonexistent. Establishing an effective chain of military command would require more than operational adjustments; it would necessitate a major revision of the EU Treaties, one carrying profound constitutional and political implications.[22] Nevertheless, the White Paper does not even mention Treaty reform. No wonder: also when it comes to defence, amending the treaties is complete taboo at this point of time. The shadow that the constitutional failure of 2005 keeps on casting on European politics is long. Moreover, the appetite for such reform among European publics remains to be democratically tested, not least because everybody realises that the creation of a military command structure, 20 years after the introduction of a single currency, would be a decisive step in the direction of creating a state-like EU. It is then understandable why on such a

[17]A detailed history of the emergence of the concept, in M Damen, 'EU strategic autonomy 2013–2023: From concept to capacity', Think Tank European Parliament, 8 July 2022, available at <https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)733589>. The Commission has recently started qualifying the concept as 'open'. See, for example, 'Communication from the Commission to the European Parliament and the Council, 2023 Strategic Foresight Report: Sustainability and people's wellbeing at the heart of Europe's Open Strategic Autonomy', 6 July 2023, COM(2023) 376 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023DC0376>.

[18]The term was introduced to European debates by President Macron in his 2017 Sorbonne speech. See 'Initiative for Europe. Speech by M. Emmanuel Macron, President of the French Republic', 29 September 2017, available at <https://www.diplomatie.gouv.fr/IMG/pdf/english_version_transcript_-_initiative_for_europe_-_speech_by_the_president_of_the_french_republic_cle8de628.pdf>. That even triggered an editorial by the European Constitutional Law Review, 'European Sovereignty' 14 (1) (2018) European Constitutional Law Review 1. On the spread of the concept in the following years, see B Dupré, 'European sovereignty, strategic autonomy, Europe as a power: what reality for the European Union and for what future?' Fondation Robert Schuman, Working Paper 620, available at <https://www.robert-schuman.eu/en/european-issues/620-european-sovereignty-strategic-autonomy-europe-as-a-power-what-reality-for-the-european-union-and-for-what-future>. That paper should perhaps be read together with the results of the Jaurés/Ebert poll on the perception of term and the extent to which is regarded as a tangible reality by citizens, 'Survey on European sovereignty', Friedrich Ebert Stiftung, available at <https://www.fes.de/en/survey-european-sovereignty>.

[19]European Commission and High Representative of the Union for Foreign Affairs and Security Policy, above n 14, 2: 'EU support to collaborative capability development will thus facilitate EU Member States in NATO to deliver on their capability targets more quickly and economically and with enhanced interoperability from the outset'.

[20]A point maliciously raised in N Vinocour, How Donald Trump became president of Europe, Politico, 9 September 2025, available at <https://www.politico.eu/article/donald-trump-european-union-president/>.

[21]See Arts 42(1)-43 TEU.

[22]It does not seem inappropriate to remind the reader that under the Lisbon Treaty the Union is expected to '[. . .] respect their [of the Member States] essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State. The text is of course taken from Art 4(2) TEU.

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crucial point the Commission and the European Council are extremely reticent, so much so that they either fudge the issue or simply avoid it.[23]

However, if the threat we face is as real as the European institutions claim, and the Union avoids acting as seems to be objectively required by the circumstances, then it is hard not to draw the conclusion that the Union continues to be utterly unprepared. Should the protection offered by NATO's Article 5 actually falter (as leading institutional actors seem to assume now will happen in the not distant future, if it has not already disappeared *de facto*),[24] Europe will have no choice but to turn to the 'smaller' internal solidarity in the absence of *ex ante* arrangements about how to combat together.[25] Indeed, at that point of existential urgency, it will be found that any collective response requires a unanimous vote,[26] not exactly the most propitious way to proceed in the middle of a war, not even a Cold one.

B. Is long-term strategic autonomy compatible with the 'deal' with the United States?

The incapacity of the EU to achieve strategic autonomy is not confined to its unwillingness to reform the governance of defence. An additional hurdle in the attainment of that goal has emerged in the context of the 'deal' with the United States on trade and investment. As said, rearmament plans have been justified also in the name of the perceived risk of US disengagement from European defence. While the ultimate goal of the Union is to make Europe ready for the day in which the US defensive umbrella will no longer be there, in the short run it is regarded as imperative to avoid a too sudden and too quick American withdrawal. Such an imperative has been regarded as a good reason to grant the present US administration a set of major concessions, not only in terms of 'burden-sharing' within NATO,[27] but also through a 'deal' on trade and investment, as scenified in President Trump's private resort in Turnberry (Scotland) on 27 July.[28] What may be characterised as a politically but not legally binding text reflecting the 'deal' was jointly produced and published on 21 August.[29] It is worth quoting paragraph 7 at length, which reads:

[23]Indeed, the security threat following the Russian invasion of Ukraine has not produced meaningful steps in the direction of EU capacity building, at least in the short term. See P Genschel, 'Bellicist Integration? The War in Ukraine, the European Union and Core State Powers' 29 (2022) Journal of European Public Policy 1885.

[24]R Aymerich, 'Entrevista a José Borrell, Presidente del Cidob : Con Gaza, Europa se ha desacreditado completamente frente al resto del mundo', La Vanguardia, 11 May 2025, available at <https://www.lavanguardia.com/internacional/20250511/10660024/gaza-europa-desacreditado-completamente-frente-resto-mundo.html>. 'We still think in terms of the Atlantic Alliance, but to a large extent it is a thing of the past. At least for Trump. The US front line is no longer in Europe. It is in Asia. And they are right to tell us that we should worry about our own security, because it is true that we have sublet it to the US since the end of World War II. Obama already told us this. But since he did so politely, we ignored him. Trump says it in a very blunt way, in his usual rude style, as is his wont. And he means it'.

[25]See Art 42(7) TEU.

[26]See Art 42(4) TEU.

[27]The Hague Summit Declaration issued by the NATO Heads of State and Government participating in the meeting of the North Atlantic Council in The Hague, 25 June 2025, available at <https://www.nato.int/cps/en/natohq/official_texts_236705.htm>.

[28]That 'deal' was not immediately followed by a common declaration of the two delegations, with each one issuing its own press release. The press release issued by the European Commission can be found at <https://ec.europa.eu/commission/presscorner/detail/en/qanda_25_1930>; the US 'fact sheet' is available at <https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-the-united-states-and-european-union-reach-massive-trade-deal/>. For contrasting assessments on the basis of a pretty similar diagnosis, see M Sandbu, 'Europe is selling its soul to Trump', Financial Times, 25 August 2025, <https://www.ft.com/content/75609ba4-cc61-4556-8ca2-09381da721e9>; and J Ganesh, 'Europe's necessary appeasement of Donald Trump', Financial Times, 24 September 2025, available at <https://www.ft.com/content/7d4866b6-28a9-4e69-9288-4e970447ffe7>.

[29]See above n 63.

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> The European Union plans to substantially increase procurement of military and defence equipment from the United States, with the support and facilitation of the US government. This commitment reflects a shared strategic priority to deepen transatlantic defence industrial cooperation, strengthen NATO interoperability, and ensure that European allies are equipped with the most advanced and reliable defence technologies available.

This is a remarkable sentence, for three reasons.

First, because the actual levels of procurement from the US are already very high. If we are to consider as accurate the figure provided in the Draghi report of late 2024, 63 per cent of all EU defence orders between mid 2022 and mid 2023 (close to 88 bn according to official EDA figures for the 2023 year)[30] were placed with US firms (ie, around 55 bn euro).[31]

Second, because the degree of a peculiar form of 'interventionism' resulting from the deal, while unsurprising when it comes to the defence sector, reveals the extent to which European rearmament is certainly going to proceed on the basis of non-market albeit thoroughly capitalistic arrangements (US corporations clearly fit that characterisation). The degree of contagion of this very peculiar form of interventionism becomes clear in paragraph 5 of the same joint statement:

> The United States and the European Union commit to cooperate on ensuring secure, reliable, and diversified energy supplies, including by addressing non-tariff barriers that might restrict bilateral energy trade. As part of this effort, the European Union intends to procure US liquified natural gas, oil, and nuclear energy products with an expected offtake valued at $750 billion through 2028. In addition, the European Union intends to purchase at least $40 billion worth of US AI chips for its computing centres. The European Union further plans to work with the United States to adopt and maintain technology security requirements in line with those of the United States in a concerted effort to avoid technology leakage to destinations of concern. The United States will endeavour to facilitate such exports once such requirements are in place'.

The third and fundamental reason why we should pay attention to this sentence is that what the EU is pledging to do contradicts the proclaimed willingness to take steps in the direction of strategic autonomy. More than acknowledging a disengagement of the US from the European scenario, this commitment signals an intention to postpone *sine die* the plan for the EU to become autonomous in defence and security terms.

It remains to be seen to what extent the joint statement is translated into binding EU legislation and fully fleshed institutional decisions. But the mere fact of its existence confirms the confused and contradictory nature of European plans on defence, where aims and goals hardly match likely consequences and implications.

C. Are cannons (and drones) to be bought at the expense of butter?

The gap between aspirations and reality in EU defence plans is not simply a matter of ineffective governance or contradictory attitudes toward the US. Even more troubling than these uncertainties is the deep confusion within these documents about what, precisely, Europeans are expected to defend. To be sure, the war in Ukraine, escalated with the 2022

[30]European Defence Agency, 'Defence Data 2024–2025', available at <https://eda.europa.eu/docs/default-source/brochures/2025-eda_defencedata_web.pdf>.

[31]'The Draghi Report on European Competitiveness', part B, 165, available at <https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en>. European Commission and High Representative of the Union for Foreign Affairs and Security Policy, above n 14 18 refers that 60 per cent of the capital of European defence corporations is in US hands.

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Russian invasion, has resulted in a state of open confrontation constituting a tangible security threat, especially for the Member States sharing a physical border with Russia. All this seems to have constituted a powerful reminder of the need to patrol and protect EU physical boundaries.[32] However, in those very documents Europe is portrayed not just as a territory but also as a 'way of life'.[33] In theory, this might sound inspiring: at its most optimistic, the commitment to defend the European 'way of life' could signal a broader pledge to move beyond austerity and fully (re)embrace the European social model. Indeed, even some progressive critics of EU austerity view the rearmament plan as a chance to bolster the EU's economic and social credentials through defence investment.[34]

Nevertheless, what the EU actually has in store falls far short of military Keynesianism (a far from uncontroversial concept).[35] The Council Recommendations allowing Member States to activate the national escape clause foresee that the deduction of military expenditures from the net expenditure calculation will leave national budget balances unaffected. But only during the first four years. After that, as the Commission itself stated,

> Member States would have to sustain the higher spending level through gradual re-prioritisations within their national budgets, to safeguard fiscal sustainability'.

In plainer language, the Commission is reminding States that paying for defence and security will require, given the economic, social, and demographic circumstances in which the EU finds itself, increased taxation and/or reductions in other items of public spending. As we pointed, Chancellor Merz is already on record claiming that Germany should downsize its welfare state.[36]

It is to say the least paradoxical that the defence of the 'European way of life' may indeed lead to the further dismantlement of the European social model, without which not only the European way of life may become a squalid copy of the US one, with inevitable detrimental consequences on the very fabric of social integration in Europe and, ultimately, on its very security. All the appeals to the defence of the 'rule of law' and EU values should be complemented with the prescient insights coming from the interwar period, concerning the impossibility of a rule of law 'without adjectives' (that is, divorced from solid democratic and social commitments) to keep society whole. There is no democratic legitimacy and no national security without a Democratic and Social Constitutional State.[37] Claiming that we cannot afford anymore the latter to pursue the former is a statement revealing a lack of understanding of the history of Europe.[38]

[32]The European Commission has proposed the creation of a 'drone wall' on the 'Eastern flank' of the EU. See J Smialek, 'What is Europe's "Drone Wall"?', New York Times, 1 October 2025, available at <https://www.nytimes.com/2025/10/01/world/europe/drone-wall-european-union-russia.html>. The plans were still being put together at the time at which this editorial went into production. The Commission's proposal is contained in 'Preserving Peace-Defence Readiness Proposal 2030', 17 October 2025, JOIN (2025) 27 final, available at <https://defence-industry-space.ec.europa.eu/document/download/9db42c04-15c2-42e1-8364-60afb0073e68_en?filename=Joint-Communication%20_Defence-Readiness-Roadmap-2030.pdf>.

[33]Ibidem, 1 and 3.

[34]Such as Stiglitz. Cf. 'Freedom and rearmament, with Joseph Stiglitz' available at <https://www.ilpost.it/podcasts/globo/freedom-and-rearmament-with-joseph-stiglitz/>.

[35]The concept is a bastardization of Keynes' thought, see J Robinson, 'What has become of the Keynesian revolution?', in J Robinson (ed), *After Keynes* (Blackwell 1973) 10–11.

[36]See above n 9.

[37]H Heller, 'Political Democracy and Social Homogeneity', <https://www.degruyterbrill.com/document/doi/10.1525/9780520929685-025/html>.

[38]A critical structural analysis in A Somma, 'L'Unione europea nel sistema di guerra: il conflitto russo ucraino e le evoluzioni del capitalismo' 2 (2025) Costituzionalismo.it 18, available at <https://www.costituzionalismo.it/lunione-europea-nel-sistema-di-guerra-il-conflitto-russo-ucraino-e-le-evoluzioni-del-capitalismo/>.

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D. The asymmetric strengthening of national military industrial complexes

In fact, far from venturing in uncharted waters, the strategy prepared by the Union develops in full continuity with the strategic objectives and modes of governance pursued and the instruments employed in the recent past.[39] In the short term, the support to Ukraine initiated with the *Act in Support of Ammunition Production (ASAP)*[40] and the *EU Military Assistance in Support of Ukraine (EUMAM)*[41] is confirmed. In the medium to long term, the Union creates conditions for its Member States to 'improve [their] military capabilities'.[42] In this regard, most of the economic effort will fall on national governments, which are called upon to increase investment and current spending in a number of priority areas related to high-intensity warfare. It is important to keep in mind that more than a plan to create a supranational defence policy, the Commission and the High Representative are proposing to render possible *that each European state rearms itself*.[43]

Indeed, the role of the Union is essentially auxiliary. The contribution of supranational institutions comes first and foremost in the form of subsidised loans aimed at fostering the coordination and interoperability of national defence systems. Additionally, it is foreseen that European rules would be streamlined, so as not to hinder the mobility of troops within European territory.[44] The initiatives planned in this regard are many but also rather scattered. Most of them are yet to be translated into binding norms, so, unsurprisingly, the definition of some of the objectives remains rather unsettled at present.[45]

At any rate, boosting defence investment is clearly the top priority for the Union. At first glance, the overall proposed scheme largely follows the template of the twofold supranational response to the Covid-19 emergency. First, fiscal rules are relaxed (selectively) so as to encourage national public investment in military expenditures. Thus, the political and fiscal space is effectively 'created' by carving out exceptions to the ordinary rules, allowing Member States to increase spending on defence and security. Second, a European financial assistance instrument is set up for the Member states with a view to coordinate state's spending (notably, avoiding duplications and creating synergies) and introduce an element of equalisation so that all Member states are in the position of increasing their military and defence expenditure.

Yet, upon closer examination, there are striking differences between *Readiness 2030* and the response to the Covid-19 emergency. While the defence plan encourages national governments to finance military spending through market borrowing, it critically lacks the equivalent of both the *Pandemic Emergency Purchase Programme,*[46] the ECB plan that during the pandemic mitigated the

[39]See, for example, the legal and political design of the European Defence Fund: Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092, OJ L 170, 12.5.2021, 149. Available at <http://data.europa.eu/eli/reg/2021/697/oj>. See also BO Martins and J Mawdsley, 'Sociotechnical Imaginaries of EU Defence: The Past and the Future in the European Defence Fund' 59 (6) (2021) Journal of Common Market Studies 1458; F Giumelli and M Marx, 'The European Defence Fund Precursor Programmes and the State of the European Market for Defence' 23 (2023) Defence Studies 589.

[40]European Commission, 'ASAP: Boosting defence production', available at <https://defence-industry-space.ec.europa.eu/eu-defence-industry/asap-boosting-defence-production_en>.

[41]'EU Military Assistance Mission in support of Ukraine', available at <https://www.eeas.europa.eu/eumam-ukraine_en?s=410260>.

[42]See Art 42(3) TEU.

[43]In line with the NATO commitment to increase defence and security spending for an amount of 5 per cent of their GDP, see NATO Heads of State and Government, 'The Hague Summit Declaration', 25 June 2025, available at <https://www.nato.int/cps/en/natohq/official_texts_236705.htm>.

[44]The 'old' 2022 plans on 'military mobility 2.0' (cf. Joint Communication to the European Parliament and the Council: Action Plan on military mobility 2.0', JOIN (2022) 48 final, 10 November 2022, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022JC0048>) is being updated with the so-called military mobility package, see <https://transport.ec.europa.eu/transport-themes/military-mobility_en>.

[45]This is indeed the case of the military mobility package, the structure of which is known, but whose actual contents are actually yet being decided.

[46]See <https://www.ecb.europa.eu/mopo/implement/pepp/html/index.en.html>.

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borrowing costs for highly indebted member states, and *the Next Generation EU*,[47] the one-off fiscal plan providing substantial support to national recovery plans in the form of non-repayable grants and cheaper loans. Lacking the widespread consensus necessary to, respectively, allow ECB activism and approve robust EU fiscal measures, what the EU has on offer is only the *Security Action For Europe (SAFE)*,[48] a more modest temporary and emergency instrument aimed at strengthening the European defence technological and industrial base through a EUR 150 billion fund, borrowed by the Commission on capital markets, and used to finance loans to national governments.[49]

Unsurprisingly, the absence of robust equalising measures has already created the preconditions for further divergence. On the one hand, many fiscally constrained Member States have refrained from profiting from the relaxation of fiscal rules.[50] On the other hand, several countries have accelerated tremendously their spending plans. Germany, in particular, has moved decisively in that direction. Its recent constitutional amendment permanently exempts defence expenditures exceeding 1 per cent of GDP from debt-brake rules.[51] Additionally, it creates a EUR 500 billion special fund for infrastructure and climate neutrality, valid for 12 years.[52] This move not only entrenches Germany's fiscal dominance but also widens the gap with other member states lacking comparable fiscal room.

3. The legal dimension of the rearmament plan

Having assessed the general content and substantive implications of the European Commission's plans, we next zoom on their legal dimension. Both the coordinated activation of the general escape clause and the *SAFE* programme entail legal criticalities that have been largely overlooked in existing commentaries.[53] Our purpose in highlighting these is not to suggest that a direct challenge to their legality would be advisable (that is rather immaterial to our argument, even if a relevant policy question), but rather to underscore how, in the absence of a comprehensive reform of the EU Treaties and the Stability and Growth Pact, the Union's institutions are increasingly driven to employ innovative legal constructs and what may be labelled as strained hermeneutic techniques. This reliance on doctrinal elasticity, consistent with patterns observable since the Eurozone and Covid-19 crises, contributes to the progressive weakening of the EU's formal commitment to the rule of law.

A. Suspending or materially breaching the new Stability and Growth Pact?

To favour national military spending, the Commission has opted for the coordinated activation of the national escape clause of the new Stability and Growth Pact.[54] Such a decision reflects the

[47]See <https://next-generation-eu.europa.eu/index_en>.

[48]Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument, OJ L, 2025/1106, 28.5.2025, ELI: <http://data.europa.eu/eli/reg/2025/1106/oj>.

[49]Id., Art 6. Loans will be available until the end of 2030 (Art 12) and must be repaid within up to 45 years (Art 10 (2)).

[50]On 8 July, the Council accepted the activation of the national escape clause for 15 Member States. See 'Council activates flexibility in EU fiscal rules for 15 member states to increase defence spending', 8 July 2025, available at <https://www.consilium.europa.eu/en/press/press-releases/2025/07/08/council-activates-flexibility-in-eu-fiscal-rules-for-15-member-states-to-increase-defence-spending/>.

[51]See the amended versions of Arts 109 (3) and 115 (2) of the German Basic Law. On the controversial process leading to the amendment, see AJ Menéndez, 'Editorial: Rewriting the German Fundamental Law in a Blitz' 3 (2024) European Law Open 687l.

[52]See the amended version of Art 143h of the German Basic Law.

[53]E Chiti, 'Il rafforzamento della difesa europea' 2 (2025) Giornale di Diritto Amministrativo 145, 'Editorial Comments: ReArm Europe/Readiness 2030: European defence in times of war' 62 (4) (2025) Common Market Law Review 1019.

[54]Art 26 of Regulation (EU) 2024/1263 of the European Parliament and of the Council of 29 April 2024 on the effective coordination of economic policies and on multilateral budgetary surveillance and repealing Council Regulation (EC) No 1466/97, OJ L, 2024/1263, 30.4.2024, ELI: <http://data.europa.eu/eli/reg/2024/1263/oj>.

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impossibility (acknowledged by the Commission itself[55]) of taking advantage of the general safeguard clause. The latter can only be triggered when a 'serious economic downturn in the eurozone or the Union as a whole'[56] occurs. Such a condition is not met at the present time.[57] This is why the path of activating in coordinated fashion national escape clauses is followed. In July, the Council, based on a Commission recommendation, authorised the relaxation of fiscal rules for 18 requesting states.[58]

There are several reasons to believe that such a *modus procedendi* is legally problematic. First and foremost, it is hard to avoid the conclusion that it is directed at circumventing limits that the European legislature established only last year, i.e., at a stage when the alleged looming military threat to Europe was already fully known. Indeed, the European Commission and many national leaders insisted on such threat once and again since, at latest, February of 2022. For conflicts that have been raging for years to be considered as a sufficient reason to trigger the escape clauses, it would seem necessary at the very least the provision of reasons of what has actually changed recently, so that institutional actors come at a different assessment of the situation now than they did in 2022, 2023 and 2024. We are not aware of any such set of reasons having been put forward. And yet, the Commission presents Russia's war of aggression against Ukraine and the associated threat to European security as an exceptional circumstance 'beyond the control of the member state' with 'significant repercussions on its public finances', precisely the conditions to be met to trigger the national escape clause.

This leaves two sets of questions unanswered.

First, the concrete repercussions of the current war scenario on national public finances are merely asserted rather than substantiated through studies, empirical data, or economic forecasts. In this respect, a genuine impact assessment is entirely absent. Given that defence and security expenditure are policy domains in which public authorities, by definition, enjoy broad discretion, one might reasonably expect the Commission to consider itself under a heightened obligation to provide such an assessment.[59] Second, the claims regarding the fiscal impact of the war are made a full three years after the recrudescence of the conflict in Ukraine. Why are the clauses activated when the most serious impact of the war on the European economy has already been addressed (as indeed, again, authorities have claimed)?[60]

While on this specific point it will be easy for the policymaker to invoke the wide discretion inherent in decisions such as those under discussion, it may be less easy to overcome another order of issues concerning the *contrivance* of the coordinated activation of the national safeguard clause.

[55]European Commission, 'Accommodating increased defence expenditure within the Stability and Growth Pact', 19 March 2025, C(2025) 2000 final, available at <https://defence-industry-space.ec.europa.eu/document/download/a57304ce-1a98-4a2c-aed5-36485884f1a0_en?filename=Communication-on-the-national-escape-clause.pdf> (n 4) 2.

[56]Art 25 of Regulation 2024/1263, above, n 45.

[57]Unless we resort to the argument that the policies applied by the US, and leading to the Joint Statement of 21 August 2025, available at <https://policy.trade.ec.europa.eu/news/joint-statement-united-states-european-union-framework-agreement-reciprocal-fair-and-balanced-trade-2025-08-21_en>, have a major depressive effect on the European economy. That is contradicted by the claims made by the President of the European Commission in her upbeat characterisation of the 'deal' See 'Statement by President von der Leyen on the deal on tariffs and trade with the United States', 27 July 2025, available at <https://ec.europa.eu/commission/presscorner/detail/en/statement_25_1915>.

[58]See above n 38. Due to national procedural requirements (and marginal political differences), it was very unlikely that all Member States activated the clause simultaneously. Events have proven right such an assumption. This highlights that the coordinated activation of national clauses is not equivalent to the activation of the European general clause. It is interesting to notice that while Germany had expressed its intention to trigger the clause, it had not fulfilled the national procedural requirements to do so by the beginning of July.

[59]See, for example, Judgment in Case C-58/08 *Vodafone* ECLI:EU:C:2010:321, paras 52–3. The issue has been hammered in on several occasions by the now President of the CJEU, Koen Lenaerts. See K Lenaerts, 'The European Court of Justice and Process-Oriented Review' 31 (2012) Yearbook of European Law 3.

[60]The weakness of the argument is compounded by the fact that 2021 is the year which is considered the last 'normal' one for the purposes of calculating the new spending ceiling.

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In particular, it is possible to challenge the assumption from which the European Commission moves, namely, the supposed diversity of circumstances that would allow the use of the national safeguard clause (Article 26 of Regulation 2024/1263) and the general safeguard clause (Article 25 of the said Regulation). As anticipated, the Commission considers that only the general clause is conditional on the existence of a serious economic downturn, while the national clause could already be available in the presence of unspecified exceptional circumstances beyond the control of the member state. Starting from this assumption, the alleged general economic problems resulting from Russia's invasion of Ukraine are broken down into a series of national economic problems, with the result that the obstacle posed by the discipline of the general safeguard clause is circumvented. This already raises a few perplexities and an administrative lawyer might even discern in it indications of a misuse of power. When the conditions are not met to apply the general clause, a similar effect is obtained by means of transforming the collective issue in a sum of individual problems. But scepticism is bound to increase as soon as one delves deeper into the analysis of the rules in question. While it is true that the interpretation put forward by the Commission is superficially grounded in the letter of the said Articles 25 and 26 of Regulation 2024/1263, it is equally evident in Recitals 40 and 41 of the same regulation that both clauses were designed to cope with serious economic downturns. In other words, the difference between the two clauses seems not to be qualitative, but only quantitative: the national clause is aimed at coping with economic downturns *circumscribed* to a Member State, while the general clause is aimed at a recession affecting the Union *as a whole*. If this were the case, not even the national escape clause would be available in the current circumstances.

Doubts about the legitimacy of the use of the national escape clause can finally be expressed with respect to its selective nature. In fact, the activation of the clause will neither lead to a revision of the 'reference trajectories' (the public spending reduction targets previously agreed upon at the European level),[61] nor to a general loosening of fiscal rules (as happened during the Covid-19 pandemic). The Commission aspires to a narrower and more targeted outcome, namely to allow the decoupling of military spending, and military spending alone, from both the net expenditure reduction trajectory and from the correction path within the excessive deficit procedure. Therefore, the deviations allowed under the escape clause will be strictly monitored and contained with reference to the expenditure items concerned. Or, to put it in technical terms, only expenditures concerning the COFOG division 02 – Defense category will be allowed, for a precise amount (a maximum of 1.5 per cent of GDP is set, taking, as already pointed, 2021 military spending as a basis) and for a limited period of time (4 years).[62]

Even the legal soundness of this move appears precarious. Once again, the Commission seems to be opting for a shortcut of questionable legality, bypassing what would have been the most appropriate instrument to achieve the intended goal – namely, an amendment to the Stability Pact aimed at expanding the 'golden rule'. Specifically, a temporary revision of Article 2(2) could have allowed military expenditures to be included among the deductible items when calculating the 'net expenditure' of Member States. However, even amending the Pact appears a political taboo. Still, the fact that those seeking to preserve the Pact's full binding effect are the same actors who are in favour of dodging its norms for military purposes does not justify attempts to circumvent them. Legal coherence demands transparent reform rather than opaque maneuvering around existing provisions.

[61]Arts 2 (3) and 5 regulation 2024/1263, above n 45.

[62]Accommodating, above n 8, 4. It may be added that even if we suspend our judgment on the legality of the move, the activation of the national escape clauses may provide insufficient space for German rearmament plans. Unsurprisingly, we already hear German voices arguing for a reform of the Stability and Growth Pact. Cf. J Zettelmeyer, Z Darvas, L Welslau, 'What Germany's medium-term fiscal plan means to Europe', Bruegel, 22 October 2025, available at <https://www.bruegel.org/policy-brief/what-germanys-medium-term-fiscal-plan-means-europe>.

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B. SAFE: precarious legal basis, modest equalization of defence and security expenditure and limited coordination

As said, the second component of the European rearmament plan is the *Security Action for Europe* (*SAFE*).[63] As noted, this instrument is supposed to play a complementary function to national rearmament programs[64] by ensuring that all Member States have sufficient resources for rearmament and, at the same time, that military expenditure is carried out in a coordinated manner (translating into an *actual* coordination of the efforts to increase defence and security capabilities).

The model followed is that of *SURE,* the instrument used during the pandemic to provide financial assistance for unemployment support costs incurred by Member States.[65] *SAFE* is also rooted in the emergency legal basis of Article 122 TFEU and, just like *SURE,* authorizes borrowing in the Commission's financial markets totalling EUR 150 billion.[66] These resources will in turn be used for loans extended to Member States to finance their military expenditures.[67] It is not clear according to what criteria the sums found in the markets will be allocated to the Member States nor what interest rate will be applied to these loans. What can be said at this point in time is that the *rationale* for this back-to-back lending is that for several national governments the loans provided will be cheaper than 'direct' borrowing in the financial markets and that Member States will have up to 45 years to repay the loans received.[68] The only European dimension at the level of execution comes in when it is claimed that Member States will have to deploy these resources primarily through joint procurements with other Member States (or Ukraine or states belonging to the EEA).[69]

Regarding the legitimacy of this instrument, Article 122 TFEU is confirmed in its role of *passepartout* legal basis for financial assistance interventions to Member States, although it should be pointed out that the JURI Committee of the European Parliament vigorously challenged its approval, believing that the act in question should also be rooted in Article 173 TFEU (industrial policy).[70] On such a basis, the European Parliament has actually brought the conflict with the Council before the Court of Justice (while stressing that the Assembly does not question the substantive merit of *SAFE*).[71] Whether intentionally or not, that reveals in itself the extent to which defence expenditure is regarded as a way of building up an industrial policy by other means. Moreover, the legal basis of *SAFE* is problematic not only due to the exclusion of the European Parliament from the legislative process, but also because it appears to unduly broaden the scope of Article 122 TFEU to encompass circumstances that, until recently, were considered to fall outside its remit. Notably, the Council Legal Service, in its opinion on the establishment of *NGEU*, expressly stated that

[63]See above n 46.

[64]Ibid., Art 3.

[65]Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak, OJ L 159, 20.5.2020, 1, ELI: <http://data.europa.eu/eli/reg/2020/672/oj>.

[66]SAFE, above n 37, Arts 6 and 9.

[67]Ibid., Art 5.

[68]Ibid., Art 4.

[69]Ibid., Art 5. This, quite obviously, leaves the UK outside the equation.

[70]Cf. G Rosini, '"Scavalcare il voto del Parlamento sul riarmo Ue è illegittimo": Eurocamera contro la mossa di von der Leyen', Il Fatto Quotidiano, 23 April 2025 <https://www.ilfattoquotidiano.it/2025/04/23/scavalcare-parlamento-ue-illegittimo-von-der-leyen-riarmo/7962453/>.

[71]F Bortoletto, 'European Parliament takes EU member state governments to court over the SAFE defense fund', 25 August 2025, available at <https://www.eunews.it/en/2025/08/25/european-parliament-takes-eu-member-state-governments-to-court-over-the-safe-defense-fund/>.

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> Article 122(1) TFEU provides for 'reactive' actions in the sense that it allows to respond to existing difficulties but does not support preventive action to avoid future hypothetical crises, for which other legal bases (and ordinary forms of financing) are available.[72]

If one were to take the Council at its own word, the conclusion seems inescapable: Article 122 TFEU cannot serve as a sound legal basis for financing deterrence programmes, which by their very nature are forward-looking and preventive.

Admittedly, in light of the gravity of the looming threats, debating the precise contours of Article 122 TFEU may risk appearing as the kind of legalistic formalism that undermines the credibility of both the Union and the legal profession that serves it.[73] Thus, let us focus on substance and ask whether *SAFE* can deliver on what it promises, namely heightened and more efficient military investments. If we look at the size of the increase, no doubt, the Union's financial commitment is certainly substantial. Yet, as we already pointed, it is bound to remain very small in relation to the likely defence and security expenditure of the Member States (or to be more precise, of *some* Member States, Germany *in primis*). This leads us to suspect that *SAFE* is unlikely to be able to perform an effective equalizing action, with detrimental consequences for the territorial cohesion of the Union and the tightness of the internal market.

If we look instead to the capacity of SAFE to promote a more efficient use of financial resources, two considerations are in order. The first is that because of its small size, SAFE is unlikely to act as a catalyst for effective coordination of national military expenditures. In fact, while it is possible to assume that through joint procurement the Commission will be able to rationalise, not without difficulty, the interventions financed with European resources, it still remains unspecified how the expenditures financed with national resources will be coordinated in order to avoid duplication and waste.

The second is historical experience with defence expenditure, a field in which the record points to the serious risk of capture of public institutions by the military–industrial complex and subsequent waste of public resources for public money.[74] Such concerns are conspicuously absent in the rearmament debate at the institutional level. This is even more surprising because *Readiness 2030* is not the first step taken in the direction of common defence expenditure. The *European Defence Fund (EDF)* was created back in 2021.[75] The resources allocated to the *EDF* are certainly not negligible (more than 1bn euro per year, with a total of almost 8bn for the period 2021-7), even if clearly very small in comparison to overall defence expenditure on the side of EU states.[76] One would have expected lessons to be drawn from the *EDF* when designing *SAFE*. However, the Commission seems to have paid attention only to the official mid-term assessment, which emphasised the need of increasing significantly the resources of the Fund while engaging in a rather light substantive review of potential shortcomings.[77] Indeed, we have already some signals

[72]Council of the European Union, Opinion of the Legal Service on Proposals on Next Generation EU, 24 June 2020, available at <https://data.consilium.europa.eu/doc/document/ST-9062-2020-INIT/en/pdf> § 131 (Italic added).

[73]But just in a footnote, we dare to ask: if this is the case, and decision-makers truly desire more flexibility, why do they tie their own hands with legal opinions that set out constraints everyone knows are written in the sand?

[74]See for example M DeVore, 'Military-Industrial Complexes and Their Variations', *Oxford Research Encyclopedia of Politics*. Retrieved 30 Sep. 2025, from <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1876>.

[75]Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 (Text with EEA relevance), OJ L 170, 12.5.2021, pp 149–77 <http://data.europa.eu/eli/reg/2021/697/oj>.

[76]Most of the said funds support national research and procurement, with only around 1/3 been destined to fund collaborative research that could be genuinely regarded as 'supranational'.

[77]'European Defence Fund Interim Evaluation Report', 17 June 2025, available at <https://defence-industry-space.ec.europa.eu/eu-defence-industry/european-defence-fund-edf-official-webpage-european-commission/edf-interim-evaluation-report_en>.

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of a rather casual attitude toward transparency in the project review processes, which may have already resulted in waste of public resources and enrichment at the cost of taxpayers' money.[78]

4. Conclusions: European rearmament beyond proclamations

At least since the Lisbon Agenda 2000–2010,[79] the European Commission has tended to produce proclamations that are as lofty as they are inexorably hollow when tested against the facts. The *Readiness 2030* rearmament plan is no exception. If indeed the Member States of the Union consider the risk of external aggression to be a real and imminent one, the measures put forward by the Commission and the Council appear to be ineffective in terms of deterrence, strategic autonomy, and capacity to deliver an effective military response. There is no doubt that military readiness requires clear lines of command, which are a tall order in a pluralistic community such as the European Union. In other words, once the 'foreign prince' (ie, the US) is excluded from the European defence equation, there would be a need of deciding who calls the shots if the chips come down. The tallness of the order is evident; but also the conclusion that even when confronted, in the words of the institutional actors, to an existential threat, European institutions shirk initiatives conducive to bold integration steps. If the Commission was determined in following its rhetoric, it could not but have put forward plans to a wide-ranging Treaty amendment process, including, at the very least, more efficient chain of command, a more legitimate government and an adequate fiscal capacity.

On closer analysis, the programme approved by the European Council, while appealing to fears that are regarded as very real by many European citizens (geography counts in that matter!), in fact merely ushers in the strengthening of national military–technological–industrial complexes through massive recourse to public (EU and national) borrowing. This poses at the very least three urgent questions.

The first is the compatibility of this move with the integrity of the single market and, as a consequence, of the single currency. If, as seems clear, rearmament is intended *also* to reinforce the industrial base of the Member States, the fact that the defence plans are mainly implemented and funded at the national level without meaningful supranational equalising measures will necessarily result in asymmetric outcomes. But that would unavoidably lead to a massive alteration of the competitiveness of the different Member States. What would be left of the regulatory ideal of the 'level playing field' and, in the mid run, of territorial cohesion, we leave the readers to ponder.

The second regards the coherence with which the dual objectives of rearming and reindustrialising Europe are being followed. The political yet formalised terms of the 'trade agreement' with the US seem to suggest that a considerable amount of the additional public spending on arms procurement would not contribute to the building up of 'strategic autonomy' and European reindustrialisation, but to the order book of the US military–technological–industrial complex.

A third concern lies in the extent to which the formal rationale of safeguarding the 'European way of life' is, in practice, accompanied by decisions that risk dismantling one of its core components: the European social model. Both European and national institutional actors have openly acknowledged that the additional expenditure required for defence and security will necessitate reductions in other areas of public spending over the medium and long term. The tension between the political discourse of protection and the fiscal reality of retrenchment raises fundamental questions about the coherence and sustainability of the Union's commitment to its foundational values.

[78]'The European Defence Fund. The opaque use of public funds', available at <https://centredelas.org/publicacions/fed-uso-opaco-fondos-publicos/?lang=en>.

[79]'Presidency Conclusions of the Lisbon European Council of 23 and 24 March 2000', available at <https://www.europarl.europa.eu/summits/lis1_en.htm>.

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That all this is done, we are told once and again, in the name of safeguarding the European values and 'the European way of live', gives us the measure of the cynicism of the ruling classes that govern us and of the passivity of the European peoples and political communities. Admittedly, on the last point we very much hope to be proven wrong.

In this Issue

Is the CJEU becoming more deferential to the European Commission on what regards review of EU merger control, very specifically on issues of law? And if so, what are the implications? Ibáñez Colomo reminds us that we used to expect European judges would fully review legal interpretations and only defer on complex economic assessments. Now, it could be argued, these categories have started to overlap. In that regard, the reader is introduced to the *CK Telecoms* case, a paradigmatic illustration of this trend. In that case, the General Court sought to impose substantive limits on the 'significant impediment to effective competition' (SIEC) test, requiring 'particularly close' competitors or a 'particularly important' maverick firm to justify intervention. The CJEU overturned this, adopting a broader, more flexible approach. Critically, that approach was aligned with that of the Commission. Although the magistrates reaffirmed that legal concepts are subject to full review, in practice they assumed that their actual meaning often emerges only after economic assessment. In a nutshell, this encourages process-based rather than substantive scrutiny. The author stresses that this shift could give the Commission greater policy space to address new challenges, such as Big Tech and 'killer acquisitions'. This, however, would only come, in his view, at the cost of legal certainty. Does this signal a mutation on what the CJEU understands by the 'rule of law' happening just before our eyes?

The Digital Services Act has attracted a disproportionate attention on the side of EU watchers, both lawyers and political scientists (and one should not forget economists). Ortolani, Vahed, Sanfey, and Goanta provide us with a reading undertook from the perspective of behavioural science. The usefulness of doing that is that they can spot the gaps between the implicit and occasionally explicit assumptions of the European legislator and the actual behaviour of the weird set of digital services. The authors present an experimental study showing that users' reporting is influenced not only by legality but also by moral judgments, perceived responsibility, and trust in platforms. They stress that the results of the study suggest that current legal frameworks such as the Digital Services Act underestimate psychological factors shaping moderation practices. Hope is not to be abandoned yet, as they conclude that behavioural evidence can at the end of the day improve regulatory design, and facilitate that legislation (including of course European legislation) aligns with the texture of the 'real world'. After all, Blade Runner's world is not yet the one we inhabit.

It is perhaps unavoidable that the construction of a European legal field, a goal at the very heart of the process of European integration, entails a move away from highly contextual legal rules into abstract legal principles. This is a most ambivalent development, as the integrative capacities of modern law, and its very potentiality as the vehicle and form of democratic decision-making, depends on the right combination of principles and rules. Mancano's contribution approaches that most delicate issue focusing on fairness as a legal principle in the new EU Asylum and Migration Pact (which the reader will remember was the object of Farahat's editorial in a recent ELO issue). The author develops a conceptual framework of fairness – defined as non-arbitrary decision-making, adherence to shared principles, and effective responses to unfairness – and applies it to a critical aspect of the legislation which makes up the Pact, border procedures. The analysis considers the design of these procedures, their compliance with EU values such as solidarity and non-refoulement, and the effectiveness of safeguards like access to asylum, liberty rights, and judicial protection. The article concludes that while fairness is essential for legitimacy, its constant proclamation is no guarantee of actual realisation. The new asylum and migration legislation is indeed a good example of this tragic tension. The 'security' turn of the European Union puts at risk compliance with international, European, and national fundamental norms.

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It is almost an article of faith among Euro-lawyers that law has played an outstanding role in European integration. Not enough attention has been paid to what is actually meant by law. Or to put it differently which EU law and whose EU law we are talking about. *Rethinking European Legal Integration: Legal text from a bottom-up perspective and the functioning of European law, 1957–2000*, a symposium edited by Leucht, Esmark, and Loth provides the reader with some instruments to confront the issue head on. Instead of emphasising only landmark rulings by the Court of Justice of the European Union, the authors sustain, *modo realistico*, that we should define 'legal text' broadly enough so as to include all texts used in legal conflicts. The study highlights how diverse actors – lawyers, citizens, and social movements – mobilised European law between 1957 and 2000 to pursue political, social, and economic aims, often unrelated to 'Europe' itself. In their view, case studies reveal that areas such as non-discrimination, environment, and human rights were co-created beyond elites, underscoring law's embeddedness in society and its evolving, contested role in integration. Van Leuween and Van Zoon consider the infringement procedures in the context of the Seveso industrial safety directive; Avril provides us a socio-historical portrait of the building of the European legal profession; Loth rethinks the so-called 'Marshall' saga from 'below'; Hommes revisits the critical years during which the European Court of Human Rights mutated into an active court in the late sixties and early seventies; finally, Esmark zooms in the tender materials of a late 80s Dannish infrastructure project.

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