

Strategic Autonomy: The Legal Contours of a Security Policy Construct

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Following-up on the many academic analyses of strategic autonomy over the past decade, this special issue aims to take a more comprehensive perspective on ‘security’ by analysing the notion of strategic autonomy from a legal vantage point. After two more general contributions – on the role of the Court of Justice of the European Union and on the ‘supranationalization’ of security despite the key role of EU Member States in this area – the focus turns on specific policy areas. Subsequent contributions thus address strategic autonomy in the context of EU defence-industrial spending, sanctions, data autonomy, energy and investment and economic measures. Together, these contributions highlight different dimensions of the challenges the EU is currently facing. The question that is central to this Introduction –and to the special issue as whole – is to identify and shed light on the important legal contours of an essentially political concept.

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‘Strategic autonomy’ has become a buzzword in debates on the EU’s position as a global actor. A first reference to strategic autonomy already dates back to December 2013 when the European Council called for the development of European defence capabilities to enhance the strategic autonomy of the European Union. In the following years, the term features prominently in EU policy documents, including the 2016 EU Global Strategy and the establishment of a European Defence Fund (EDF) in 2017.¹ The idea received additional attention during the Trump-era and can also be seen as a driver behind the current Permanent Structured Cooperation (PESCO) initiatives on European military cooperation.² Closely linked to this debate is the role of NATO and the function

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¹ N. Helwig & V. Sinkkonen, *Strategic Autonomy and the EU as a Global Actor: The Evolution, Debate and Theory of a Contested Term*, 27 (Special Issue) *Eur. For. Affairs Rev.* 1–20 (2022), doi: 10.54648/EERR2022009.

² See on PESCO for instance: S. Blockmans & D. Macchiarini Crosson, *PESCO: A Formula for Positive Integration in European Defence*, in *The Routledge Handbook of Differentiation in the European Union* (B. Leruth, S. Gänzle & J. Trondal eds, Routledge 2022).

of both Article 5 NATO and Article 42(7) TEU on collective defence. Despite its growing significance, the legal contours of and challenges raised by ‘strategic autonomy’ remain nebulous. At the same time, these legal contours cannot be identified in isolation from the attendant political context, as some of the contributions to this special issue confirm.

The EU itself defines strategic autonomy as the ‘capacity to act autonomously when and where necessary and with partners wherever possible’.³ In the 2022 European Foreign Affairs Review (EFAR) special issue on strategic autonomy, Niklas Helwig and Ville Sinkkonen defined the notion as ‘the political, institutional and material ability of the EU and its Member States to manage their interdependence with third parties, with the aim of ensuring the well-being of their citizens and implementing self-determined policy decisions’.⁴ More recently, Hoffmeister approached the notion from a legal perspective.⁵ He defines strategic autonomy as ‘Striving for multilateral solutions, while being able to take lawful action alone to safeguard the Union’s values, fundamental interests, security, independence and integrity’.⁶ While ‘security’ only plays a small part in these definitions, it is clear that it is a central element to the strategic autonomy debate. The 2016 EU global strategy directly linked an ‘appropriate level of ambition and strategic autonomy’ to ‘Europe’s ability to promote peace and security within and beyond its borders’.⁷ At the same time, the debate made clear that ‘security’ should be understood in a ‘comprehensive’ fashion. Security questions are not only relevant in military terms, but also present themselves in areas such as energy policy, data protection, sanctions, investment policy, or public procurement.

The aim of the special issue is to explore the different legal dimensions of the concept of ‘strategic autonomy’ by approaching ‘security’ in a more comprehensive fashion. Practical legal questions increasingly present themselves in these

³ Council of the European Union, *Council Conclusions on Implementing the EU Global Strategy in the Area of Security and Defence* (14 Nov. 2016), <https://www.consilium.europa.eu/en/press/press-releases/2016/11/14/conclusions-eu-global-strategy-security-defence>.

⁴ Helwig & Sinkkonen, *supra* n. 1; see also *Strategic Autonomy and the Transformation of the EU: New Agendas for Security, Diplomacy, Trade and Technology*, 67 FIIA Report (N. Helwig ed. 2021), <https://www.fiaa.fi/julkaisu/strategic-autonomy-and-the-transformation-of-the-eu> (accessed 19 Sep. 2023); as well as N. Tocci, *European Strategic Autonomy. What It Is, Why We Need It, How to Achieve It*, Istituto Affari Internazionali (2021), <https://www.iai.it/sites/default/files/9788893681780.pdf> (accessed 19 Sep. 2023). On the evolution of the concept, see also M. Damen, *EU Strategic Autonomy 2013–2023*, European Parliament Research Paper, 2–5 (Jul. 2022).

⁵ F. Hoffmeister, *Strategic Autonomy in the European Union’s External Relations Law*, 60, *Com. Mkt. L. Rev.* 667–700 (2023), doi: 10.54648/COLA2023048. See also the editorial comments, *Keeping Europeanism at bay? Strategic Autonomy as a Constitutional Problem*, 59 *Com. Mkt. L. Rev.* 313–326 (2022), doi: 10.54648/COLA2022026.

⁶ *Ibid.*, at 673.

⁷ EEAS, *Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy* (Brussels Jun. 2016), https://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf (accessed 19 Sep. 2023).

fields – as the relevant CJEU case-law attests to. These range from individuals or companies seeking legal protection in Common Security and Defence Policy (CSDP) matters (including staff and public procurement matters), on questions of energy security or data protection, on exports of dual-use goods, or in cases of clear conflicts between EU and foreign sanction regimes. At the same time, these legal questions do not exist in a vacuum; the need to pay attention to the attendant political context and relevant debates is a point that the contributions to this special issue also corroborate.

This special issue therefore takes as a point of departure the notion of ‘comprehensive security’, a term that has been used in different ways in the literature as well as in policy documents.⁸ An early use of the term was made by the OSCE, the Organization for Security and Cooperation in Europe. From the outset, in the 1970s, the OSCE had an approach to security ‘that encompasses politico-military, economic and environmental, and human aspects’.⁹ The European Union adopted the notion along similar lines in its 2003 Security Strategy.¹⁰ And exactly ten years ago, this journal published a special issue on ‘A European Approach to Comprehensive Security’, which again drew attention to this development.¹¹

The present special issue adopts the notion to explicitly link it to ‘strategic autonomy’, thereby highlighting the underpinning dependencies, and related security risks, that come with that concept. Thus, the various contributions to this special issue each address a specific dimension of comprehensive security, by focusing on the implications of a certain policy field or development for the Union’s strategic autonomy. In his contribution, President of the General Court of the European Union, Marc van der Woude, analyses the evolution in EU law in which ‘security issues’ have increasingly become not only important, but are also accepted as part of the EU’s brief. This has institutional consequences and also increasingly involves the European Courts. Despite the limited role the Treaties may have foreseen for the EU Courts in relation to the Common Foreign and Security Policy (CFSP), security questions are indeed much more ‘comprehensive’ and have allowed the Courts to play an essential role in defining the legal contours of EU security policy. That Member States continue to play an essential part in the shaping of EU’s strategic autonomy is highlighted in the contribution by Federico

⁸ Compare Margriet Drent, who already in 2011 held that ‘The term “comprehensive approach” is notorious for being a catch-all phrase for what can turn out to be quite different things’. M. Drenth, *The EU’s Comprehensive Approach to Security: A Culture of Co-ordination?*, *Studia Diplomatica*, 3–18 (2011).

⁹ www.osce.org.

¹⁰ <https://www.consilium.europa.eu/media/30823/qc7809568enc.pdf> (accessed 19 Sep. 2023).

¹¹ See the introductory comments by Carmen Gebhard, *Introduction: A European Approach to Comprehensive Security?* 18 (Special Issue) *Eur. For. Affairs Rev.* 1–6 (2013), doi:10.54648/eerr2013027

Casolari, who addresses the ‘EU-Member States security nexus’: the way in which the Union and its Member States interact in security matters. The author argues that the strategic autonomy doctrine in combination with new evolving threats requires a stronger capacity to protect the supranational interests and values. In this process the EU’s and the Member States’ prerogatives for the protection of both (supra)national security and sovereignty are significantly blurred, which has an impact on the Union’s constitutional structure. The contribution also explores the development of the ‘Strategic Autonomy Doctrine’ (SAD), also in light of the recent security crisis in Europe.

Subsequent contributions then focus on specific policy fields. In his contribution, Bram Vroege addresses one of the key notions in relation to strategic autonomy: the possibilities to finance European defence. In that respect, the European Defence Fund (EDF) has for the first time enabled the EU to fund military equipment development in pursuit of its strategic autonomy. This article analyses the legal basis of the EDF and the related capacity to contribute to EU strategic autonomy. It reveals the complex internal EU competence division as well as the role of the Member States – issues that both hamper an effective use of the mechanisms. Another CFSP-related topic is addressed by Luigi Lonardo and Viktor Szép, who focus on the use of restrictive measures (sanctions) in relation to the EU’s strategic autonomy. Their main argument is that sanctions define strategic autonomy as much as they are defined by it. The article also contributes to defining strategic autonomy through the lens of sanctions. This leads to the conclusion that strategic autonomy has different procedural and substantive objectives.

Moving to specific policy areas, Oskar Gstrein analyses ‘data autonomy’ as a value-based framework, in response to the ongoing power-shift undermining the European Union’s strategic autonomy. A ‘future-proof security environment’ is one of the four priority areas of the Commission’s strategy towards an EU security Union. The author argues that the datafication of society comes with a recalibration of power structures. European states can no longer depend on territorial control to govern (cyber)space. A key question is whether the EU and its Member States are able to claim strategic autonomy when essential capabilities rely on a safe and sound data infrastructure. A similar reliance on external factors is to be found in what is often termed ‘energy security’. In their contribution, Sarah Lokenberg, Giulia Cretti, and Louise van Schaik argue that European strategic autonomy in the energy has field gained particular traction after the Russian invasion of Ukraine, which showed the extent and risks of fossil energy dependency on autocratic regimes. Fossil dependency upon undemocratic and unstable petrostates is a critical weakness that increases EU vulnerability and limits its capacity to act. Yet, the authors argue that the EU should continue to reduce its fossil dependencies on petrostates and consider more pro-actively how to manage

the energy relationship with them. Finally, the strategic autonomy of the EU – and hence its security – can be influenced by using trade instruments. Najib Zamani and Henri de Waele analyse how states increasingly pursue their interests not by classic military or political means, but rather through a clever application of particular economic and investment policies. To confront the challenges that come with this incremental geopolitization and securitization, the EU has newly embraced a creed of ‘open strategic autonomy’. That formula is intended as a way of coping with the changing international environment, while at the same time remaining receptive to most ordinary commercial opportunities. In their contribution, the authors raise the question of the extent to which these economic measures could in fact be seen as unwanted unilateral protectionism that may, in turn, affect the multilateral rules-based economic order.

Together, these contributions show different dimensions of the manifold legal (as well as political) challenges the EU is currently facing in implementing policies related to the notion of strategic autonomy. Ultimately, the question at the heart of this special issue is whether, and if so how, the EU can reconcile the need to strengthen its own position while being committed to the ethos of multilateralism and to common responses in a world where geopolitics still matter. We do not claim that this tension is unique to the concept of ‘strategic autonomy’. Indeed, one could say that this tension is inherent in the EU’s normative DNA; Article 3(5) TEU calls upon the Union not only to ‘uphold and promote its values’, but also its ‘interests’. In fact, in earlier publications, we identified other contexts in which this tension plays out.¹² We do claim however that the pursuit of the strengthening of the EU’s geopolitical position – through the rhetoric of and practice pertaining to the concept of ‘strategic autonomy’ – is a conceptual space where this tension manifests itself in a most dramatic manner. In this way, exploring the legal dimensions of the EU’s strategic autonomy is a useful lens through which to gauge the issue and this exercise not only provides significant and distinctive insights about the legal consequences that this turn to strategic autonomy may entail but also invites reflection on the future (normative) identity of the EU.

¹² E. Kassoti & R. A. Wessel, *The Normative Effect of Article 3(5) TEU: Observance and Development of International Law by the European Union*, in *Interacciones entre el Derecho de la Unión Europea y el Derecho Internacional Público* 19–46 (P. García Andrade ed., Tirant lo Blanch 2023); E. Kassoti & R. A. Wessel, *The Conclusion of Trade Agreements and the EU’s Duty to Respect Human Rights Abroad: Extraterritorial and Territorial Considerations*, in *Extraterritoriality of EU Economic Law: The Application of EU Economic Law Outside the Territory of the EU*, 229–249 (N. Cunha Rodrigues & J. Mata Diz eds, Springer 2021); E. Kassoti & R. A. Wessel eds, *EU Trade Agreements and the Duty to Respect Human Rights Abroad*, CLEER Papers (2020).

