CHAPTER FIVE

CFSP ASSISTANCE TO THE LAW ENFORCEMENT INSTITUTIONS: CSDP OPERATIONS

5.1. INTRODUCTION

The preceding chapter provided a detailed account of the European Union’s non-CFSP competences for supporting the police and the judiciary in third countries with a focus on the unilateral external assistance instruments. This chapter will inquire into the CFSP elements of the European Union’s toolbox in civilian peacebuilding.

The Common Foreign and Security Policy\(^ {791}\) was created as one of the three pillars of the newly formed European Union with the adoption of the Treaty of Maastricht. Even if “founded on the European Communities” to which it was a “supplement[ing] policy and form of cooperation,”\(^ {792}\) the CFSP has—against the backdrop of the fall of the Berlin wall and in the wake of a new Europe—been established with a potentially all-encompassing subject matter of “covering all areas of foreign and security policy.”\(^ {793}\)

For further “defini[tion] and implement[ation of]” the CFSP’s substantive scope, the Treaty did not provide a catalogue of precise competence-conferring provisions, each constituting the legal basis for a defined field of activity, comparable to the technique of the specific attribution of competences in other policies.\(^ {794}\) Instead, it introduced a set of aims that—certainly also explained by the very nature of foreign policy—could be characterized as “underlying policy”\(^ {795}\) or “abstract”\(^ {796}\) principles. In any

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\(^{792}\) Art. 1 TEU (Nice).

\(^{793}\) Art. II TEU (Nice).

\(^{794}\) Dashwood, ‘Art. 47 TEU’.

\(^{795}\) Eeckhout, EU External Relations, at 171.

case, these aims provided the European Union with grounds to become involved in the civilian aspects of peacebuilding and in the support of the police and the judiciary in third countries, in particular in the framework of the then ESDP. ESDP was introduced to, *inter alia*, “strengthen the security of the Union in all ways,” “to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders,” and most importantly “to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.”797

In terms of powers to achieve these objectives, the Treaty enumerated and defined a number of instruments, in particular, the adoption of joint actions, which “address specific situations where operational action by the Union is deemed to be required,”798 accompanied by the possibility to conclude international agreements.799

The Union’s CFSP peacebuilding is pursued under its security and defence policy, which implies that it operates under a security and defense rationale.800 Indeed, under the “common foreign and security policy [which] shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy […],” the Treaty on European Union further clarified that “[q]uestions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.”801 This provision – together with the provision providing for the adoption of joint actions – constituted the legal basis for the “EU operations”802 of both military and civilian nature. The 2000 Feira European Council Conclusions803 gave the necessary political impetus to the civilian operations

797 Art. 11 (1) TEU (Nice).
798 Art. 14 TEU (Nice).
799 Art. 24 TEU (Nice).
800 See also the implicit rationale of providing security for the Union – within its own borders – in the mission statements, in particular in those of the operations launched in the countries of the Western Balkans. This argument is supported by the fact that Art. 17 (2) has integrated the so-called “Petersberg tasks,” originally formulated in 1992 for the (temporarily) revived Western European Union (WEU). See paragraph II.4 of the Petersberg Declaration, adopted by the Council of the WEU on 19 June 1992, available at www.weu.int. The WEU’s operational responsibilities ended with the adoption of the European Council Conclusions in June 1999, aimed at strengthening the European Union’s ESDP.
801 Art. 17 (2) TEU (Nice). This list (“shall include”) was not exhaustive.
802 Expression used at the Council of the EU website, www.consilium.europa.eu.
803 European Council Conclusions, note 672.