

Common Foreign, Security, and Defense Policies

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ABSTRACT

This chapter examines the issue of the common foreign and security policy, as well as its integral part of the common security and defense policy, discussed from the perspective of the EU Member States, including, in particular, the countries of Central and Eastern Europe. To create a substantive basis for the assessment of the position of EU Member States in the CFSP implementation process, the basic issues related to the provisions of the treaties in this area are discussed at the beginning. An important element of the chapter is also the characterization and identification of the separateness of the regulations in force in the field of CFSP. Attention is also paid to institutional solutions, which are important in this case, as well as legal instruments for the implementation of CFSP. In addition to general guidelines, decisions, and the issues of strengthening systematic cooperation, attention is also drawn to the importance of international agreements concluded by the EU in the area of CFSP. An important element of the analysis of the rights and obligations of EU Member States is also the decision-making procedure considering the unanimity principle, as well as the so-called solidarity clauses. The discussion of the role and position of the EU Member State in the CFSP area is summarized with a reference to issues that specifically concern the countries of Central and Eastern Europe. Attention is drawn to the spectrum of problems that arise in the practice of CFSP implementation, related primarily to significant differences in defining state security guarantees and the underlying factors.

KEYWORDS

Common foreign and security policy, common security and defense policy, EU external action, EU Member State, Central and Eastern Europe, unanimity mechanism, general guidelines, action decisions, position decisions

1. Introduction

Common Foreign and Security Policy (CFSP)—and in its framework, the Common Security and Defense Policy (CSDP)—is one of the levels of cooperation in the European Union, the goals, principles, and scope of implementation of which have undergone significant modifications over the years. The provisions of the Treaty of Lisbon of December 13, 2007¹ became the basis for a structural reform eliminating

1 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJ C 306, 17.12.2007, pp. 1–271.

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the structure of the three pillars of the EU, as a result of which CFSP ceased to be the second pillar of the EU, and became one of its policies, which are the most important areas of cooperation between EU Member States.

At the same time, it should be noted that CFSP is the only EU policy regulated by the provisions of the Treaty on European Union,² and not—like the other categories—by the provisions of the Treaty on the Functioning of the European Union.³ Therefore, in the normative sense, it has been clearly separated from the catalogue of EU policies, but also from the whole of the so-called EU external action. The provisions of the Treaty on European Union, defining the scope of the EU's competences in the field of CFSP, indicate all areas of foreign policy and all issues related to EU security, and the gradual definition of a common defense policy. At the same time, the interpretation of these provisions allows for the definition of—important from the perspective of this study—rules of cooperation between EU Member States, as well as the possibility of protecting the national interests of individual countries, considering CFSP subjecting to specific rules and procedures.⁴

Specifying the EU's competences in the field of CFSP, the TEU provisions stipulate that, in the framework of the principles and objectives of the EU's external action, it also conducts, defines, and implements a common foreign and security policy, based on the development of mutual political solidarity between the Member States, identifying issues of general interest and achieving an ever-greater degree of convergence in the actions taken by these countries.⁵ Moreover, Member States are to support the EU's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity, and to respect the EU's actions in this area. Unanimity in actions should characterize the activity of EU Member States aimed at strengthening and developing mutual political solidarity. At the same time, they should refrain from any action that would run contrary to the interests of the EU or could jeopardize its effectiveness as a coherent force in international relations. The Council and the EU high representative for Foreign Affairs and Security Policy ensure the observance of the above-mentioned principles.⁶

In the process of the changes taking place, the CFSP has retained the nature of actions implemented at the level of intergovernmental integration, and the division of competences between the EU and individual Member States should be specifically qualified in this case.⁷ Decisions under the CFSP are to be (with certain exceptions) based on the unanimity mechanism. Legislative acts are also excluded in this case.⁸

In the context of the analyzed issue, the provisions of Declaration No. 13 on the common foreign and security policy are of particular importance, according to which

2 Treaty on European Union, OJ C 326, 26. 10. 2012, pp. 13–390 (further referred to as: TEU).

3 Treaty on the Functioning of the European Union, OJ C 326, 26 10. 2012, pp. 47–390 (further referred to as: TFEU).

4 Art. 24(1) TEU.

5 Art. 24(2) TEU.

6 Art. 24(3) TEU.

7 Arts. 2–6 in conjunction with Art. 24 TEU.

8 Art. 24(1), Art. 31(1) TEU.

the provisions of the TEU on the indicated issues, including the creation of the office of the EU high representative for Foreign Affairs and Security Policy and the European External Action Service, do not violate the current responsibility of Member States to shape and conduct their own foreign policy, and the way they are represented in relation to third countries and international organizations. The provisions of the declaration also indicate that the provisions governing the common security and defense policy do not violate the specific nature of the security and defense policy of the Member States. The provisions of Declaration No. 13 also referred to the issue of membership in the United Nations, because of which the European Union and its Member States will remain bound by the provisions of the Charter of the United Nations,⁹ and in particular the primary responsibility of the Security Council and its members for the maintenance of international peace and security.

Reference should also be made to Declaration No. 14 on the common foreign and security policy, the provisions of which refer primarily to the provisions of Art. 24(1) TEU, from which it follows that CFSP is subject to specific rules and procedures. In accordance with the content of Declaration No. 14, in addition to the specific rules and procedures referred to in Art. 24(1) TEU, the provisions on the common foreign and security policy, including the EU high representative for Foreign Affairs and Security Policy and the European External Action Service, will not affect the applicable legal basis, responsibility and powers of each Member State to shape and conduct its own foreign policy, national diplomatic service, relations with the third countries and participation in international organizations, including membership of the UN Security Council. The provisions of Declaration No. 14 indicate at the same time that the provisions governing the Common European Security and Defense Policy do not infringe the specific nature of the security and defense policy of the Member States.¹⁰

Currently, 11 countries belong to the group of Central and Eastern European countries that are part of the EU structures. Their accession took place in several stages and took place in 2004 (Czech Republic, Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, and Hungary), 2007 (Bulgaria, Romania), and 2013 (Croatia).¹¹ The representation of 11 states should therefore result in a significant participation and influence on decisions and directions of EU actions in the field of common foreign, security and defense policy. However, the specific nature of the analyzed area of cooperation between EU Member States is also related to the fact that in this case identifying the priorities that constitute the basis for the decisions and actions taken is conditioned by many factors, including, in particular, different economic and geopolitical interests. It should not be forgotten that the shape of the security and defense policy is also significantly influenced by historical and cultural conditions. All these factors make it difficult to develop, and quite often even prevent the development of, common solutions fully supported by the conviction that the same security

9 Charter of the United Nations, signed in San Francisco, 26 June 1945.

10 Gadkowski and Gadkowski, 2019, pp. 91-93.

11 Łazowski, 2008, pp. 426-432.

guarantees are maintained for individual EU Member States. Achieving the aforementioned security guarantees by joining the forces of all states remaining in the EU structures remains an important argument, but it does not seem to be sufficient in a situation where the geopolitical point of gravity—having a decisive impact on the shape of foreign, security and defense policy—is, however, located differently in the presented beliefs and direct actions of various EU Member States.

When attempting to take a historical look at the process of integration and cooperation of EU Member States in the field of common foreign, security and defense policy, it should be noted that activities aimed at establishing broadly understood cooperation between European countries were undertaken throughout the postwar period, and their significance for inclusion in this the process of Central and Eastern European countries increased especially in connection with the events of the ‘Autumn of Nations’ in the 1980s and 1990s. The significantly changing balance of power in Europe, resulting from the collapse of the communist system in the eastern part of the continent, was the basis for the EU to build new rules of cooperation with the countries of Central and Eastern Europe and became one of the priorities of the EU’s foreign policy. From the perspective of the countries of Central and Eastern Europe, establishing such cooperation was associated with building and strengthening their position in Europe and resulted in many cooperation initiatives and, consequently, the initiation of the process of concluding association agreements,¹² and finally membership in the EU of the eleven countries mentioned above.

At the same time, it should be noted that the efforts to integrate the countries of Central and Eastern Europe with the EU were accompanied by activities aimed at the inclusion of individual countries in the region into the North Atlantic Treaty Organization (NATO), which in relation to the analyzed group of countries took place for the first time in 1999 and concerned the Czech Republic, Poland, and Hungary. This process was extended in 2004 (including Romania, Slovakia, and Slovenia) and then in 2009 (including Croatia). In the case of the countries of Central and Eastern Europe, NATO’s defense forces have been an important pillar of security from the very beginning, and their positions in the field of CFSP implemented in the EU structures were shaped considering the perspective of this broader cooperation of states. An example of, among others, Poland shows that for a relatively long time, also in the period after joining the EU, the dominant position was that NATO remained the pillar of Poland’s security.¹³ Currently, the cooperation of EU Member States in the field of CFSP is considered particularly important, and the definitely growing role of the EU in the field of common security is indicated, but it is difficult to talk about replacing allied obligations in NATO structures with it, which is related to, inter alia, with a lack of sufficient defense infrastructure.¹⁴

12 First with Czechoslovakia, Poland, and Hungary (1991), followed by Bulgaria and Romania, among others (1993); see Papadimitriou, 2003.

13 Miszczak, 2020, p. 181.

14 Ibid. pp. 189 and 213.

2. Institutional Solutions in the Field of CFSP

The rules in force in the implementation of CFSP have a direct impact on the shape of institutional solutions adopted in this area. As mentioned above, CFSP has retained the nature of activities carried out at the level of intergovernmental integration of EU Member States, which determines the manner of its implementation by the EU institutions of an intergovernmental nature. In this case, it is primarily about the European Council and the Council of the European Union. In the complex structure of institutions assigned competences in the field of CFSP, there are also those established solely for the purpose of implementing the assumptions and goals of the analyzed sphere of EU functioning. The main competences in this respect lie with the high representative for Foreign Affairs and Security Policy, assisted in his activities by the European External Action Service and the EU Member States.¹⁵

The competences of the European Council in the field of CFSP are related to defining the strategic interests of the EU, including setting goals and defining the general guidelines of the common foreign and security policy.¹⁶ They also include adopting the necessary binding decisions. The strategic interests and objectives of the EU are determined based on the principles and objectives set out in Art. 21 TEU, and decisions taken by the European Council on these matters may concern the Common Foreign and Security Policy and other areas involving EU external action.¹⁷ An additional competence of the president of the European Council is the possibility of convening an extraordinary meeting to define the strategic directions of the EU's policy in a situation when the international situation so requires.

The competence of the Council of the European Union covers the development of the common foreign and security policy and making the decisions necessary to define and implement this policy based on general guidelines and strategic directions defined by the European Council. The Council of the European Union is to ensure the uniformity, coherence, and effectiveness of EU actions, which is also the responsibility of the EU high representative for Foreign Affairs and Security¹⁸ policy.¹⁹

In the context of the functioning of the Council of the European Union, it is also worth paying attention to the issue of the presidency of individual Member States, because the programs implemented in this area often referred to issues related to CFSP. In case of Poland, the six-month presidency program implemented in 2011 covered three priority areas: 'European integration as a source of growth,' 'Safe Europe—food, energy, defense,' and 'Europe benefiting from openness.' Two of the indicated areas of planned activity related to EU external actions. Activities related to shaping a safe Europe were related to many areas, including the economy,

15 Aleksandrowicz, 2011, p. 92; Barcz, 2020, p. 118.

16 Art. 26 TEU.

17 See Art. 21(2) and Art. 22(1) TEU.

18 Art. 26(2) TEU.

19 Aleksandrowicz, 2011, pp. 92–93; McCormick, 2010, pp. 127–141.

common agricultural policy, finance, and energy security. In the latter case, it was proposed to create the assumptions of the external energy policy of the European Union. The activities of the Polish presidency were also focused on solutions related to the external security of the EU, including the security of its borders. The need for changes in the functioning of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), ensuring effective support of EU Member States in crisis situations, was mentioned. An important element of the Polish presidency of the Council of the European Union were also activities aimed at strengthening the military and civilian capabilities of the EU, as well as strengthening the direct dialogue between the European Union and NATO. As part of the ‘Europe benefiting from openness’ priority, *inter alia*, support for the EU’s foreign and security policy was mentioned, which was considered an important element in strengthening the EU’s position on the international stage. Attention was also paid to the further expansion of the European Union and the development of cooperation with neighboring countries. An important goal of the Polish presidency of the Council of the European Union was also the finalization of accession negotiations with Croatia and the signing of the Accession Treaty with Croatia.²⁰ The continuation of accession negotiations with Turkey, progress in Iceland’s accession negotiations, and support for the European aspirations of the Western Balkan countries were also considered an important element of the presidency’s objectives. The issues of cooperation between the EU and Russia were also highlighted.²¹ The implementation of the objectives of the Polish Presidency of the Council of the European Union in the field of CFSP turned out to be partial, but it allowed for the finalization or intensification of many activities—covered by the presidency’s priorities.²² It should be emphasized, however, that the presidency mechanism can be considered an important tool that highlights—important from the perspective of individual EU Member States—the principles and directions of cooperation, also in the field of CFSP.

In practical terms, the CFSP is carried out by the EU high representative for Foreign Affairs and Security Policy (acting in this case under the authority of the Council of the European Union) and by the Member States. The EU high representative for Foreign Affairs and Security Policy participates in the preparation of the CFSP and represents the EU in matters falling in its scope. They also ensure the implementation of decisions adopted in this area by the European Council and the Council of the European Union. They are appointed by the European Council, acting in this case by a qualified majority, which takes place with the consent of the president of

20 The accession treaty with Croatia was signed on 9 December 2011.

21 See Program of the Polish Presidency of the Council of the European Union 1 July 2011–31 December 2011, Warsaw, 2011, pp. 8 et seq.

22 See Polish Presidency of the Council of the European Union. Final report on the preparation and exercise of the presidency, Warsaw, 2012.

the European Commission. Under the same procedure, the European Council may terminate the term of office²³ of the high representative.²⁴

In the context of the discussed issues and the assessment of the implementation of the CFSP assumptions from the perspective of EU Member States, including Central and Eastern European countries, attention should be paid to the special positioning of the EU high representative for Foreign Affairs and Security Policy in the structure of EU institutions. They ensure the implementation of decisions made by intergovernmental institutions, and are vice presidents of the European Commission, which certainly has a significant impact on maintaining coherence in the field of EU foreign policy. The assessment of the institutional affiliation of the high representative and its character goes beyond the scope of this study, but there is no doubt that the common denominator of the aforementioned affiliation is the scope of tasks performed by them. It should be emphasized, however, that the function of the EU high representative for Foreign Affairs and Security Policy is performed at the intergovernmental and supranational level of cooperation between EU Member States.²⁵ While there are justified doubts as to the degree of independence of the high representative in the process of carrying out his or her tasks, the proper weighting of intergovernmental and supranational factors having a fundamental impact on the broadly understood EU foreign policy, or the effectiveness in achieving assumptions and goals with such a wide range of tasks performed, the possibility of accentuating in the field of CFSP the diversity of interests of individual EU Member States, which cannot always be closed into a uniform framework of common solutions.

In carrying out his or her tasks, the high representative is assisted by the European External Action Service, which consists of officials from the relevant services of the General Secretariat of the Council of the European Union and the European Commission, as well as staff seconded from the national diplomatic services. The organization and functioning of the European External Action Service are determined by a decision of the Council of the European Union. It cooperates with the diplomatic services of the individual EU Member States.²⁶

Its substantive basis is, of course, the limited competences in the field of CFSP of the European Parliament, the European Commission, and the CEJU. However, it should be remembered that there are many institutions in the organizational structure of the EU which—apart from the key competences discussed above—carry out specific tasks falling in the scope of CFSP. Examples include: the Political and Security Committee,²⁷ the so-called special representatives,²⁸ and the Agency for the Development of Defense Capabilities, Research, Purchasing and Armaments (whose

23 Arts. 18(1) and (2) TEU.

24 See Barcz, 2020, pp. 118–121; Grzeszczak, 2013, pp. 28–33.

25 Dubowski, 2019, pp. 107–128.

26 See Art. 27(3) TEU.

27 Art. 38 TEU.

28 Art. 33 TEU.

activities relate to the CSDP, which is an integral part of the Common Foreign and Security Policy, Art. 42(3), Art. 45 TEU).²⁹

As the issue of institutional solutions is complementary to the basic assumptions of this study, reference was made to the key issues of importance in the CFSP implementation process from the perspective of EU Member States, their participation in making these decisions and the assessment of the degree of representation of their national interests.³⁰

3. Instruments for the Implementation of the EU's Common Foreign and Security Policy

3.1. General Guidelines and Decisions

Pursuant to Art. 24(1) TEU, in the field of Common Foreign and Security Policy, the adoption of legislative acts is excluded, which is additionally confirmed by the provisions of Declaration No. 41 relating to Art. 352 TFEU. However, in accordance with the wording of Art. 25 TEU the European Union conducts a common foreign and security policy through:

1. defining general guidelines;
2. adopting decisions specifying:
 - a. activities to be carried out by the Union;
 - b. positions to be taken by the Union; and
 - c. the rules for implementing the decisions referred to above; and
3. strengthening systematic cooperation between Member States in the conduct of their policies.

The competences listed above are shared between the European Council and the Council of the European Union. As already indicated—in accordance with Art. 26(1) TEU—the European Council defines the general guidelines of the CFSP and takes the necessary decisions. It also sets goals and outlines the general guidelines of the CFSP, including matters with political-defense implications. In the process of implementing the general CFSP guidelines, decisions are issued by the Council of the European Union. According to Art. 26(2) TEU, the Council of the European Union develops the CFSP and takes decisions necessary to define and implement this policy based on general guidelines and strategic directions defined by the European Council.³¹

Considering the above, it should be emphasized, however, that the decisions issued by the Council of the European Union are of fundamental importance from the perspective of CFSP implementation. TEU regulations qualify them in the group of the so-called decisions about actions and decisions about positions. In the former

29 Aleksandrowicz, 2011, pp. 93–96.

30 See Missiroli, 2008.

31 Ibid. pp. 96–97.

case, these decisions impose certain obligations on states. The Council of the European Union undertakes them if the international situation requires operational actions by the EU, and the provisions of the treaty do not specify what in practice these operational actions should mean. Decisions on actions define their range, objectives, scope and means to be placed at the disposal of the EU, the conditions for their implementation and, if necessary, their duration. In this case, there is also a situation where a change of circumstances takes place which has a clear impact on the issue being the subject of such a decision—the Council of the European Union then reviews the principles and objectives of such a decision and takes further necessary decisions (see Art. 28(1) TEU). The decision to act then remains in force until the Council adopts a revised decision.³²

Referring the discussed issues to the position of individual EU Member States participating in the process of making and approving such decisions, it should also be noted that:

- a) They bind Member States regarding their positions and activities;
- b) Member States are required to inform the Council of the European Union of any national position or action taken pursuant to the decision; the Member State is obliged to inform the Council of the European Union in time which, if necessary, allows prior arrangements to be made in its forum, and the obligation to inform in advance does not apply to measures that merely simply implement the Council's decision at national level;
- c) The information obligation of the EU Member States also applies to situations where, in the event of absolute necessity resulting from developments in the situation and in the absence of a review of the decision of the Council of the European Union, they will urgently apply the necessary measures (as allowed under the TEU provisions, see Art. 28(4)), having regard to the overall objectives of such a decision; apart from the existence of the information obligation itself, it should also be noted that the Member States are obliged to respect several rules in this case (case of absolute necessity, no review of the Council of the European Union decisions, the need to take into account the general objectives of the decision taken by the Council);
- d) In the event of serious difficulties in implementing a decision, a Member State is required to notify them to the Council of the European Union, which considers them and seeks appropriate solutions, provided that they may not run counter to the objectives of the decision or prejudice its effectiveness.³³

Therefore, making decisions specifying actions under CFSP and CSDP is related to the existence of specific obligations on the part of EU Member States (e.g., information) and compliance with certain rules related to their implementation, including in the event of a need to take a national position or difficulties in implementing a specific

32 Starzyk-Sulejewska, 2013, p. 461.

33 Arts. 28(2)-(5) TEU.

decision. At the same time, it should be emphasized that these decisions do not significantly restrict the ability of the Member States to implement an independent security and defense policy, but require, in some cases, close cooperation of EU Member States (if it concerns, for example, specific missions carried out under the CSDP).³⁴

Decisions of the Council of the European Union setting out positions define the EU approach to a given problem of a geographic or subject nature. The rule in this case is that the Member States must ensure that their national policies are in line with EU positions, which means they should not adopt decisions contrary to the common position. Similarly, the TEU provisions impose certain obligations on the EU Member States:

- a) Member States coordinate their actions in international organizations and at international conferences, upholding the EU positions in this forum; the EU high representative for Foreign Affairs and Security Policy is responsible for organizing coordination in this regard;
- b) If all EU Member States are not represented in international organizations or at international conferences, it is for the participating Member States to uphold the EU positions.³⁵
- c) Member States represented in international organizations or at international conferences in which not all Member States participate are required to inform the latter, as well as the EU high representative for Foreign Affairs and Security Policy, of any matter of mutual interest;
- d) Member States that are also members of the United Nations Security Council are required to act compliantly, and fully inform the other Member States as well as the EU high representative for Foreign Affairs and Security Policy about decisions on common positions; Member States that are members of the Security Council are bound, in the performance of their functions, to defend the positions and interests of the EU, without prejudice to their obligations under the provisions of the Charter of the United Nations;
- e) Where the Union has defined a position on a matter which is on the United Nations Security Council agenda, the participating Member States request that the high representative be invited to present the Union's position;³⁶
- f) Member States' diplomatic and consular missions and EU delegations in third countries and at international conferences, as well as their representations in international organizations, are also required to ensure that decisions defining EU positions and actions are respected and implemented; they strengthen cooperation in this area by exchanging information and making joint³⁷ assessments.³⁸

34 See Art. 42(1) and Art. 43 TEU; see also Starzyk, 2003, pp. 127–136.

35 See Art. 34(1) TEU.

36 See Art. 34(2) TEU.

37 Art. 35 TEU.

38 See Starzyk-Sulejewska, 2013, pp. 463–464; see also Gadkowski and Gadkowski, 2019, pp. 96–97.

For the sake of order, we should also mention the decisions taken by the Council of the European Union pursuant to Art. 215 TFEU related to the application of restrictive measures against third countries, as well as natural or legal persons and groups or entities other than states.³⁹

3.2. Strengthening Systematic Cooperation, Common Approach

Pursuant to Art. 25 TEU, the European Union conducts a common foreign and security policy by strengthening systematic cooperation between its Member States. EU Member States—under the TEU provisions—are obliged to agree in the European Council and the Council of the European Union on all foreign and security policy issues of general interest to define a common approach. As a consequence of the above-mentioned TEU provisions, each EU Member State consults the others in the European Council or the Council of the European Union before taking any action in the international arena or entering into obligations that could affect the interests of the Union. In addition, Member States ensure, through concerted action, that the EU is able to pursue its interests and values in the international arena and remain in solidarity with each other. Where the European Council or the CEU has defined a common EU approach on a specific matter, the high representative of the EU for Foreign Affairs and Security Policy and the foreign ministers of the Member States coordinate their activities in the Council. Similar guidelines apply to Member States' diplomatic missions and EU delegations in third countries and to international organizations.⁴⁰

3.3. Sanctions for Non-compliance with Decisions Made in the Field of CFSP

The TEU provisions do not provide for specific sanctions applicable to an EU Member State in breach of its obligations under the Title V TEU. Under the current legal status, the jurisdiction of the Court of Justice of the EU in this area of cooperation between EU Member States—with few exceptions—is almost completely excluded. This means that the legal instruments for implementing the CFSP are practically outside judicial control.⁴¹

Referring to these exceptions, it should be noted that the Court of Justice of the EU is competent to control compliance with Art. 40 TEU, which defines the issue of compliance with procedures and the appropriate scope of powers of institutions exercising their competences in the field of CFSP. The Court of Justice of the EU also reviews the legality of certain decisions provided for in Art. 275 para. 2 TFEU.

39 E.g. Council Decision 2014/145/CFSP of 17 March 2014 on restrictive measures in relation to actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine, OJ L 78, 17.3.2014, pp. 16–21.

40 Art. 32 TEU.

41 See Art. 24(1) para. 2 TEU.

3.4. *International Agreements*

An important element of the discussion of issues related to the instruments of implementation of the EU's common foreign and security policy in practice are also international agreements. The catalog specified in Art. 25 TEU does not include international agreements, but from the beginning of the cooperation of EU Member States in the field of CFSP, they were an important instrument for achieving goals in this area of EU functioning. It should also be emphasized that the regulations in force in this area have undergone significant changes over the years, they were also introduced by the provisions of the Treaty of Lisbon, according to which the EU was granted legal personality⁴² and the procedure for concluding international agreements by the Union was given a uniform nature.

Referring to the key issues important from the perspective of this study, attention should be paid to Art. 216(1) TFEU, which defines the general principles shaping the EU's competence to conclude international agreements. Pursuant to its provisions, the EU may conclude international agreements with one or more third countries or international organizations. The EU may conclude international agreements if it is provided for in the Treaties or if the conclusion of an agreement is necessary to achieve, in the framework of the EU's policies, one of the objectives set out in the Treaties, if the conclusion of the agreement is provided for in a legally binding Union act, or if the conclusion of an agreement is may affect common rules or may change their scope. It should be emphasized in this case that international agreements concluded by the EU with third countries or with international organizations bind both EU institutions and individual Member States.

The principles and stages of a uniformly regulated procedure for concluding international agreements are regulated by Art. 218 TFEU, while the competence to conclude them in the field of CFSP is specified in Art. 37 TEU.⁴³ At the same time, it should be noted that the regulations on concluding international agreements, also after the changes introduced in this respect by the provisions of the Treaty of Lisbon, did not restrict the ability of Member States to make decisions in the field of CFSP.⁴⁴

3.5. *The Principle of Loyalty*

The cooperation of EU Member States—also in the field of CFSP—is also influenced by the principle of loyalty, currently regulated by the TEU regulations. Pursuant to the principle of sincere cooperation, the EU and the Member States respect each other and assist each other in carrying out tasks under the Treaties. The provisions of the TEU also oblige the Member States to take any appropriate measures, general or specific, to ensure the fulfillment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. Member States are also to facilitate the

42 Art. 47 TEU.

43 On CFSP, see, e.g., the Framework Agreement of 31 March 2011 between the United States of America and the European Union on the participation of the United States of America in European Union crisis management operations, OJ L 143, 31.05.2011, p. 1.

44 Starzyk-Sulejewska, 2013, p. 471.

fulfillment by the Union of its tasks and refrain from taking any measures that could jeopardize the achievement of the Union's objectives.⁴⁵ This rule for CFSP is specified in detail in Art. 24(3) TEU.⁴⁶

In addition to the principle of loyalty, both the TEU and TFEU⁴⁷ provisions define the content of solidarity clauses that are binding on the Member States on various levels of cooperation. Art. 42(7) TEU, according to which, in the event that any EU Member State becomes a victim of an armed attack on its territory, other Member States are obliged to provide assistance and support to it using all available means—in accordance with Art. 51 of the United Nations Charter. At the same time, the mentioned provision contains a reservation that the clause contained therein does not affect the specific nature of the security and defense policy of some Member States.

4. Decision-making Mechanism under CFSP

The decision-making procedures based on the principle of unanimity in this area are also an important safeguard for the interests of the Member States in the field of CFSP. They provide for some exceptions related to, for example, establishing a few decisions by the Council of the European Union applying the rules of qualified majority, e.g., when it adopts a decision defining the action or position of the EU, based on a decision of the European Council regarding the strategic interests and objectives of the Union or under the procedure appointment of a special representative (in accordance with Art. 33 TEU). The qualified majority voting mechanism, however, provides for the possibility of opposing the adoption of a decision under this procedure if it is based on significant national policy considerations, which the Council member must define in this case.⁴⁸

The TEU regulations also provide for a solution in the form of the so-called constructive abstention, which does not, however, prevent making decisions by the required unanimity procedure. According to the formal declaration made by the Member State (abstaining), it is not obliged to implement the decision in this case, but accepts that the decision is binding on the European Union. Such state—in a spirit of mutual solidarity—refrains from any action that could contradict or impede the action of the EU taken based on this decision, while the other Member States respect its position. However, the TEU provisions contain an important proviso that a decision cannot be adopted if the members of the Council of the European Union who have made a declaration of abstention represent at least one-third of the Member States whose total population is at least one-third of the population of the Union.

45 Art. 4(3) TEU.

46 See point 1 of this Chapter.

47 See Art. 222 TFEU.

48 Art. 31(2) TEU.

From the perspective of the interests of EU Member States, the reservation is also important, according to which the rules of qualified majority voting do not apply to decisions having military or defense implications. This sphere of cooperation between the Member States requires unanimity in each case.⁴⁹

It should also be noted that the TEU provisions grant the Member States the right of initiative in decisions taken in the field of CFSP. They also have the right to submit to the Council of the European Union any questions and motions relating to matters falling in the scope of the⁵⁰ CFSP.⁵¹

5. The Perspective of the Countries of Central and Eastern Europe—Final Remarks

The analysis of the binding treaty provisions and the procedures for cooperation between the EU Member States in the area of CFSP envisaged therein allows for the identification of significant differences in the normative and practical solutions that characterize it. The discussed area of cooperation in the European Union has kept separate solutions over the years, and subsequent changes introduced in this respect in the treaty regulations concerned both its institutional structure and legal instruments at the disposal of EU Member States. The current shape of the TEU provisions given by the provisions of the Treaty of Lisbon is confirmed by the fact that CFSP has been separated from the catalog of EU policies, as well as from the entirety of the EU's external actions, while maintaining its intergovernmental character. From the perspective of this study, it is important to clarify some of the obligations of the Member States in the field of CFSP—with the reservation, however, that the provisions of the TEU in force refer to the originally adopted solutions. It should also be emphasized that while the TEU provisions impose certain obligations on the Member States—also in the context of the solidarity clauses—they do not significantly restrict their freedom in making decisions in the field of foreign policy.⁵² Decisions taken by the Council of the European Union in a given matter do not result in the inability to make a decision in this respect at the national level.⁵³ Therefore, notwithstanding the fact that the CFSP area currently covers all areas of foreign policy and all matters relating to the security of the EU, including the gradual definition of a common defense policy,⁵⁴ and efforts to achieve an ever greater degree of convergence of actions by Member States,⁵⁵ the provisions of the TEU in many places emphasize the autonomy of the Member States in shaping and implementing foreign policy at the national level. At the time time, a kind of boundaries of the aforementioned

49 See Art. 31(5) TEU.

50 Art. 30(1) TEU.

51 Aleksandrowicz, 2011, pp. 97–98.

52 Hillion and Wessell, 2008, p. 86.

53 Starzyk-Sulejewska, 2013, p. 466.

54 Art. 24(1) TEU.

55 Art. 24(2) TEU.

autonomy are determined by the rules of loyalty applied in CFSP and the requirements of coherence of the entire external relations of the EU.

In conclusion, it should also be noted that CFSP—as an intergovernmental area of cooperation between EU Member States—is shaped by the EU institutions of an intergovernmental nature, i.e., the European Council and the Council of the European Union, and performed by the EU high representative for Foreign Affairs and Security Policy, who is assisted by the European External Action Service in performing its tasks. Of course, the EU Member States themselves participate in the CFSP implementation process, applying in this case national and EU measures.⁵⁶ The TEU provisions exclude the adoption of legislative acts in the field of the CFSP, establishing as the basis for the CFSP implementation process tools in the form of, above all, general guidelines, decisions defining actions or positions, and strengthening systematic cooperation between the Member States in the conduct of their policies. An important supplement to the aforementioned solutions is the possibility for the EU to conclude international agreements in its external relations, which are binding both for the EU institutions and for individual Member States.

Important from the perspective of the CFSP objectives is also the fact that its integral element is the Common Security and Defense Policy (CSDP), which has been separately regulated by the TEU regulations. Pursuant to Art. 42(1) TEU, the CSDP provides the Union with an operational capacity based on both civilian and military means. The European Union can use them in peacekeeping, conflict prevention and strengthening international security missions outside the EU, in line with the principles of the United Nations Charter. These tasks are performed using the potential and capabilities provided by EU Member States. The TEU regulations also specify that the missions for which the EU may use civil and military means include: joint disarmament operations, humanitarian and rescue missions, military advisory and support missions, conflict prevention and peacekeeping missions, and military crisis management missions, including post-conflict stabilization operations. All these missions can contribute to the fight against terrorism, including supporting third countries in combating terrorism in their territories.⁵⁷ At the same time, it should be noted that the CSDP assumes the gradual definition of a common defense policy.⁵⁸

It should be noted that the institution of permanent structured cooperation was introduced in this respect,⁵⁹ in which the countries of Central and Eastern Europe also participate.⁶⁰ The adoption of the above solutions resulted in a return to the concept of creating a common European army.⁶¹

56 Art. 26(3) TEU.

57 Art. 43(1) TEU.

58 Gadkowski and Gadkowski, 2019, p. 103.

59 Art. 42(6) in conjunction with Art. 46 TEU.

60 See Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States, OJ L 331, 14.12.2017, pp. 57–77; Miszczak, 2020, pp. 229–235.

61 Miszczak, 2020, p. 229.

The issue of external security is an important element of foreign policy for each country, and it is obvious that we strive to ensure it at the highest possible level. As already indicated above, the problem in creating fully consistent rules for the implementation of CFSP is sometimes a significant difference in the assessment of threats from the perspective of individual countries, which is influenced by a number of factors related mainly economic and political, but also related to geographic conditions. The coherence of solutions in the CFSP area was adopted to the extent that allows all Member States to make decisions at the national level. Therefore, such solutions increase the effectiveness of states providing security guarantees both within the EU structures and outside of them.

From the perspective of Central and Eastern European countries, the discussed issue has recently gained particular importance in connection with events related to, for example, the ongoing war in Ukraine, the concentration of Russian troops in Belarus, or the migration crisis that now affects the countries of Central and Eastern Europe.

Due to the different perceptions of the realization of one's own interests for the reasons mentioned above—the current situation shows a certain weakness of the solidarity clauses embedded in the treaty provisions—in terms of both cooperation in the field of foreign policy and, consequently, also security. This study does not deal with the issue of economic cooperation between EU Member States, however, the activities of states on various levels of their operation intertwine with each other, causing certain repercussions in areas (seemingly) unrelated.

Strategic assumptions of Central and Eastern European countries related to foreign and security policy share many common points. When discussing them, using Poland as an example, attention should be paid first of all to the expectations in terms of building the stability of the immediate geographical environment, maintaining measures to strengthen the voice of Central European countries in the European Union and the implementation of an active regional policy. The important issue remains, of course, taking actions aimed at expanding own defense capabilities, as well as strengthening the potential of allied relations in the EU and NATO.⁶²

Recent events, particularly affecting many Central and Eastern European countries, show that the further development of cooperation between EU Member States in the field of CFSP depends to a large extent on their political will. It is also important to define European cooperation in such a way that it will be deprived of the context of the special importance of the interests of the stronger states. For the above reasons, for activities focused on ensuring security guarantees—assuming a broad spectrum of understanding of this term—apart from cooperation implemented in the structures of the EU, cooperation implemented in the region is also important for Central and Eastern European countries (e.g., as part of the Visegrad Group or

62 See Strategy of Polish Foreign Policy 2017–2021; see also National Security Strategy of the Republic of Poland (2020), Hungary's National Security Strategy (2020), Security Strategy of the Czech Republic (2015).

the Three Seas Initiative). Forms of cooperation on a level going beyond the borders of the EU and Europe, the importance of which should at least be indicated here, are beyond the scope of this study. It is also worth paying attention to the fact that the issues of foreign, security and defense policy today are associated with many issues which, to some extent, require re-analysis and formulation of effective solutions, and concern a very wide spectrum of problems, such as the protection of the EU's external borders,⁶³ military security,⁶⁴ the growing migration crisis, or the protection of EU cyberspace.⁶⁵

63 Moraczewska, 2021, pp. 115–200.

64 See Miszczak, 2020, pp. 151–168.

65 Oleksiewicz, 2021, pp. 181–224.

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