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Brexit and External Differentiation in Foreign, Security and Defence Policy

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Abstract

This policy brief examines the EU's foreign, security and defence policy relations with third countries, and their relevance to the EU's future co-operation with the UK in these areas. It highlights the key points in the EU's proposals for the future relationship with the UK. The British government is currently refusing to negotiate any arrangements in these areas, and the policy brief looks at why. Since the UK's refusal to engage may turn out to be only temporary, the paper also looks at possible arrangements falling short of a legally-binding agreement, from the perspective of negotiability with the UK as well as their contribution to meeting EU objectives. It then considers the impact on the EU and the UK of having a treaty (however unlikely), no formal agreement, or a "light" agreement, and the implications of the EU's future relationship with the UK for its relationships with other third countries.

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Executive summary

The EU has diverse arrangements for foreign, security and defence co-operation with partners, from informal to treaty-based. But even legally-binding consultation mechanisms give third countries little added influence in EU decision-making, and the cost of not having a formal arrangement is minimal.

The EU has proposed detailed arrangements for the future foreign, security and defence policy relationship with the UK. The government of Boris Johnson, however, sees little added value in a contractual relationship with the EU institutions in these areas. It believes that it can instead work bilaterally with major EU member states, which will then bring the institutions into line.

Given the stalemate in negotiations on the future relationship as a whole (at the time of writing), and the British government's views on external security co-operation with the EU, London is unlikely to agree to the kind of foreign and defence policy relationship that the EU has proposed.

The most likely scenario at present is that there will be no agreement on foreign, security and defence co-operation. The short-term impact would be limited, though co-ordination on sanctions would become harder, and the EU might lose access to some UK military capabilities. The UK defence equipment market might become less open to EU manufacturers. The EU is also concerned that without an agreement UK policy could over time diverge from its own; and it worries that London might try to manipulate the EU by cultivating like-minded member states.

A less likely but possible scenario is that the EU and UK might agree later to limited foreign, security and defence co-operation with a light formal structure. The EU should be open to this, provided that any arrangement helps the EU to meet its international objectives. Such a relationship might evolve into something more substantial over time.

The EU should also rationalise its third country relationships, to give partners (potentially in future including the UK) who are more willing to follow co-ordinated policies and contribute to EU operations formal channels to influence decisions more than countries that want to remain more autonomous or contribute less.

Introduction

Foreign, external security and defence policy barely featured in the 2016 Brexit referendum campaign or the British government's lengthy pre-referendum report (UK Cabinet Office 2016a, 2016b). More than 60 per cent of voters surveyed thought that leaving the EU would not affect the UK's influence in foreign affairs (Clarke et al. 2017).

As Prime Minister, Theresa May sought “an ambitious partnership covering the breadth of security interests including foreign policy, defence [and] development” (UK Department for Exiting the European Union 2018: 51). Her government largely negotiated the Political Declaration (PD) accompanying the Withdrawal Agreement, which speaks of “ambitious, close and lasting” security cooperation (EU and UK 2019: 188). Her successor, Boris Johnson, changed it little.

Since Brexit, however, British negotiators have refused to discuss external security co-operation as an element in the future relationship. At the time of writing, talks on free trade and law enforcement co-operation are also at an impasse. Johnson seems unconcerned that there might be no agreement by the end of the post-Brexit transition period.

1. The (very) variable geometry of third country co-operation with the EU in external security policy

The EU's foreign, security and defence policies offer many examples of internal differentiation, with opt-outs, opt-ins and informal groupings of member states, with or without third countries (Grevi et al. 2020). External differentiation is equally varied: relationships with third countries range from almost entirely informal to treaty-based.

Fourteen countries (candidate countries; potential candidate countries; EEA/EFTA states; and the Eastern Partnership countries excluding Belarus) are invited to align themselves with EU sanctions regimes, declarations and statements in some international organisations. Some, such as Albania and Norway, almost always do so; others, notably Turkey and Azerbaijan, rarely do (Cardwell 2016). Alignment enables countries aspiring to membership to demonstrate that they are part of the same political space as the EU, but offers them no formal influence on proposed actions (Hellquist 2016).

Norway has no formal agreement with the EU on external policy co-operation, but the informal political dialogue accompanying the biannual meetings of the European Economic Area Council covers foreign policy issues. Several Council working parties hold regular consultations with Norway and other EEA countries. Norway seconds

a few staff to the European External Action Service. In discrete areas of Norwegian expertise (especially conflict resolution) Oslo can be quite influential (Norwegian Ministry of Foreign Affairs 2013). But as the Common Foreign and Security Policy (CFSP) has taken on more “legal” aspects, particularly the increased use of sanctions, Norway has suffered more from the lack of formal opportunities to comment on measures that may cause domestic economic and political pain (Hillion 2019).

The legally-binding EU–Canada Strategic Partnership Agreement (SPA) aims to enhance external policy coherence in many areas (EU and Canada 2016). It sets out the levels and sometimes the frequency of EU–Canada political dialogues. The EU–Japan SPA identifies more subjects for discussion, but is less prescriptive about dialogue modalities (EU and Japan 2018). Canadian officials complain that the EU imposed the SPA on Canada even though previous, more flexible arrangements worked well.¹

The EU and the US have many regular contacts at all levels, based on the non-binding Transatlantic Declaration of 1990 (US and EU 1990) and New Transatlantic Agenda of 1995 (EU and US 1995). Much foreign policy business is transacted informally, however, with EU officials or small groups of member states (particularly the E3 – France, Germany and the UK). US officials still agree with a 2005 review that the New Transatlantic Agenda created “overabundance of process, [...] disproportionate to actual output” (Peterson et al. 2005: 5).

There are also many models for third-country participation in CSDP missions and operations. Some 45 non-EU states have contributed personnel since the first operation in 2003, including almost all the states acceding to the EU in 2004 or later (Tardy 2014). Eighteen countries have Framework Participation Agreements governing their contributions, but others, including regular contributors to missions like Switzerland, have more *ad hoc* arrangements (Koenig 2019). Third countries such as Norway that could offer significant capabilities are excluded from the early stages of operation planning (Norwegian Ministry of Foreign Affairs 2018).

Overall, there is little correlation between how binding a third country’s external policy relationship with the EU is and the influence it has on decisions: the EU always guards its decision-making autonomy. Meanwhile, “excludability” – the ability to prevent a third country free-riding on EU policy successes – is low (Lavenex and Križić 2019). The current British government believes, therefore, that it would gain little from a contractual external security relationship with the Union.² But the EU perceives itself as offering the UK a unique foreign, security and defence relationship, drawing on the best elements of its relationships with others.³

1 Discussions in closed workshop on EU foreign policy co-operation with third countries, 2017.

2 Videoconference interview with a Foreign and Commonwealth Office official, 3 August 2020.

3 Telephone interview with EU official, 31 August 2020.

2. The EU and UK negotiating positions: The sound of one hand clapping

The EU has published proposals for a foreign, security and defence co-operation agreement with the UK, based on the Political Declaration, while acknowledging that the UK does not want to discuss these issues (European Commission 2020). Like the EU–Japan SPA, the draft lists areas for co-operation rather than detailed arrangements for political dialogue:

- Improving the effectiveness of international organisations.
- Sanctions, including (uniquely among third countries) discussions before EU sanctions are adopted “to allow for close alignment” of EU and UK regimes (European Commission 2020: 3) – reflecting the UK’s past contribution to EU sanctions regimes.⁴
- Crisis management, including participation in CSDP missions and operations, with intensified exchanges of information “at relevant stages of the planning process [...] proportionately to the level of the United Kingdom’s contribution” (European Commission 2020: 3), though not direct involvement in operation design and planning.
- Defence capability development, including involvement in EDA activities and PESCO projects.
- Modalities to facilitate intelligence exchanges.
- Galileo, giving the UK access to the Public Regulated Service (the encrypted signal for government users) under certain conditions.
- Development co-operation.

3. Scenarios for the future EU–UK foreign, security and defence relationship

Based on the EU’s proposals, the UK’s silence and the situation in the negotiations, there are three possible scenarios for the foreign, security and defence relationship.

3.1 An ambitious agreement

It is least likely that the UK will agree to the kind of relationship that the EU has proposed. But for the EU side, a legally-binding agreement on external security co-operation remains the best way to ensure a stable and constructive foreign and security policy relationship with the UK, avoiding “political volatility” elsewhere.⁵

Though the proposal allows the UK to influence policy in specific areas (including sanctions) without automatically replicating EU actions, or contributing to all missions

4 Videoconference interview with EU official 2, 7 August 2020.

5 Videoconference interview with EU official 1, 7 August 2020.

and operations, it is incompatible with the Johnson government's approach. Even before Brexit, Foreign Secretary Dominic Raab limited UK ministerial and official contact with the EU institutions to participation "only in those EU meetings where the UK has significant national interests involved" (Barrow 2019). In a letter to the Chair of the House of Commons Foreign Affairs Committee, Raab stated: "We have never defined our global outlook just through our EU membership" (Raab 2019). While May wanted a "hand on the tiller" of EU defence initiatives, to ensure their continued compatibility with NATO, Johnson will not expend negotiating capital on getting access to them when he doubts they will succeed.⁶ If the EU invited the UK to align itself with CFSP actions, London would regard that as "subjugation to EU decision-making". And it rejects the EU's standard clauses in third-country agreements, which allow their suspension in response to human rights and democracy violations.⁷

3.2 No agreement

The most likely scenario is no agreement, and only *ad hoc* foreign, security and defence co-operation, resulting from three assumptions underpinning British government policy:

- First, the UK is sovereign in its decision-making (Johnson and Raab are said to reject the idea of being foreign policy "auxiliaries" to the EU).⁸
- Second, its peers are other major nation-states (including EU member states), not the EU.
- Third, no major country's foreign policy relationship with the EU institutions is "load-bearing": major powers instead agree courses of action with the main EU capitals, who then bring the institutions into line.

As a former member state seeking to emphasise its "independence", the UK does not believe that its influence in Europe's security affairs depends on a contractual relationship with the EU, but on its status as a permanent member of the UN Security Council, a NATO member and a major military power. British ministers plan to work through bilateral relationships or *ad hoc* coalitions (in particular the E3), rejecting constraints on their freedom of manoeuvre that would be the price for working with the EU institutions.

3.3 A delayed and less formal agreement or set of agreements

If an agreement on free trade and law enforcement co-operation can be reached by the end of 2020 (by no means certain), it might then be easier for the EU and UK to agree on a foreign, security and defence policy relationship with a light formal structure.

6 Videoconference interview with a Foreign and Commonwealth Office official, 3 August 2020.

7 Videoconference interview with a Foreign and Commonwealth Office official, 3 August 2020 and telephone interview with EU official 2, 7 August 2020.

8 Videoconference interview with a British official, 31 July 2020.

The EU might prefer a legally-binding SPA-like agreement, but most aspects of foreign, security and defence policy co-operation can function without a treaty. Three possible exceptions are agreements on (a) the exchange and protection of classified information; (b) participation in CSDP missions and operations; and (c) participation in defence industrial co-operation through the European Defence Agency (EDA).

The UK accepts the need for an agreement on the exchange of classified information to enable co-ordination on matters such as sanctions. The parties disagree only over whether it should be a free-standing agreement (the UK preference) or part of an overall agreement (the EU view).⁹ So far, however, the UK has shown no interest in a Framework Participation Agreement to allow UK troops to take part in CSDP operations, nor in having access to EDA programmes.

On issues such as sanctions policy the advantages of working together are clear. The EU and US achieved a lot in 2014 through informal co-ordination on sanctions against Russia after the annexation of Crimea. Similarly, the EU could work with the UK, which has acknowledged expertise in identifying targets and crafting designations that will stand up to legal challenge. Over time, dialogue could expand to other themes.

4. The three scenarios: Effectiveness of EU and UK policy

Even if there is no agreement on co-operation when the post-Brexit transition period runs out, by comparison with the impact on trade or even law enforcement co-operation, the practical difference between the three scenarios would be relatively limited. In the foreign policy area, much EU (and UK) activity is declaratory. If there were no deal, the UK could theoretically take a visibly different line from the EU in international organisations. That would reduce the impact of EU statements (made on behalf not only of the 27 but a wider group of countries) in international fora such as the UN Human Rights Council. More likely, the UK would do what it is doing at present, described by one EU official as “socially distancing” from the EU: making national statements without co-ordinating them with the EU; but remaining close to the substance of EU positions.¹⁰ For the UK the symbolism of taking sovereign decisions independently of the EU seems to be key.

Only in relation to sanctions might having no deal make a significant difference. With no agreement on the exchange of classified information, co-ordination on sanctions lists would be much harder. If there were no trade agreement either, and relations were acrimonious, the UK might stop co-operating with the EU on sanctions issues (on which it currently continues to work with the EEAS and the Commission).¹¹ Separate

9 Videoconference interview with EU official 1, 7 August 2020.

10 Videoconference interview with EU official 1, 7 August 2020.

11 Videoconference and telephone Interviews with EU officials, 7 August 2020.

EU and UK sanctions regimes are likely to be less effective: the City of London's role as a financial hub complements the EU's role as a major trading partner of most countries.

In the defence field, the UK's contributions to CSDP missions and operations as a member state were limited. In the event of no deal, the EU would risk losing access to some UK enablers (such as strategic lift), and to the UK's military planning capabilities.¹² But the UK could still work with EU members in other formats, whether through NATO, France's European Intervention Initiative (EI2 – in which the UK, Norway and 12 EU members take part) or *ad hoc* coalitions of the willing.

The EU may be able to increase its role in defence industrial co-operation now the UK is not obstructing it. On the other hand, the UK defence industrial sector is one of the largest in Europe, and is likely to continue to supply EU customers – though UK defence manufacturers might suffer from supply chain disruption if there were no deal. The EU has to think not only of the capabilities and technology it is losing, but also consider that UK competition could damage EU defence firms, while the UK defence market itself could become less open to foreign competition.¹³

5. The three scenarios: Impact on EU unity

The EU sees an agreement with the UK as best for its own internal unity. The EU institutions are concerned that if there is no agreement, the UK might try to “divide and rule”, for example by upgrading defence relations with individual states or groups of states that might then represent the UK's point of view in the EU. The institutions have not so far needed to “police” the UK's bilateral contacts with member states, but they are wary.¹⁴

The institutions also have concerns about the interest of some member states, particularly France, in creating non-EU forums in which the UK can participate, including EI2.¹⁵ While EI2 could act as a bridge to the UK, it might detract from efforts to make CSDP more effective. The French proposal for a European Security Council, though currently dormant, was also designed partly to keep the UK engaged in European foreign policy formation; it too risks shifting the focus of decision-making away from EU structures, creating discord between its members and other EU member states (Scazzieri 2019).

The E3 format is viewed more positively, both because it has helped to keep UK and EU policies towards Iran aligned, even after Brexit (and in the face of US hostility), and because the EEAS participates informally in some E3 consultations. If there were a “light” EU–UK agreement, the UK might try to broaden the E3's agenda and use it as

12 Telephone interview with EU official, 31 August 2020.

13 Telephone interview with EU official, 31 August 2020.

14 Videoconference interview with EU official 1, 7 August 2020.

15 Telephone interview with EU official, 31 August 2020.

a channel to influence EU thinking.

Ultimately, with or without an agreement, UK and EU interests in European and international security are likely to remain similar. If trade and economic relations break down, the UK could try to undermine EU cohesion across the policy spectrum. But EU institutions should be more concerned about the on-going efforts of powers like China, Russia and (in some contexts, such as support for the International Criminal Court) the US to undermine EU unity, than anything the UK might do.

Outlook and conclusion

Though in recent years the increased use of sanctions as a CFSP tool has led to some “legalisation” of EU foreign policy, it remains the least communitised area of EU policy (Cardwell 2015). Differentiated co-operation in CFSP (and in CSDP) should in theory be easier than in other areas, therefore. In Theresa May’s 2018 Munich Security Conference speech, she proposed agreeing on security co-operation in advance of any deal on other aspects of the future relationship (May 2018). Yet it now appears probable that there will be no foreign, security and defence agreement at all.

The EU should accept that in the short term some UK actions internationally are likely to be performatively rather than substantively different from what the EU itself is doing. The UK’s pre- and post- Brexit interests (though currently under review in its Integrated Review of Security, Defence, Development and Foreign Policy) are unlikely to differ much. The Union should leave the door open to closer co-operation once the UK has satisfied its domestic political need to show that it is accepted internationally as a fully sovereign and independent player.

But the EU should also use the time before the UK re-engages to review its foreign, security and defence relations with other like-minded third countries. The UK’s dismissive view of the existing models may be exaggerated, but feedback from the EU’s partners shows that they are dissatisfied with how little attention the Union pays to their views.

The EU argues that its decision-making autonomy could be compromised by offering third countries more influence. The UK at one stage suggested to the EU side that it wanted as close an informal relationship with the EU as it had with the US – able to influence decisions without being in the room when they were taken. But the EU response was negative, giving the UK the impression that the institutions saw that as too much influence.¹⁶ In a challenging international environment, the EU should focus less on the purity of EU decision-making, and more on the effectiveness of the decisions taken.

¹⁶ Videoconference interview with a UK official, 31 July 2020.



In the single market context, the Commission consults EEA countries when legislation is being prepared, giving them a role in decision-shaping; and in return, the EEA countries abide by the decisions subsequently taken (Council of the European Union and European Commission 1994). The EU should envisage a similar trade-off in foreign and defence policy: the UK and other third countries might be more willing to align themselves with EU policies and to bring significant contributions to the table, if the EU were more willing to allow them to be involved in shaping – but not making – decisions.

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Differentiation has become the new normal in the European Union (EU) and one of the most crucial matters in defining its future. A certain degree of differentiation has always been part of the European integration project since its early days. The Eurozone and the Schengen area have further consolidated this trend into long-term projects of differentiated integration among EU Member States.

A number of unprecedented internal and external challenges to the EU, however, including the financial and economic crisis, the migration phenomenon, renewed geopolitical tensions and Brexit, have reinforced today the belief that **more flexibility is needed within the complex EU machinery**. A Permanent Structured Cooperation, for example, has been launched in the field of defence, enabling groups of willing and able Member States to join forces through new, flexible arrangements. Differentiation could offer a way forward also in many other key policy fields within the Union, where uniformity is undesirable or unattainable, as well as in the design of EU external action within an increasingly unstable global environment, offering manifold models of cooperation between the EU and candidate countries, potential accession countries and associated third countries.

EU IDEA's key goal is to address **whether, how much and what form of differentiation is not only compatible with, but is also conducive to a more effective, cohesive and democratic EU**. The basic claim of the project is that differentiation is not only necessary to address current challenges more effectively, by making the Union more resilient and responsive to citizens. Differentiation is also desirable as long as such flexibility is compatible with the core principles of the EU's constitutionalism and identity, sustainable in terms of governance, and acceptable to EU citizens, Member States and affected third partners.



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