



HARMONIZATION OF ROMANIAN LEGISLATION WITH THE NATO AND EU ACQUIS IN THE FIELD OF SECURITY AND DEFENCE POLICIES

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Romania's accession to the North Atlantic Alliance and the European Union involved a long process of negotiation and legislative harmonization at the national level. For Romania, the membership to the two organizations represents an essential landmark in terms of ways of designing the national vision on national and regional security, marked by strategic continuity. In this context, Romania has been active and open in terms of legislative harmonization throughout all this time that has passed since accession, with a priority to enhance our geographical position. In addition to the undeniable benefits that NATO and EU membership bring to society, it also introduces vulnerabilities, so ensuring that national legislation is harmonized with the *acquis communautaire* must be a major, ongoing concern for all stakeholders, especially at the institutional level, where the responsibility for the elaboration and application of coherent policies in the field is concentrated.

Keywords: legislation; *acquis*; politics; security; defence.

For any national state, the harmonization of national legislation with that of the alliances to which it belongs must be a desideratum by which it contributes to the definition and preservation of a secure security environment with a high degree of security and trust. Adapting the regulatory and institutional framework to the dynamics of threats, establishing and enforcing minimum security requirements for national infrastructures, ensuring their resilience and developing national and international cooperation thus become a mandatory condition.

The development of a dynamic security environment, based on interoperability and services specific to the third millennium society, as well as ensuring respect for the fundamental rights and freedoms of citizens and national security interests, in an appropriate legal framework is also a condition we need to start from. Given this perspective, there is often a need to develop a culture of security among citizens, often insufficiently informed about the potential risks, but also about solutions to counteract them. The creation of a culture of security is based on the principles of legislative harmonization and the coordination of action plans aimed at ensuring security, through cooperation between all entities involved, both public and

private, by prioritizing the security of national infrastructures and disseminating information, expertise and good practices.

In approaching the material, we start from the definition of the term "acquis", which comes from French and means "what has been acquired". In this context, the term *acquis communautaire* refers to all the common rights and obligations arising from the status of a Member State of the European Union or the North Atlantic Alliance, including, in addition to treaties, acts adopted by the EU and NATO institutions.

For example, in accordance with Decision no. 1367 of December 20, 2000 of the Government of Romania, published in the Official Gazette no. 30 of 17 January 2001, the *acquis communautaire* means that¹:

- Primary legislation includes the Treaties of the Communities with all subsequent amendments and completions and represents the constitutional framework of the European Union, namely: the provisions of the Treaty establishing the European Community, signed on 25 March 1957 in Rome and of the Treaty on European Union, signed on 7 February 1992 in Maastricht, both republished in the Official Journal of the European Communities no. C 340 of November 10, 1997, as well as of any other treaties that will amend and complete them until the date on which the treaty for Romania's accession to the European Union entered in effect;

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• Secondary legislation includes all Community legal acts (directives, regulations, decisions, recommendations, opinions, etc.) adopted by the Community institutions under the Treaties, namely:

- regulations, directives and decisions issued by the institutions of the European Union, as binding acts, as well as other acts adopted by the institutions of the European Union, such as: declarations, resolutions, joint strategies, joint actions, common positions, conclusions, framework decisions, resolutions and the like;

- multilateral conventions open only to the Member States of the European Union, as well as those open to a larger number of states to which the Member States of the European Union and, where appropriate, the European Commission are parties, designated as such by the latter as part of *acquis*;

- the case law of the Court of Justice of the European Communities;

- the European agreement establishing an association between Romania, on the one hand, and the European Communities and their Member States, on the other hand, signed on 1 February 1993 in Brussels and ratified by Romania by Law no. 20/1993.

It should be noted that, since all the languages of the Member States are official languages of the European Union, the translation of the *acquis communautaire* into the languages of those States is one of the obligations assumed by each of them².

Although the term refers in particular to the set of measures agreed at Union level, I appreciate that it can also be extrapolated to NATO level, given the content of the accession documents and the need for legislative harmonization at Alliance level. Therefore, the *Acquis* can be defined as a set of measures agreed between NATO / EU and each candidate country, which aims to establish a special consultancy so that they adopt, at minimal cost, the spectrum of rules and laws after which is administered by NATO or the EU³. Starting from the realities of the current, difficult and extremely turbulent geopolitical environment, NATO and Europe are trying to work closely together on the internal security and defence of each state, as well as the external security of the Union/Alliance⁴.

On the occasion of various summit meetings and recent summits, EU and NATO leaders decided

to attach particular importance and new impetus to the external security of their alliances, as well as to European and global defence by strengthening cooperation among Member States in this domain. In keeping with these commitments, the leaders of the two world organizations took a number of decisions in which:

• a plan for the implementation of security and defence administration and management standards and models was approved at Union level;

• the EU proposal on the European Defence Action Plan was accepted;

• rapid action was called for so as to accelerate security and defence cooperation between NATO and the EU.

With regard to the concrete measures to stimulate security and defence cooperation at European level, in December 2016, the European Council approved the Security and Defence Implementation Plan.

The implementation plan sets out the way forward for the development of EU security and defence policy. Based on the Union's Global Strategy, the implementation document focuses on three major strategic priorities⁵:

- response to external conflicts and crises;
- strengthening the capacities of the partners;
- protection of the EU and its citizens.



Figure 1 EU level of ambition for security and defence⁶

Among the concrete measures aimed at achieving these objectives we find the following:⁷

• launching a coordinated annual defence review process (CARD) to strengthen defence cooperation among Member States;

• establishing permanent structured cooperation (PESCO) to strengthen defence cooperation among Member States wishing to move forward in this cooperation;



- establishing a military planning and leadership capability (MPCC) to improve crisis management structures;

- strengthening the EU's rapid response toolkit, including EU battlegroups and civilian capabilities.

Unfortunately, it has often been found that the bureaucracy of the institutions and the lack of coherence in information on the Union's defence sector make communication rather difficult. The coordinated annual defence review process (CARD) would provide a better overview at EU level of defence spending, national investment and research efforts in the field. The review would increase the transparency and political visibility of European defence capabilities, while also bringing a wide range of benefits, including:

- better identification of deficits;
- a deeper cooperation in the field of defence;
- a better and more coherent approach to defence spending planning.

Following successive consultations, on 25 June 2018, the Council approved the 2018 progress catalogue, assessing the capacity gaps and the objectives to be achieved.

In the field of permanent structured cooperation, this was first addressed in the Lisbon Treaty, which provides that a group of Member States may strengthen their defence cooperation by establishing permanent structured cooperation (PESCO).

In this context, on 22 June 2017, EU leaders agreed to launch a permanent structured cooperation to strengthen Europe's security and defence, and on 11 December 2017, the Council adopted a decision establishing PESCO. All EU Member States participate in PESCO, except for three countries (Denmark, Malta and the United Kingdom, the latter leaving the Union at the end of 2019). The participating Member States agreed on an initial list of 17 projects to be undertaken under PESCO, targeting projects in areas such as: training; capability development; or operational availability in the field of defence. These initial projects were formally adopted by the Council on 6 March 2018 and, on the same day, the Council adopted a roadmap for the implementation of PESCO.

On 25 June 2018, the Council adopted governance rules for projects within PESCO, and

on 19 November 2018, the Council adopted a second set of 17 projects, bringing the total number of projects to 34. The latter cover areas such as training, capability development and operational availability on land, sea and air, as well as cyber defence.

Improving crisis management structures was first set on 8 June 2017, when the Council agreed on the establishment of a military planning and leadership capability (MPCC) in the European Union General Staff, with a view to improving the EU's response capacity in a faster, more efficient and coherent way. This capability is strategically responsible for the operational planning and conduct of non-executive CSDP military missions.

EU battlegroups are one of the tools the Union has at its disposal to respond quickly to crises and conflicts. These are, or should be, military forces that can be deployed quickly on the ground. Although battlegroups were set up in 2005, they were never deployed due to political, technical and financial obstacles. For this reason, in order to strengthen the Union's rapid response capabilities, its leaders agreed on 22 June 2017 that the deployment of battlegroups should be a common cost and that the funding of battlegroups should be managed at EU level through the Athena mechanism on an ongoing basis. Romania has been committed to setting up groups since the beginning, initially through two participations. The contribution to collective defence was reaffirmed in 2020, by including in the White Paper on Defence the provisions on: operationalization with priority of the single package of forces assumed; ensuring the capabilities of the NATO Response Force (NRF), the NATO Rapid Reaction Initiative (NRI) and the European Union Battlegroups (EUBG)⁸.

Although the European Union is working to develop civilian capabilities and improve the response capacity for civilian crisis management, including through the possible creation of a central response capability, the world is in a pandemic crisis (COVID 19) at the time of writing this article, in which several European states questioned not only the Union's capacity for reaction but also the mutual support among Member States, although, in the end, the seeds of civic spirit began to emerge.

In terms of legislative harmonization with the NATO and EU acquis, at national level, Romania had and must consider the triptych Romania -

NATO - EU, as an indissoluble relationship and as a source of security for a country on the border the two entities, through a realistic approach and awareness at European level of the existing risks and opportunities. Also, in the mechanism of legislative construction, the Romanian state must permanently promote the expansion of the space of prosperity, democracy, security and predictability in its neighbourhood.

Therefore, starting from the idea of the indissolubility of the Romania - NATO - EU relationship, in our approach it is necessary to consider the EU-NATO cooperation relationship, established more than 15 years ago. This led to the development of a wide range of tools which provide increased security for the citizens of Europe and beyond. Relatively recently, on 10 July 2018, the EU and NATO signed a new joint declaration setting out a common vision on how the EU and NATO will act together against common security threats. Building on contemporary threats, EU-NATO cooperation focuses on sensitive areas, such as: military mobility; cyber security; hybrid threats; countering terrorism; or the newer conflict with variable geometry, a concept that is beginning to take shape in the analysis of military thinkers. The new joint statement highlights that recent EU efforts to step up defence and security cooperation are strengthening transatlantic security: "We welcome the EU's efforts to improve European security and defence in order to better protect the Union and its citizens and to contribute to peace and stability in the region and beyond. Permanent structured cooperation and the European Defence Fund contribute to the achievement of these objectives"⁹.

With the common goal of strengthening EU-NATO cooperation in seven strategic areas, the Joint Declaration¹⁰ on EU-NATO cooperation addresses:

- hybrid threats;
- operational cooperation, including maritime issues;
- cyber security;
- defence capabilities;
- industry and research;
- coordinated exercises;
- capacity building.

The fragmentation of the European defence market, the costly duplication of military

capabilities or insufficient industrial cooperation and lack of interoperability have in many cases led to the inefficient use of allocated budgets, although a joint action plan has been established following the signing of the joint declaration of the two major organizations in the field of defence and generous sums have been invested. To address these issues, the Defence Action Plan has been constantly revised, with a view in particular to boosting the cost-effectiveness of defence spending, improving defence cooperation or building a stronger industrial base. However, we also have positive consequences, which have been included in the plan, being oriented towards three key actions necessary for the current politico-economic context:

- establishment of a defence fund;
- encouraging investment in the defence industry;
- strengthening the single defence market.

In order to respond appropriately to the current security challenges, at national level, in accordance with the NATO and EU acquis in the field of security and defence policies, action has been taken on several levels, the most important of which are:

- at the budgetary level, by allocating 2% of GDP for the defence sector, materialized for the first time in Law no. 6/2017, the State Budget Law for 2017;

- in the field of procurement, by including in the procurement packages "offset" offers, except for contracts awarded by one government to another government, where Romania has strategic interests (Government Emergency Ordinance No. 189/2002, as subsequently amended and supplemented);

- in the field of organization, by setting up national commands (Special Operations Forces Command and Cyber Defence Command, following the decisions taken at the 2016 NATO Summit in Warsaw) and multinational commands deployed in Romania (Multinational Corps Command South-East, South-East Multinational Division Command or South-East Multinational Brigade Command).

All these measures taken at national level reflect the concern of Romanian decision-makers for harmonization with NATO and the EU both in the legislative field, but also in terms of security and defence policies, demonstrating strategic continuity with the two organizations. At the same time, the need to increase the operational capacity of the Army, together with a proper management



of defence resources can significantly contribute to the revitalization of the national defence industry, in an allied context, so we can react timely and interinstitutional in the context of current threats.

The need for joint action also derives from the National Strategy for the Defence of the Country for the period 2020-2024 ("Together, for a secure and prosperous Romania in a world marked by new challenges") which identifies NATO and the EU as the main vectors for promoting stability and security for Romania, given that it is a state on the Eastern flank of NATO and on the Eastern border of the European Union. Both organizations have demonstrated their ability to effectively meet the objectives of ensuring the security and economic prosperity of the Member States, while demonstrating a strong strategic potential for permanent adaptation to changes in the security environment¹¹.

In conclusion, starting from the need to know on a large scale the risks and threats arising from the current geopolitical context, as well as how to prevent and counteract them, a synergistic action of EU and NATO member states is required, which requires communication and cooperation among specific actors in this field, including in the field of legislation. As a border state, both for NATO and for the EU, by being aware of the existing risks and threats, Romania has constantly promoted in the security and defence policies the expansion of the space of prosperity, democracy, security and predictability in its neighborhood. Therefore, whether we are talking about the EU or talking about NATO, the harmonization of the Romanian legislation with the *acquis communautaire* in the field of security and defence is a continuous process in which all the elements of the Romanian legislative and executive powers are involved. Depending on the type of European act, the implementation mechanism is different but the finality is the same, respectively the implementation with the observance of the Romanian legislation of the respective act.

NOTES:

1 *HG nr. 1.367 din 20 decembrie 2000, privind constituirea și funcționarea grupului de lucru pentru studierea concordanței dispozițiilor și principiilor Constituției României cu acquisul comunitar, în perspectiva aderării României la Uniunea Europeană*, art. 1.

2 *Regulation (EC) No 662/2009 of the European Parliament and of the Council of 13 July 2009 establishing*

a procedure for the negotiation and conclusion of agreements between Member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations, <https://eur-lex.europa.eu/eli/reg/2009/662/oj>, accessed on 01.11.2020.

3 *A Dictionary of Law*, Oxford University Press, 2018, <https://www.oxfordreference.com/search?q=Acquis&searchBtn=Search&isQuickSearch=true>, accessed on 01.11.2020.

4 *Operational Analysis and Defence Planning*, NATO Communication and information Agency, <https://www.ncia.nato.int/what-we-do/operational-analysis-defence-planning.html>, accessed on 01.11.2020.

5 *EU Global Strategy: implementation plan on security and defence*, <https://www.consilium.europa.eu/en/infographics/eu-global-strategy/>, accessed on 01.11.2020.

6 *Ibidem*.

7 *Factsheet on the implementation plan on security and defence (EEAS)*, <https://www.consilium.europa.eu/en/policies/defence-security/>, accessed on 01.11.2020.

8 *Carta Albă a Apărării*, Bucharest, 2020, p. 26.

9 *Joint declaration on EU-NATO cooperation*, Brussels, 10 July 2018, <https://www.consilium.europa.eu/en/policies/defence-security/>, accessed on 01.11.2020.

10 *Joint declaration on EU-NATO cooperation*, Brussels, 10 July 2018, <https://www.consilium.europa.eu/en/policies/defence-security/>, accessed on 01.11.2020.

11 *Strategia Națională de Apărare a Țării pentru perioada 2020-2024 – „Împreună, pentru o Românie sigură și prosperă într-o lume marcată de noi provocări”*, Bucharest 2020, p. 21.

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*** *Strategia Națională de Apărare a Țării pentru perioada 2020-2024*, Bucharest, 2020.

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