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## PESCO AS AN ADDITIONAL MECHANISM OF COOPERATION OF THE EU MEMBER STATES IN THE DEFENSE SPHERE

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### SUMMARY

The modern threats and challenges to the European security system and their impact on the development of international legal cooperation of the EU Member States in the defense sphere are analyzed in the article. Attention is paid to the fact that the Treaty on European Union contains a number of opportunities to deepen the integration of EU Member States in the field of defense, in particular, the introduction of permanent structural cooperation within the Union (PESCO). The mechanism of realization of such possibility, which is defined by the founding treaties of the EU, is studied. The formation and functioning of permanent structural cooperation of the EU Member States in the field of defense are considered. PESCO's role in European security architecture has been clarified. The prospects for further strengthening of EU Member States' cooperation within PESCO are outlined.

**Key words:** permanent structural cooperation on security and defense, European Union, global challenges, security.

### PESCO КАК ДОПОЛНИТЕЛЬНЫЙ МЕХАНИЗМ СОТРУДНИЧЕСТВА ГОСУДАРСТВ – ЧЛЕНОВ ЕС В СФЕРЕ ОБОРОНЫ

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### АННОТАЦИЯ

В статье проанализированы современные угрозы и вызовы системе европейской безопасности и их влияние на развитие международно-правового сотрудничества государств – членов Европейского союза в оборонной сфере. Акцентировано внимание на том, что Договор о Европейском Союзе содержит ряд возможностей для углубления интеграции стран – членов ЕС в сфере обороны, в частности, предусмотрено введение постоянного структурного сотрудничества в рамках Союза (PESCO). Исследован механизм реализации такой возможности, определенный учредительными договорами ЕС. Рассмотрены становление и функционирование постоянного структурного сотрудничества государств – членов ЕС в сфере обороны. Выявлена роль PESCO в архитектуре европейской безопасности. Определены перспективы дальнейшего укрепления сотрудничества государств – членов ЕС в рамках PESCO.

**Ключевые слова:** постоянное структурное сотрудничество по вопросам безопасности и обороны, Европейский союз, глобальные вызовы, безопасность.

**Problem setting.** Although the origins of the European integration defense component began in the 1950s, its development over the decades was moderate, as defense as well as foreign policy remained to be quite sensitive area where the need for integration confronted national sovereignty issues.

Recently, however, cooperation in the field of security and defense has proved to be one of the most productive areas for the future reforming of the European Union. Among the reasons that prompted the EU to strengthen security and defense cooperation were the lack of confidence in the US security guarantees, the Brexit of the military strong Great Britain, and a combination of a number of security threats – Russian aggression in Ukraine and Syria, international terrorism and the migration crisis. In regards to the fragmentation, inefficiency and the lack of funding of the industry, the need for greater cooperation was recognized by virtually all of EU Member States.

The differences concerned only the directions and the amount of such cooperation. As a result, the choice was made in favor of the German vision – a slower progress of the widest possible range of EU countries, as opposed to the French concept of deeper cooperation between the most powerful in the military field of EU countries [1].

The escalation of the security situation has further highlighted the internal problems of the security and defense sector of the EU countries. First of all, it is about the inefficiency of the industry: defense spending is twice the size of the US, their efficiency compared to 15% [2]. In addition, the EU Member States have 17 tank types, 29 warships and 20 aircraft types, while the US has 1 tank, 4 ships and 6 aircraft types. This situation contributes to the inefficient use of available resources for defense [3, p. 151].

The lack of funding for the armed forces should also be noted: NATO's spending

standard of 2% of the defense budget is currently use by only 5 EU countries (UK, Estonia, Greece, Poland, and France). The majority of countries reduced defense and military research and development spending between 2005 and 2015 [2].

So cooperation is no longer just an opportunity, it is a duty. Today, EU countries are not able to guarantee their security alone in the event of a threat of military conflict, as their defense spending and security potential do not meet the requirements of modern times [4].

If the previous generation of European politicians saw the only way to achieve a proper level of security in Europe in strengthening the US military presence and enlarging the role of the United States in NATO architecture, today, given the fear that the United States will abandon its commitments in the North Atlantic Alliance, was made a decision on taking responsibility for the state of European security.



**Relevance of the research topic.** The relevance of the topic of the article is due to the current conditions of the European security system in the context of global challenges and threats of modern times. Among the reasons that prompted the EU to strengthen security and defense cooperation were fears that the US would abandon its NATO commitments, a desire for greater autonomy in European security issues, Brexit (United Kingdom spent about 20% of EU defense spending on defense). As well as a number of security challenges (Russian aggression, international terrorism, migration crisis).

In view of the above mentioned circumstances, on 7 June 2017, the European Commission presented an analytical report on the "Future of European Defense" outlining three scenarios for strengthening EU cooperation in the field of defense by 2025. The "Security and Defense Cooperation" scenario assumes that Member States will decide on a voluntary and case-specific cooperation in the field of security and defense, while the EU will continue to complement national efforts. Defense cooperation will intensify, but EU involvement in the most complex operations will remain limited. The newly created European defense fund will facilitate the development of some new common opportunities, but Member States will continue to control individually much of the development of defense capabilities and procurement. EU-NATO cooperation will retain its previous format and structure. The more ambitious "Collective Security and Defense" scenario assumes that Member States combine certain financial and operational assets to strengthen solidarity in defense matters. The EU will also be more involved in protecting Europe both inside and outside the Union. The EU and NATO will enlarge mutual cooperation and coordinate across the all spectrum of issues. The most ambitious "Common defense and security" scenario involves the creation of a common defense based on Article 42 of the Treaty on European Union (hereinafter referred to as the TEU), which allows a group of Member States to take European defense to a new level. Protecting Europe will become an EU and NATO responsibility that will be complementary. The EU will be able to conduct high-tech security and defense operations thanks to a higher level of integration of the defense forces of the EU Member States. It will support common defense programs through

the European Defense Fund. It will help to create a real European defense market that will be able to protect its key strategic companies from external takeover [5, p. 4–5].

Further integration processes in the field of the EU Common Security and Defense Policy have become a combination of the proposed scenarios. They were implemented in the form of Permanent Structured Cooperation (PESCO) by EU countries in the military and political sphere.

The formation of PESCO shows the intention of EU leaders to move by a way of strengthening defense cooperation without forming a full-fledged defense union. It should be noted, that cooperation within the PESCO is an important step in increasing the amount of independence and willingness to take responsibility for its own defense and security. Studying the legal regulation of EU Member States' defense cooperation in the PESCO framework gives an opportunity to reveal the role of ongoing structural cooperation in defense in the architecture of European security, as well as predict the prospects for further enhancement of defense cooperation.

**Research status.** Taking into account that PESCO is a relatively new instrument of EU Member States' defense cooperation; such an issue has not yet been sufficiently studied. Current research on the study of PESCO as an additional mechanism for EU Member States' defense cooperation is fragmented. These days there is no up-to-date comprehensive study of the peculiarities of legal regulation, formation and functioning of permanent structural cooperation of EU Member States in the defense sphere, which necessitates such analysis. Some aspects of this issue were reflected in the publications of Ukrainian and foreign experts. While studying PESCO as an additional mechanism of cooperation of EU Member States in the field of defense the works of Ukrainian scientists was used, in particular, such as: I.V. Yakovyuk, O.Ya. Tragniuk, Yu.P. Bytiak, Yu.G. Barabash, O.S. Aleksandrov, M.V. Hrebenuik, O.I. Poshedin. Among foreign researchers, works of such experts as Khav'ier Solana and Stiven Blokman were used.

**The purpose and objective of the article** is identifying the role of PESCO as an additional mechanism of EU Member States' defense cooperation, its legal nature, and to forecast the prospects for further enhancement of ongoing structural cooperation in the mentioned field.

**Statement of the main material.** It should be noted that that Treaty on European Union (hereinafter the TEU) contains a number of possibilities for deepening the integration of EU Member States in the field of defense. In particular, part 6 of Article 42 TEU stipulates that Member States whose military capability meets the higher criteria and which are responsible in this field shall provide for permanent structural cooperation within the Union [6, p. 38].

The mechanism of exercising such an opportunity is defined by Article 46 of the TEU. Member States which intend to participate in permanent structural cooperation in the field of defense must meet the criteria and be responsible for the military capabilities set out in Protocol No. 10 on permanent structural cooperation (hereinafter referred to as the PSC Protocol) established by Article 42 TEU.

Member States which declare their intention to participate in permanent structural cooperation in the field of defense shall be in line with the criteria and take military on responsibilities referred to above in the Protocol on permanent structural cooperation, notify their intention to the Council and the High Representative of the Union on Foreign Affairs and Security Policy [6, p. 40].

Within three months of such notification, the Council shall decide on the establishment of permanent structural cooperation and shall determine the list of Member States participating in such cooperation. The Council acts by a qualified majority after consulting with the High Representative [6, p. 40–41].

Any Member State may declare its intention to participate in ongoing structural cooperation at a later date. In such case, it shall notify the Council and the High Representative of its intention. If a Member State satisfies the criteria and undertakes the obligations set out in Articles 1 and 2 of the Protocol on permanent structural cooperation, the Council shall adopt a decision confirming the participation of the Member State.

The Council shall act by a qualified majority after consulting the High Representative. However, only those Members of the Council who are representatives of the Member States of such cooperation shall take part in the vote.

It should be noted that the participation of a particular Member State in such cooperation may be suspended, as decided



by the Council. It happens if such a state no longer meets the criteria and cannot fulfill the obligations set out in Articles 1 and 2 of the Protocol on permanent structural cooperation. While it the Council shall act by a qualified majority. Only those Members of the Council who are representatives of States Parties shall take part in the vote cooperation other than the Member State concerned.

Paragraph 5 of the Article 46 TEU provides for the possibility for any Member State participating in permanent structural cooperation to refuse such cooperation. The State shall notify its intention to the Council, which shall take into account the fact that the Member State concerned has suspended its participation in the cooperation.

However, paragraph 6 of the article 46 TEU, *inter alia*, establishes a unanimity mechanism for decision-making within the framework of PESCO, which, it should be noted, makes the structural weakness of this initiative from the very beginning.

The PESCO mechanism creates a legal platform for joint action by EU Member States on the creation of new military units and operations in the field of defense and security, as well as for defense researches.

The attractiveness of the PESCO tool is that it allows for rapid progress in further integration without changes to the founding treaties of the EU and makes it possible to take advantage to use each country's strengths and specializations. For example, Estonia has a very modest army but specializes in cyber security [2].

In 2017, paragraph 6 of Articles 42, 46 TEU have become practical – under the auspices of the European Council, the Permanent Structured Cooperation (PESCO) program has been initiated in the field of defense [7]. The purpose of PESCO is to deepen and to enlarge cooperation in the field of security and defense, which, in turn, will enhance the European Union's defense capability and allow it to jointly confront military threats.

On November 13, 2017, the Foreign Affairs Ministers of twenty-three EU Member States signed a declaration of intent to join the program. This was the first formal step towards the official launch of PESCO.

The document noted that PESCO is an ambitious binding and inclusive legal basis for joint investment in security and defense sphere. Initiatives that are compulsory for the participants include regular

increases in defense spending in real terms. Also, a list of 17 projects has been identified, the implementation of which is obligatory for the involved parties [3, p. 148]. These first 17 PESCO projects were approved by the EU Council on 6 March 2018.

Each of the 17 projects includes a Lead State and other participants with at least 2 members. Most of the projects are led by Western European members of the EU, while only two from Eastern Europe – Lithuania and Slovakia. Germany is responsible for the EU medical service, logistics center, training mission sender, and is working to build a rapid response force [8]. France is responsible for the security of military communications by developing common technologies for European military radio. In addition, Paris is developing new energy supply systems for field camps within EU missions. Leadership in four projects is carried out by Italy, namely: standardization of procedures among European armies and ensuring interaction between military and civilian persons within military trainings, creation of a new EU Center of advanced technology for disaster management, monitoring and protection of certain marine areas including ports and coastal waters, as well as developing a prototype of European mechanized battalions.

Spain is leading a project aimed at improving decision-making, planning and implementation of EU missions and coordination between armies [8]. The Netherlands is responsible for facilitating cross-border military mobility within the EU territory. Belgium is responsible for the development of underwater autonomous de-mining devices at sea. Greece is in the lead of two projects, one on the exchange of information from land, sea and air surveillance facilities and the other on the creation of a cybersecurity intelligence information exchange platform.

In regard to Eastern European member states, Lithuania should be responsible for the creation of a rapid cyber-response force, and Slovakia for the creation of a mobile artillery platform aimed at improving coordination and interoperability in multinational operations [8].

Subsequently, this format of defense cooperation was joined by Ireland and Portugal. In total, 25 of the 28 EU Member States joined the program. The initiative was not supported by the UK, Denmark and Malta.

On December 11, 2017, the EU Council acting by a qualified majority approved

the creation of a defense program (PESCO).

Since defense is a matter for the exclusive competence of the EU Member States, participation in PESCO is voluntary. However, if a state joins, it must take on some obligations and implement them. Such obligations are legal-binding.

Each Member State participating in PESCO shall provide a plan of national contributions and efforts agreed upon. These national implementation plans are a subject of regular evaluation by the European Defense Agency and the High Representative of the Union of Foreign Affairs and Security Policy. The latter is significantly different from the voluntary approach that is currently the rule in the EU Common Security and Defense Policy. Such an approach is aimed at strengthening the EU's strategic autonomy. At the same time, national sovereignty in the defense sphere remains untouchable and at the same time should become the basis for joint efforts of states in the field of defense and security [9, p. 16].

The military capabilities developed within PESCO remain at the disposal of the EU Member States, which can also use them in cooperation with NATO or the UN.

On November 19, 2018, the Council of the European Union approved an updated list of PESCO common security and defense projects. The list includes 17 projects focused on the training of personnel, the development of defense capabilities, the development of new weapons systems, as well as the increase of land, naval and air combat readiness [10].

It should be noted that the effectiveness of permanent structural cooperation in the field of defense will be measured by the implementation of approved projects.

In order to ensure the effectiveness of PESCO, it must be provided with the necessary tools. PESCO is managed at two levels. The EU Council is responsible for the overall mechanism for defining the direction, monitoring and evaluation of Member States' compliance with their commitments. Only members of the Council representing States Members of such cooperation shall take part in the vote. The decisions and recommendations of the Council in the framework of permanent structural cooperation shall be adopted unanimously, with the exception of votes concerning the admission of new members, suspension or termination of membership which require a qualified majority.



The main level of cooperation within PESCO is projecting. The Member States involved in such projects are responsible for implementing them.

On 14 May 2019, the EU Defense Council adopted a report summarizing the first year of military cooperation within PESCO. Based on the report, recommendations were approved.

The document emphasizes that in general the program consists of two elements. The first is 34 projects, half of which were launched in March 2017, the other half – November 2018. The second element of PESCO is the 20 commitments made by program participants. Commitments are an essential part of PESCO as they alter the nature of EU Member States' cooperation with each other. So projects are important, but only to the extent that they help to fulfill commitments [11].

It is worth mention about successful implementation of one of the main tasks that they set for themselves within the framework of PESCO – a regular increase of the defense budgets. Since 2018, they have increased defense spending by 3.3%, undertaking to increase 4.6% in 2019 [12].

Cooperation should go to a new level from 2021, when the European Defense Fund, which aimed at increasing the effectiveness of EU Member States' defense spending, becomes fully operational. The European Commission announced the creation of a European Defense Fund on 7 June 2017.

All fund assets will be divided into two main categories: research, development and procurement. A total of €90 million has been earmarked for these targets by 2019, taking into account the € 25 million allocated in 2017. After 2020, this cost item will be €500 million annually. A total of EUR 500 million will be earmarked for the development and procurement of weapons and defense technologies in 2019 and 2020. After 2020, it is planned to increase the costs of this sphere annually and eventually reach a level of 5 billion euros [13].

In addition, PESCO also provides ability for participation of non-EU countries. They may be invited as an exception – for this they will need to bring significant added value to the project and fulfill more demanding obligations [14]. In the near future, the European Council should adopt the general conditions under which third

countries may be invited to participate in individual PESCO projects.

Such an opportunity will serve as a legal basis for involving the UK into PESCO after it leaves the EU. This is important, taking into account that the EU is left by the country with a significant share of defense spending – more than 20%.

**Conclusions.** It should be noted that PESCO is a permanent format for the gradual strengthening of military cooperation in the European Union. Such an initiative should help strengthening the European Union's defense capability and allow it to jointly confront military threats.

Such an initiative was welcomed in the US and NATO. NATO Secretary General J. Stoltenberg welcomed the EU's declaration of accession to the PESCO program, noting that stronger European defense has the potential which will help to increase defense spending, provide new opportunities and improve burden sharing across the Alliance. PESCO will become one of the ways to strengthen the European pillar within NATO and, at the same time, avoid duplication and competition, since such cooperation within the European defense complements NATO [15, p. 8].

The PESCO project is positioned as compatible and complementary to NATO, although it has the potential to further enhancing of its independence.

We should admit that PESCO is now a more investment, integration project than a defense one. This is due primarily to the fragmentation, inefficiency and underfunding of the industry. Therefore, the EU leadership is primarily aimed at accumulating some of the defense spending of the Member States for their future rational use. It should be noted that the effectiveness of permanent structural cooperation in the sphere of defense will be measured by the implementation of adopted projects.

In addition, the implementation of a mechanism of permanent structural cooperation between the EU Member States in the sphere of defense within Article 42 TEU is an important step in increasing the autonomy and readiness to take responsibility for EU's own defense and security. Further cooperation within the framework of PESCO should help to strengthen the EU as a guarantor of international security, strengthen the European Union's defense capability, and allow it to jointly confront military threats.

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## ДОКТРИНАЛЬНЫЕ ЦЕЛИ АДМИНИСТРАТИВНО-ПРАВОВОГО РЕГУЛИРОВАНИЯ ОТНОШЕНИЙ В СФЕРЕ ЭКОНОМИКИ ЗНАНИЙ В УКРАИНЕ

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#### АННОТАЦИЯ

В статье проведено теоретическое исследование целей административно-правового регулирования отношений в сфере экономики знаний в Украине. Осуществлен анализ экономической и юридической литературы по исследованию концепции экономики знаний. Рассмотрены основные междисциплинарные экономические и юридические проблемы, связанные с внедрением концепции интеллектуальной экономики в Украине. Проведен анализ понятия «национальная инновационная система», основных проблем формирования ее элементов. Сделаны выводы о том, что качество формирования основных элементов НИС в Украине имеет системный характер базового инфраструктурного уровня. Степень формирования такого качества значительно влияет на развитие не только концептуальных экономических положений экономики знаний, но и на формирование административно-правовой публично-сервисной доктрины усовершенствования ее содержания, юридической практики создания благоприятной для развития инновационной среды в обществе. Определены конкретные доктринальные цели усовершенствования административно-правового регулирования отношений в сфере экономики знаний.

**Ключевые слова:** «экономика знаний», инновационная деятельность, административно-правовое регулирование.

## DOCTRINAL OBJECTIVES OF ADMINISTRATIVE LEGAL REGULATION OF RELATIONS IN THE SPHERE OF KNOWLEDGE ECONOMY IN UKRAINE

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#### SUMMARY

The article carries out a theoretical study of the goals of administrative regulation of relations in the field of knowledge economy in Ukraine. The analysis of economic and legal literature on the study of the concept of the knowledge economy. The main interdisciplinary economic and legal problems associated with the introduction of the concept of intellectual economy in Ukraine are considered. The analysis of the concept of “national innovation system”, the main problems of the formation of its elements. It is concluded that the quality of the formation of the main elements of the NIS in Ukraine has a systemic nature of the basic infrastructure level. The degree of formation of such quality significantly affects the development of not only the conceptual economic provisions of the knowledge economy, but also the formation of the administrative-legal public service doctrine of improving its content, the legal practice of creating an innovative environment in society conducive to development. The article defines the specific doctrinal goals of improving the administrative and legal regulation of relations in the field of the knowledge economy.

**Key words:** “knowledge economy”, innovative activity, administrative and legal regulation.