

INSTRUMENTS OF THE CFSP

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The implementation of common foreign and security policy is the most effective way for more active, coherent and, not at least, unified European Union on the international stage. Definition of legal instruments of the Union and its political flexibility of institutions provides the means of effectively solving of problems it faces.

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Not only the global threats and tensions but also the regional and global interests of the European Union have led the Member States to adopt a common foreign policy in major international issues. Therefore, by signing the Treaty of Maastricht in 1992, the European Union implemented a common foreign and security policy (CFSP), with several objectives, including the promotion and defense of common values, vital interests, independence and integrity of the Union, consolidation of Union security, peace preservation and strengthening international security, promoting international cooperation. The implementation of common foreign and security policy takes the advantage of speaking and acting unitary in a single voice. This policy experienced a continuous development and the changes to Lisbon Treaty in 2009 aimed at strengthening the coherence of EU actions for playing more active role in the world stage. This is reflected especially by adopting joint actions and common positions in the most international issues.

The reform of EU legal instruments and political institutions and the guarantee of the autonomy and flexibility in choosing of necessary action mean to effectively solve the problems it facing¹.

The European legal instruments refer to the instruments available to the EU institutions to fulfill its mission. These tools are presented in Article

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¹ Olivier de Schutter, Paul Nihoul, Jean-Yves Carlier, *Une Constitution pour l'Europe: Réflexions sur les transformations du droit de l'Union européenne*, Larcier, 2004, p. 64.

288 of the Treaty on the Functioning of the European Union² (TFEU): regulation, directive, decision, recommendation and opinion.

Regulation is a legislative act of general application and shall be binding in its entirety and directly applicable in each Member State. Its binding nature applies to the institutions, Member States and individuals whom it is addressed.

The fact that the regulation applies directly to each Member State is not subject to any measures for inclusion in national law. Also confers rights and obligations independent of a national measure implementing. This feature does not prevent Member States to take measures to implement. Moreover, they must do so if necessary to comply with the principle of sincere cooperation defined in Article 4 of the Treaty on European Union (TEU). In the same way, it can be used as a reference for individuals in their dealings with other individuals, Member States or European authorities.

Regulations apply in all the Member States from the day of their entry into force, i.e. 20 days after their publication in the Official Journal. Their legal effects are simultaneously, automatically and uniformly binding in all the national legislations³.

For example, protecting the name of certain agricultural products from specific areas⁴ is based on Regulations adopted by the Council.

The decision is another legally binding instrument that may have general application or may be made to a precise destination. European institutions take decisions based on the founding treaties. Where appropriate, decisions can be made to one or more recipients and they also can not accurately indicate any recipient.

Once with the entry into force of the Lisbon Treaty, the decision not necessarily indicates a recipient. Decision acquired a broader scope definition and became basic legal instrument in the field of foreign and security policy. Therefore, the EU Council and the European Council can take decisions on strategic interests and objectives of the Union, Union actions at international level, EU positions on international issues, ways of implementing EU actions and positions⁵.

² Version consolidée du Traité sur le fonctionnement de l'Union Européenne, Journal officiel de l'Union européenne, C 115/47, 9.5.2008.

³ *Legal instruments. Regulations*, Retrieved from http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/114522_ro.htm, accessed on 02.10.2012.

⁴ *Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs*, Retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R0510:RO:NOT>, accessed on 02.10.2012.

⁵ *Legal instruments. The European decision*, Retrieved from http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/ai0036_ro.htm, accessed on 02.10.2012.

Directives are characterized by flexibility in the application process because they require to the Member States necessity for reaching of particular result but giving them the opportunity to choose their own means to achieve this goal.

This is a two-tier legal act which comprises the directive proper, issued by the European institutions; national implementing measures, issued by the Member States. Entry into force does not in principle imply direct effect in national law. In order for this to happen, a second stage is necessary, transposition. Transposition is carried out by the Member States; it means adopting national measures to enable them to achieve the results stipulated by the directive. The national authorities have to notify the Commission of these measures⁶.

In spite of the mentioned tools, recommendation and opinion are not binding. Thus, through recommendation and opinion, institutions make known their opinion and suggest courses of action, without any legal obligation for who address.

Other FSCP legal instruments and that were foreseen in the EU treaties are: the common position, the joint action, the common strategy and the public declaration.

Common Position is a legal act of FSCP provided in Article 15 of TEU.⁷ This aims to achieve a more systematic and better coordinated cooperation of Member States. Member States must defend their positions adopted unanimously in Council.

Common positions can affect identity of European policy for several countries and regions of the world, especially in sensitive countries (Burma, Cuba, Zimbabwe, countries where sanctions are implemented), crisis (African Great Lakes, Middle East) or transversal themes (non-proliferation, conflict prevention in Africa, supporting the International Criminal Court, etc.).

Common positions are published in the Official Journal of the European Union and Member States must defend them in international organizations and conferences. They are regularly reviewed and updated. Since the beginning of 2006, the use of common positions, for example, helped in initialization of restrictive measures (to varying degrees) against Belarus, Syria, Lebanon, and extension of which were taken against Burma, Ivory Coast, Serbia and Montenegro, Moldova, Zimbabwe or to end cooperation of the European Union and North Korea in the nuclear field.

⁶ *Legal instruments. The Directive*, Retrieved from http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/114527_ro.htm, accessed on 02.10.2012.

⁷ *The Maastricht Treaty. Treaty on European Union, 7 february 1992*, Retrieved from <http://www.eurotreaties.com/maastrichteu.pdf>, accesat la data 18.02.2011.

Another legal instrument under Title V of the European Union Treaty⁸, the joint action (Article 14 TEU) is a coordinated action by Member States in which all resources (human, financial, equipment, and so on) are implemented to achieve the objectives adopted by the Council on the general guidelines of the European Council. As common positions, joint actions, commit the Member States in the positions they assume and the conduct of activities. They allow not only mandate defining and EU Special Representatives financing, but also programs demining, fight against small arms and light weapons spreading and Europe's position promoting on non-proliferation or support for democratization. These are regularly reviewed and extended if necessary.

Since the beginning of 2006, the common actions of the Council allowed the extension of the mandates for Bosnia and Herzegovina, Moldova, the former Yugoslav Republic of Macedonia, the African Great Lakes, Southern Caucasus, the peace process in the Middle East and Central Asia. Joint actions were focused on supporting activities of the International Atomic Energy Agency, the International Convention on Biological Weapons for drafting The Comprehensive Nuclear-Test-Ban Treaty. Joint Action is also legal instrument required for launching ESDP/CSDP operations.

Joint Strategy is a CFSP legal instrument introduced by Treaty of Amsterdam. Article 13 of the European Union Treaty states that European Council must decide on common strategies for implementing by Union in domains where the Member States have important common interests.

Concretely, purpose, duration and means that Union and the Member States will give is stated in common strategy. Normally strategy is established for a period of four years and is implemented by the Council, in particular through actions and common positions.

Three strategies have been already adopted (relating to Russia in June 1999, Ukraine in December 1999 and Mediterranean Sea in June 2000). Presently, there are no other common strategies being developed. Despite the progress made, this instrument has been used very little so far failed to provide the expected results⁹.

Another tool available for EU is the public statement. Like any other international actor, EU uses this tool to express their views in a distinct situation. Over two hundred statements are annually published in English and

⁸ *Ibidem.*

⁹ *Les actions, positions et stratégies communes*, Retrieved from http://www.diplomatie.gouv.fr/fr/europe_828/union-europeenne-monde_13399/politique-etrangere-securite-commune_851/fonctionnement-pesc_15060/les-processus-decision-instruments-pesc_15063/les-actions-positions-strategies-communes_40939.html, accessed on 04.04.2010.

French languages both in Brussels and capital of the Member State having presidency. CAG/RELEX and European Council conclusions, as well as statements that can be adopted by it, benefit from this public Union expression. There are two types of statements: the Presidency on behalf of European Union, when adopted by Member States consensus and the Presidency only if they are subject of natural disaster, emergency or exceptional situation. Presidency takes the initiative to have a declaration but then must ensure that expresses an acceptable message for all partners. Actuality, depending on subject, the President could quickly ask for the opinion of some Member States¹⁰ previous declaration.

The Presidency is also responsible for notifying and supporting positions defined by the Council in international organizations and conferences. Thus, in the beginning of UN General Assembly, Foreign Minister of Member State having presidency speaks on behalf of the European Union. Also, based on guidelines and common strategies, Council initiates joint actions, common positions, decisions and statements¹¹.

The European Security and Defence Policy (ESDP) was renamed, in December 2009, the Common Security and Defence Policy (CSDP) of the EU. The Treaty of Amsterdam, signed in 1997, established the policy instruments for European security and defense, however, remains a part of the CFSP, which depends¹².

The European Security and Defence Policy (ESDP) / (CSDP) is an integral part of the CFSP. This gives possibility to EU for using military or civilian resources in international conflict prevention and crisis management. EU is currently carried out on four continents crisis management missions.

Lisbon Treaty considerably innovate the Common Security and Defence Policy, pursuing the objective of strengthening EU security dimension. That's why treaty extends number of EU defense missions. Today they (so-called Petersberg missions) concerning humanitarian and rescue tasks, peacekeeping and crisis management missions. These were defined for the first time in the Council of Ministers declaration of Western European Union in Petersberg (Germany) on June 19, 1992.

¹⁰ *Les déclarations publiques de l'Union*, Retrieved from http://www.diplomatie.gouv.fr/fr/europe_828/union-europeenne-monde_13399/politique-etrangere-securite-commune_851/fonctionnement-pesc_15060/les-processus-decision-instruments-pesc_15063/les-declarations-publiques-union_40938.html, accessed on 04.04.2010.

¹¹ Martin Helmuth Ruelling, Karin Iannou-Naoum-Wokoun, *Die Europäische Union: Geschichte, Institutionen, Recht, Politiken*, BoD – Books on Demand, 2010, p. 274.

¹² *La PESD, une composante de la politique étrangère et de sécurité commune (PESC)*, Retrieved from <http://www.ladocumentationfrancaise.fr/dossiers/europe-defense/politique-europeenne-securite-defense.shtml>, accessed on 14.11.2010.

The Lisbon Treaty added tasks such as joint demilitarization tasks, military advice and assistance tasks, conflict prevention and stabilization operations to the end of conflicts and missions that can contribute for fighting against terrorism, including through the support of Member countries to combat terrorism on its own territory.

The Treaty introduces, for the first time, *a mutual defense clause* that if a Member State is the victim of armed aggression on its territory, the other Member States are obliged to provide aid and assistance by all the means at their disposal.

The Lisbon Treaty also includes *a simplified method* for enhancing cooperation between Member States in this field, namely permanent structured cooperation. Thus, Member States which have important military capabilities can be employed to take part in the most demanding tasks, listed above, in defense domain¹³.

BIBLIOGRAPHY

- Ruelling Martin Helmuth, Wokoun Karin Iannou-Naoum, *Die Europäische Union: Geschichte, Institutionen, Recht, Politiken*, BoD – Books on Demand, 2010.
- Schutter de Olivier, Nihoul Paul, Carlier Jean-Yves, *Une Constitution pour l'Europe: Réflexions sur les transformations du droit de l'Union européenne*, Larcier, 2004.
- Version consolidée du Traité sur le fonctionnement de l'Union Européenne*, Journal officiel de l'Union européenne, C 115/47, 9.5.2008
- The Maastricht Treaty. Treaty on European Union*, 7 february 1992.
- <http://eur-lex.europa.eu>
- <http://europa.eu>
- <http://www.diplomatie.gouv.fr>
- <http://www.eurotreaties.com>
- <http://www.ladocumentationfrancaise.fr>
- <http://www.mae.ro>

¹³ *The main innovations of the Lisbon Treaty*, Retrieved from http://www.mae.ro/poze_editare/2009.11.21_Brosura_Tratatul_Lisabona.pdf, accessed on 16.08.2010.