



HM Government

Review of the Balance of Competences between the United Kingdom and the European Union Foreign Policy

Review of the Balance of Competences between the United Kingdom and the European Union

Foreign Policy

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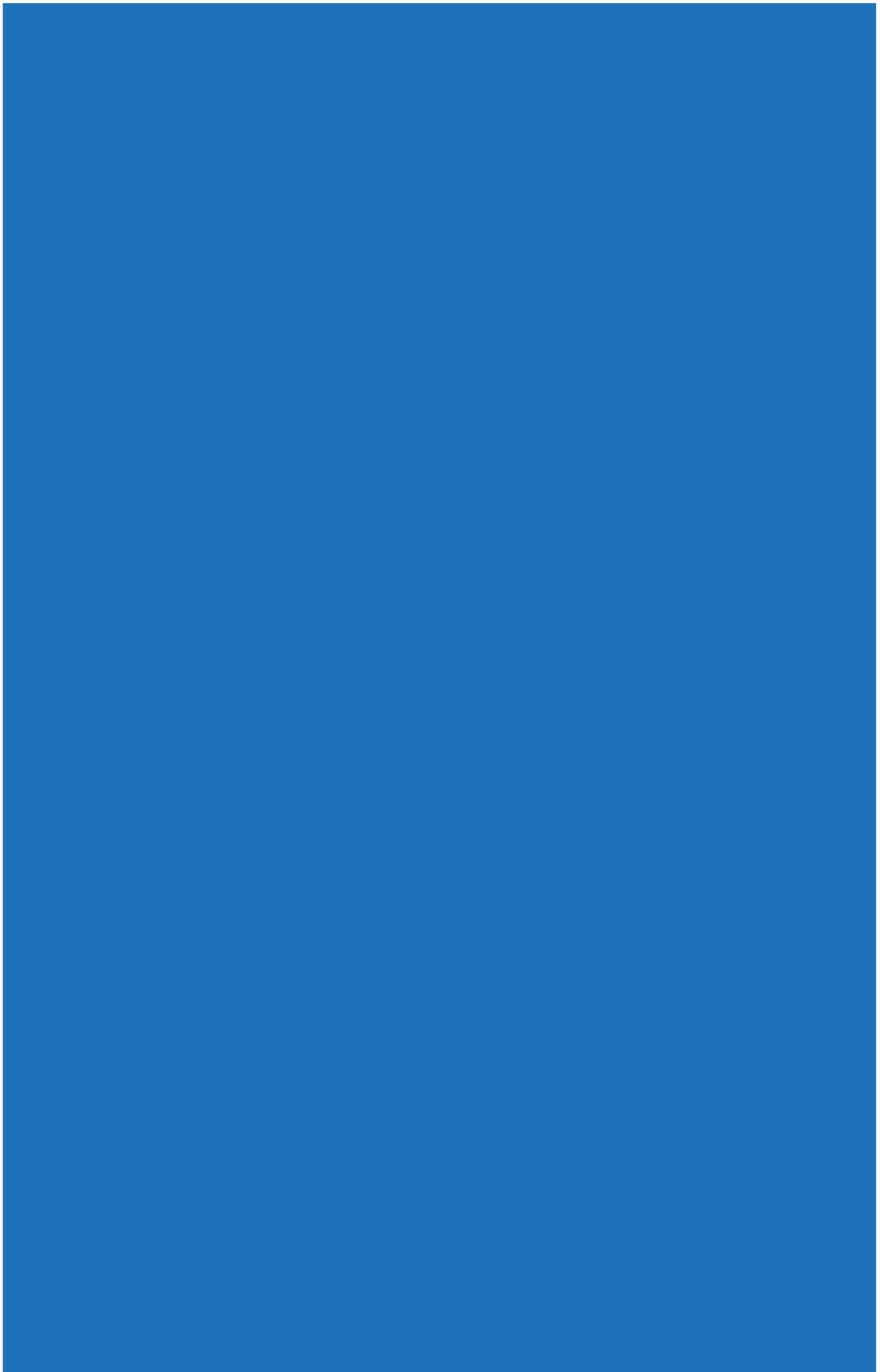
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Executive summary

This report examines the balance of competences between the European Union and the United Kingdom in the area of foreign policy. It is a reflection and analysis of the evidence submitted by experts, non-governmental organisations, businesspeople, Members of Parliament and other interested parties, either in writing or orally, as well as a literature review of relevant material. Where appropriate, the report sets out the current position agreed within the Coalition Government for handling this policy area in the EU. It does not predetermine or prejudge proposals that either Coalition party may make in the future for changes to the EU or about the appropriate balance of competences. For the purposes here, UK interests are defined as the Government's foreign policy objectives, including those in international security and defence and in civil protection.

The report sets out the complex legal and institutional framework of the EU's foreign policy, and its instruments and tools. It illustrates how these arrangements work in practice, using case studies of prominent foreign policy issues in which the EU has been or is involved, such as human rights in Burma; the Arab Spring; Iran's nuclear ambitions; the strategic relationships with China, Russia and the US; restoring order in Mali; the stabilisation of Somalia; ensuring long-term stability in the Western Balkans; and rebuilding Afghanistan.

These case studies show, in different ways, how the political, security and defence aspects of international relations are increasingly interdependent with the broader aspects of foreign policy, such as international trade, energy, transport and environment relationships. In EU terms, this is how action under the Common Foreign and Security Policy (CFSP), led by the Member States by unanimous agreement in the Council, is intertwined with external action under non-CFSP competences, largely led by the Commission and, in general, with only a qualified majority agreement from the Member States. The report does not cover everything in which the EU is involved around the world: it is selective, for the purpose of analysing the balance of competences. Moreover, detailed consideration of the EU's external action under non-CFSP competences will be for other, sector-specific reports in the review.

The majority of the evidence affirmed that, in CFSP and the Common Security and Defence Policy, the balance of competence lies squarely with the Member States. All significant decisions are made by unanimity, so each Member State has a power of veto, not least over the deployment of EU military operations and civilian missions. Each Member State also retains full sovereign control of its troops, civilian personnel and other security assets. No British personnel can be deployed in an EU mission unless the Government makes a deliberate decision to do so. The Member States can also act unilaterally, or via other international organisations, not least NATO, when they see fit.

Similarly, the evidence raised few issues in the balance of competence in non-CFSP areas of the EU's foreign policy, such as international trade and energy (although, as above, these will be looked at in more detail in other reports), and in civil protection. Indeed, it suggested that an important comparative advantage for the EU in foreign policy is its ability to combine with its diplomatic and security tools a wide range of policy instruments: political, economic, development, and humanitarian – albeit the EU needs to improve further its ability to combine its instruments effectively. But the evidence argued that the complicated web of different sources of EU foreign policy competence, creates scope for disagreements over interpretation. In particular, contributors noted tensions among the Member States and the EU institutions over how international agreements should be negotiated for the EU and how EU foreign policy should be represented at meetings of other international organisations.

Based on analysis of the evidence, the report draws conclusions about the value added and the disadvantages for the UK of working through the EU in foreign policy. Most of the evidence argued that it was strongly in the UK's interests to work through the EU in a number of policy areas. The key benefits included: increased impact from acting in concert with 27 other countries; greater influence with non-EU powers, derived from our position as a leading EU country; the international weight of the EU's single market, including its power to deliver commercially beneficial trade agreements; the reach and magnitude of EU financial instruments, such as for development and economic partnerships; the range and versatility of the EU's tools, as compared with other international organisations; and the EU's perceived political neutrality, which enables it to act in some cases where other countries or international organisations might not.

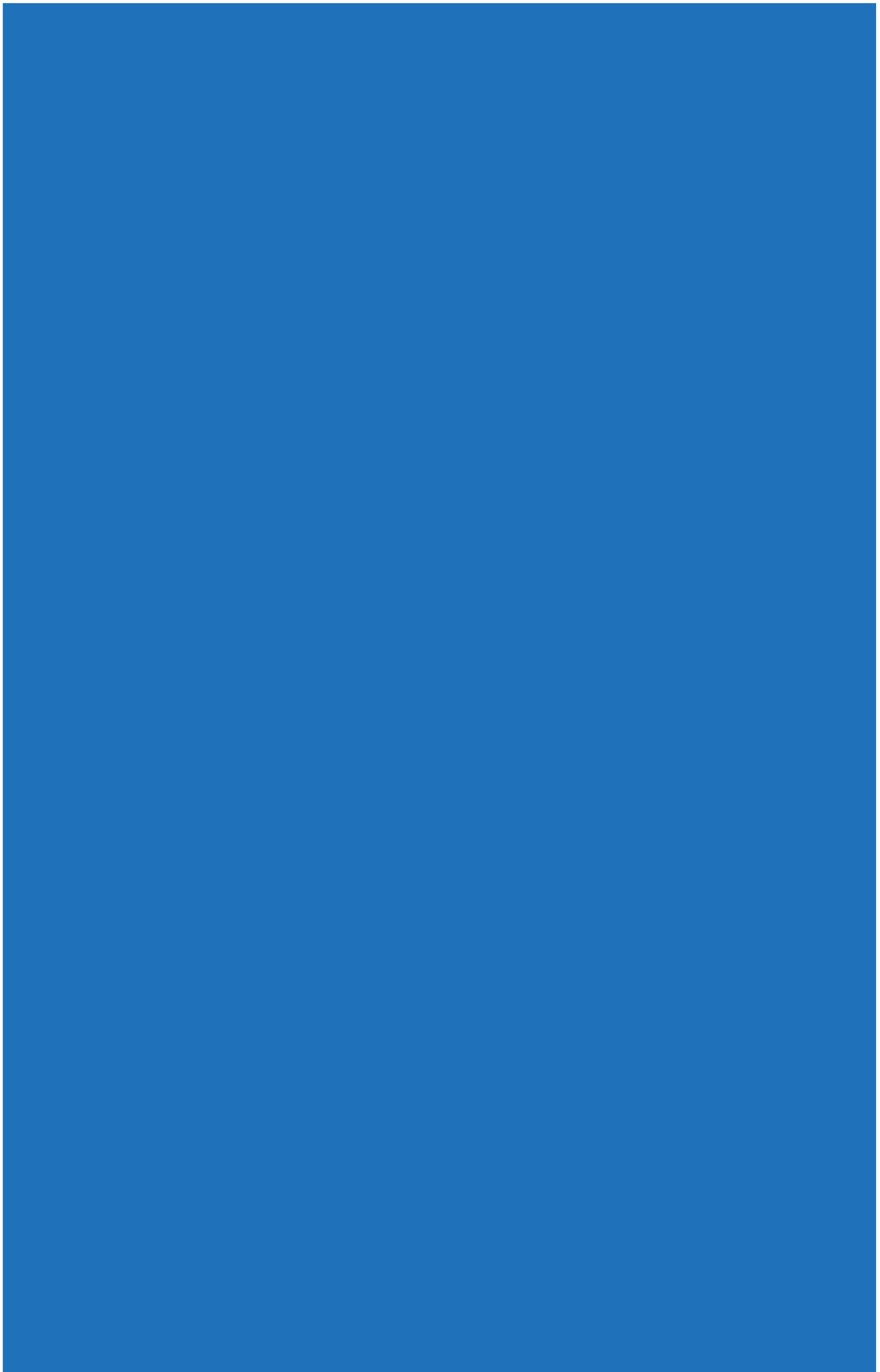
Again according to the evidence, the comparative disadvantages of operating through the EU are: challenges in formulating strong, clear strategy; uneven leadership; institutional divisions, and a complexity of funding instruments, which can impede implementation of policy; and sometimes slow or ineffective decision-making, due to complicated internal relationships and differing interests. One commentator summarised it thus: "The issue is not legal competence, but competence in general." Some argued that the EU is at its most effective when the Member States, in particular the UK, France and Germany, are aligned and driving policy.

Finally, the report poses overarching questions for the UK about the balance of competence in foreign policy:

- In CFSP and CSDP, what is the nature of the trade-off between the Member States retaining a high degree of sovereignty and control, and the perceived inefficiency or ineffectiveness of the EU institutions? How do we assess the assertions of some, in various policy areas, that the institutions would deliver greater impact if they had more latitude? Conversely, without changing the institutional or competence balance, is there a case for even more active UK leadership and involvement in areas such as military CSDP, to help improve the overall European performance?
- If the internal conditions of EU external action deteriorate, how will that affect our choices of how to deliver international impact in the British interest? If the institutions' performance does not improve; or if there is an undesirable shift in control away from the Member States, such as a greater role for the European Parliament; how will we alter our approach, what will the constraints be, and how will we use or develop our other partnerships and alliances as alternative vehicles?

- As the euro zone emerges from crisis, how might greater economic, monetary, and possibly political union between its members change the dynamics? Might stronger collective governance of a growing euro area, or more intense euro zone cooperation on TFEU policy areas, lead to a diminution of British influence on the external aspects of TFEU action? Might caucusing between the euro zone countries lead over time to erosion of sovereign control in CFSP and CSDP? If so, how can the UK guard against or counteract these tendencies?

As a relatively large, wealthy and militarily powerful country, with a global foreign policy and a long history of influence in world affairs, the UK has a complex network of alliances and partnerships through which we can work. The evidence argued that this diversity and flexibility of action will be vital in tackling the challenges and harnessing the opportunities of the twenty-first century. It also suggested ways in which the EU could reform its external action to be more effective in playing its part.



Introduction

The Foreign Policy Report is one of six reports in the first semester of the Government's Review of the Balance of Competences between the European Union and the United Kingdom. The Foreign and Commonwealth Office (FCO), which leads the Government's efforts to protect and promote the UK's interests and values overseas, has produced it, in collaboration with the Ministry of Defence (MoD) and the Civil Contingencies Secretariat (CCS) in the Cabinet Office.

Scope of the Report

Given the term "foreign policy" can mean many different things, it is worth at the outset explaining the scope of this report.

We have included here analysis of international security and defence issues, since they are inextricably linked to foreign policy, including in the EU context. Other aspects of defence policy, including those relating to defence industry, will be covered in other reports. In particular, in semester two, the Trade and Investment Report, to be published in late 2013, will look at export control and trade policy; in semester three, the Free Movement of Services Report, to be published in mid-2014, will look at issues relating to public and defence procurement.

We also cover here civil protection, i.e. how the UK works through the EU in disaster prevention, preparedness and response inside and outside the EU.

We do not consider here, except in passing, three other significant areas of foreign affairs: development cooperation and humanitarian aid, which will be covered in a separate report in semester one; EU enlargement, which will be covered in a fourth-semester report to be published in late 2014; and consular protection, which will be covered in the context of another fourth-semester report.

Methodology

In a speech on 23 January 2013, the Prime Minister set out why this was the right time to look afresh at the right to act – or the competences – between the EU and the UK: "Britain's national interest is best served in a flexible, adaptable and open European Union [...] In Britain we have [...] launched our balance of competences review to give us an informed and objective analysis of where the EU helps and where it hampers." This report is intended to inform the public debate on the EU, both in the UK and across Europe, through analysis of the evidence submitted in the area of EU foreign policy, which is also known in the EU as "external action".

On 28 November 2012, the FCO launched a public call for evidence for three months. During this time the FCO, MoD and CCS conducted an extensive outreach campaign. Many dozens of individuals and organisations with an interest in foreign policy, both in the UK and overseas,

have contributed. The evidence includes both tailored responses and articles forwarded to us by expert authors. The FCO also organised a series of seminars and roundtable discussions in the UK and other EU Member States, attended by well over a hundred experts. With the agreement of participants, unattributable records of these discussions were produced as evidence. All evidence used is clearly referenced in the report. A full list of contributors can be found in the Annex. We are publishing all the evidence received, alongside the report.¹

Structure of the Report

The report is divided into six chapters:

Chapter 1: a brief description of British interests as defined by current government policy.

Chapter 2: a description of the legal framework within which the EU acts externally, the roles of the EU institutions, and EU foreign policy instruments.

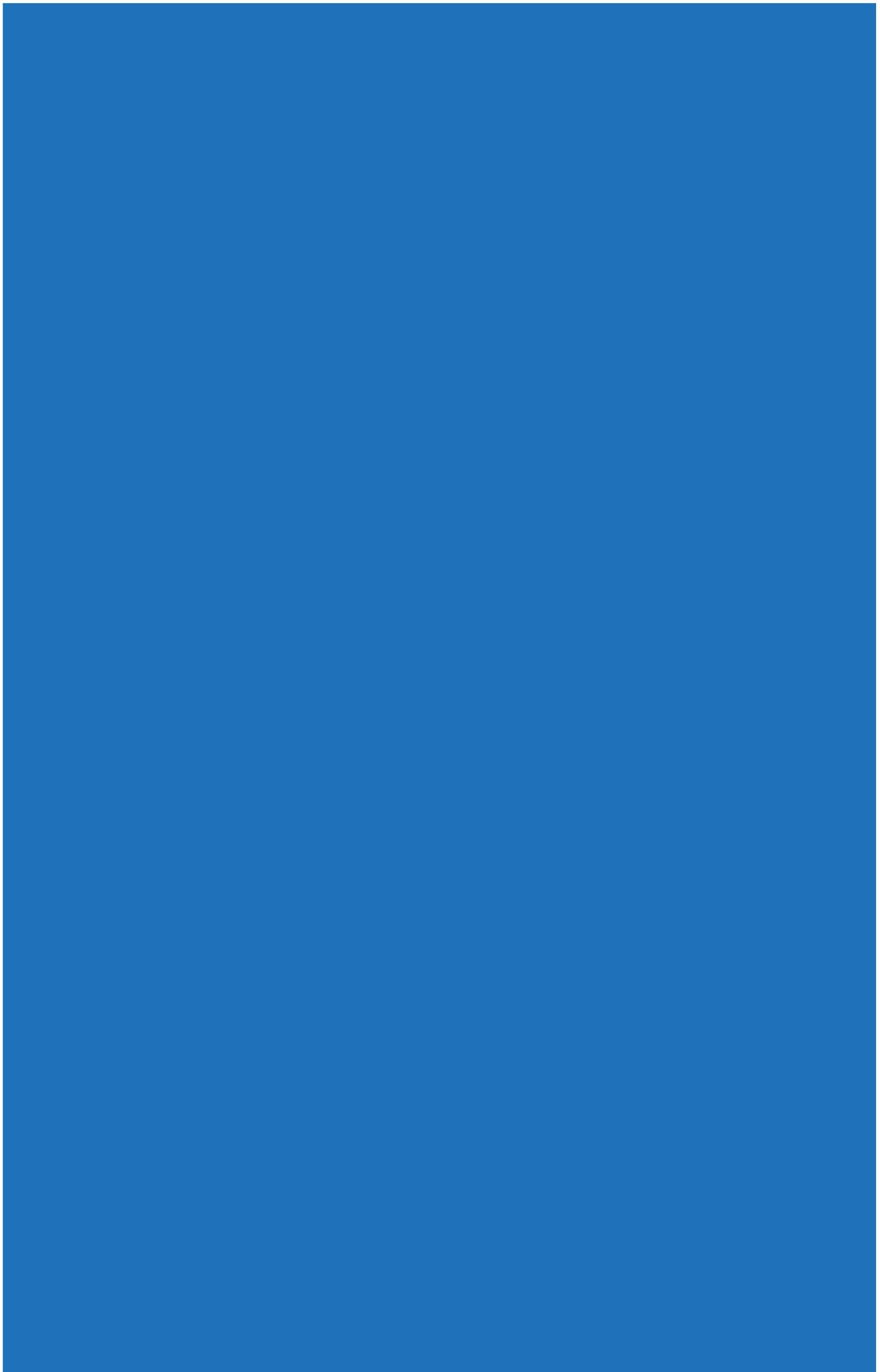
Chapter 3: based on the evidence, an analysis of general issues in the balance and exercise of competences in EU external action; and a range of case studies to explain how the EU is engaged in various prominent foreign policy issues and the value added by, and disadvantages of, that engagement for the UK.

Chapter 4: an analysis of how the EU operates in international security and defence and general issues in the balance and exercise of the relevant competences; and more case studies to examine, based on the evidence, how well the EU performs in relation to the British national interest.

Chapter 5: an analysis, again using case studies, of EU action in civil protection, that is, the prevention of, preparedness for, and response to natural or man-made disasters.

Chapter 6: conclusions drawn from the evidence and analysis, a look ahead to the foreign policy challenges facing the EU and its Member States, and the overarching questions for the UK concerning the balance and exercise of competences in this area.

¹ Where we refer to evidence that is drawn from a self-standing article or report, we give full details. Otherwise, we refer to submissions of evidence by the contributor's name.



Chapter 1:

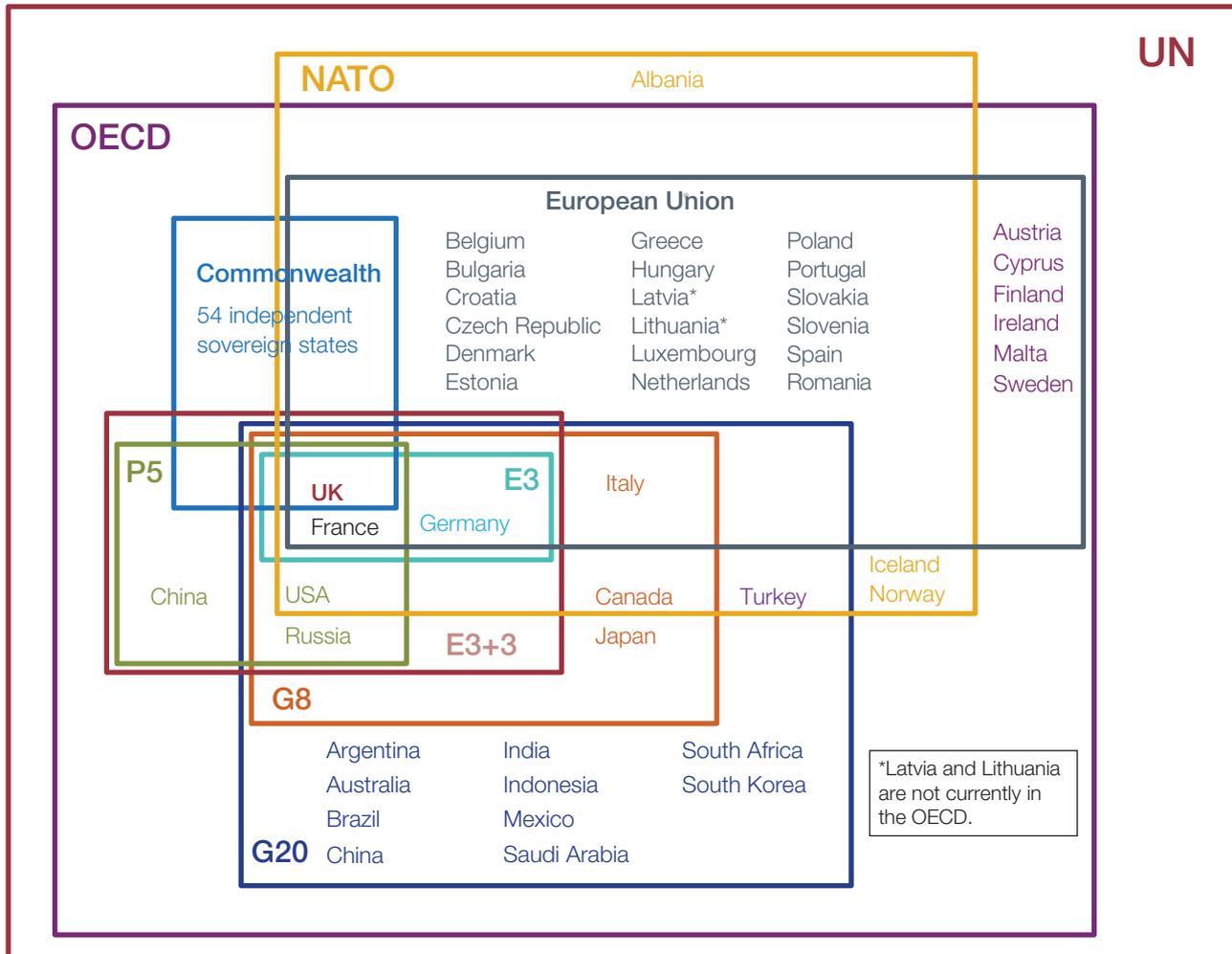
Britain's Foreign Policy Interests

- 1.1 The Government's foreign policy is perhaps best summarised by the Foreign Secretary's introduction to the 2012 FCO Departmental Report:

My vision is of a distinctive British foreign policy promoting our enlightened national interest while standing up for freedom, fairness and responsibility. It should extend our global reach and influence and be agile and energetic in a networked world. We will use our diplomacy to secure our prosperity; build significantly strengthened bilateral and multilateral relations for Britain; and harness the appeal of our culture and heritage to promote our values, including human rights. We must make the most of the abundant opportunities of the 21st century.

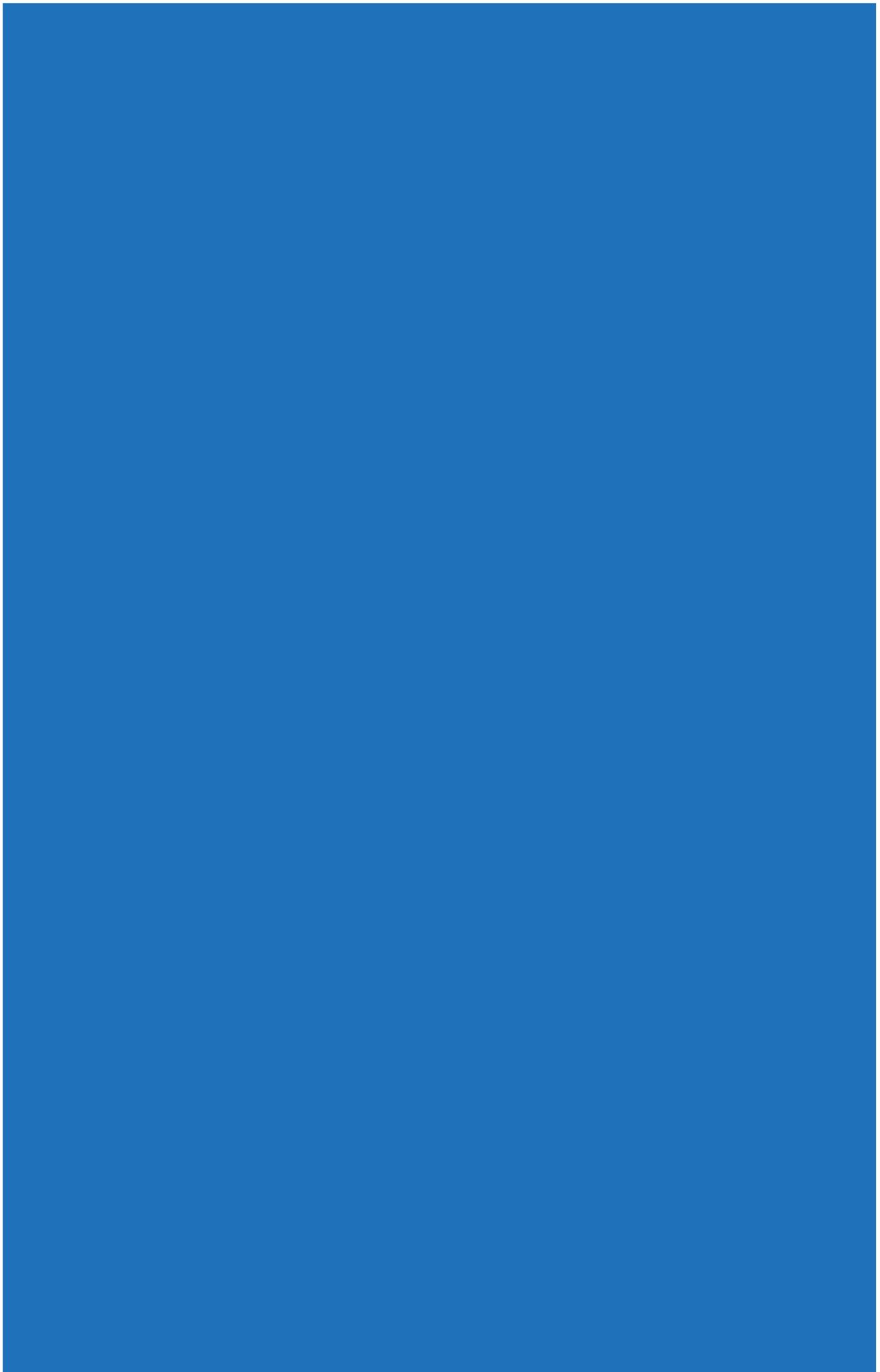
- 1.2 The Foreign Secretary identified three overarching priorities: "Safeguarding Britain's national security, building Britain's prosperity, and supporting British nationals around the world through modern and efficient consular services." On the challenges which the UK faces in ensuring its security and enhancing its prosperity, this report assesses the extent to which EU external action helps or hampers the realisation of UK objectives. As set out in the Introduction, the EU's impact in relation to the third priority, the consular protection role, will be considered in a separate report.
- 1.3 We also analyse here the extent to which EU external action correlates to UK national interests. We will see that there is, in short, a very close correlation. But they are not identical. The UK also has, for instance, a strong interest in maintaining an effective and influential Commonwealth; and the Government has particular responsibilities in respect of our Overseas Territories. These will not be considered in this report, but remain an essential part of the UK's distinctive international role and foreign policy.
- 1.4 For any given foreign policy issue, the UK potentially has a range of options for delivering impact in our national interest. As a relatively large, wealthy and militarily powerful country, with a global foreign policy and a long history of influence in world affairs, we have a complex network of alliances and partnerships through which we can work, to an extent matched in the EU perhaps only by France. These include – besides the EU – the UN and groupings within it, such as the five permanent members of the Security Council (the "P5"); NATO; the Commonwealth; the Organisation for Economic Cooperation and Development; the G8 and G20 groups of leading industrialised nations; and so on. Conversely, other EU Member States have less overall diplomatic reach and fewer options beyond the EU. Figure 1 below illustrates this. The difference constitutes an important backdrop to the UK's approach to EU foreign policy and, as we shall see, significantly shapes daily discussion in Brussels of how and when the EU should act.

Figure 1



- 1.5 At the same time, among the Member States, the UK has played one of the strongest roles, again along with France, in shaping the nature and content of EU external action. To take just two examples: in the area of sanctions, over the last ten years the UK has led the development of EU instruments and action that are closely joined up with the efforts of the wider international community, especially those of the United Nations (UN) and the US, and which have delivered important effect in line with British priorities on, for example, Libya, Burma and Iran. In the area of defence, the 1998 UK-France summit at St Malo, Normandy, adopted a declaration which laid the basis for EU defence policy; the British Presidency of the EU in 2005 saw the launch of six security and defence missions to help manage crises around the world; and, throughout these developments, British diplomats have worked ceaselessly to ensure that NATO remains the primary European and transatlantic defence organisation. This level of UK involvement has made the EU’s external tools better suited, and its action more effective, than they would otherwise have been, as one of our options for pursuing our enlightened national interest.
- 1.6 It has become a truism that in an increasingly globalised, interconnected world, the lines have become blurred between domestic policy and foreign policy. Decisions taken by the Government which are intended for the British people will often have an impact internationally – and decisions taken by other governments will affect our own livelihood and safety. In the EU context, a great many of the decisions taken in Brussels for EU internal purposes have implications for the wider world, in particular for those countries bordering the EU. Examples include EU action in areas such as visa policy, transport regulations, and health. This report does not cover all this ground, and each of these policy

areas will be covered in detail in separate reports. But the increasing significance of the link between domestic and foreign policy is relevant to the consideration here of the balance of competences to act between the UK and other EU Member States on the one hand, and between the UK and the EU institutions on the other.



Chapter 2:

EU Foreign Policy Competence

2.1 This chapter describes the legal framework in which the EU acts externally. It is a simplified account, written for the purposes of this report.² It explains the history of the development of EU competence, its two main Treaty sources today, and which areas of external competence each treaty covers. Finally, the chapter describes the EU's institutional framework and policy instruments for external action.

History of EU External Competence

- 2.2 Under the founding Treaty of Rome (1957), the European Economic Community had legal personality, that is, the ability to act internationally in its own right independently of its Member States. The Treaty gave it express powers to act externally in the area of the Common Commercial Policy, which deals with external trade, and for the purpose of associating with a third country, a union of states, or an international organisation. The power to act externally in these areas meant that the Community was able to enter into trade agreements to promote trade liberalisation, and to create links with external bodies, whether third countries or other organisations.
- 2.3 A judgement by the European Court of Justice (ECJ) in 1971, known as AETR, established that the Community also had the implied power to enter into agreements with third countries “over the whole field of objectives defined in Part One of the Treaty”.³ This meant that in the areas where the Community had competence to act internally, it would in some circumstances also be able to act externally.
- 2.4 In 1986 the Single European Act did not create any new legal bases specifically relating to external action. However, certain new legal bases with a primarily internal focus included express authorisation for the Community to enter into agreements for the purpose of organising international cooperation in the relevant fields, namely research and technological development, and the environment.

² For a more detailed analysis of the legal framework for EU external action, see Wyatt and Dashwood, *European Union Law*, sixth edition, Hart Publishing, 2011, chapters 27-28; Craig and De Búrca, *EU Law: Text, Cases and Materials*, fifth edition, Oxford, 2011, chapters 2, 3 and 10; Eeckhout, *EU External Relations Law*, second edition, Oxford, 2011; Dashwood and Hillion, *The General Law of EC External Relations*, Sweet and Maxwell, 2000; Macleod, Hendry and Hyett, *The External Relations of the European Communities*, Oxford, 1996.

³ Case 22/70, *Commission v Council*, European Agreement on Road Transport (“AETR”) [1971] ER 263 paragraph 14.

- 2.5 In 1992 the Maastricht Treaty created the EU, which comprised three pillars: the European Communities,⁴ which continued to have legal personality; the Common Foreign and Security Policy (CFSP); and Justice and Home Affairs (JHA). CFSP provided a basis for the first time for intergovernmental cooperation and common action among the Member States on a range of foreign and security policy issues. In addition, the Maastricht Treaty expressly provided for external action by the European Community in relation to monetary policy, development cooperation, and economic sanctions. The Common Security and Defence Policy (CSDP) was later developed through the Treaties of Amsterdam (1997) and Nice (2000).
- 2.6 In 2007 the Lisbon Treaty collapsed the pillar structure into a simplified framework, replacing the European Community with the EU, and expressly giving the EU legal personality. The EU's ability to act externally is based on competence conferred on it by its Member States through the Treaties. The extent, scope and nature of the EU's competence to act externally depends on the nature of a given action.

Sources of EU External Competence

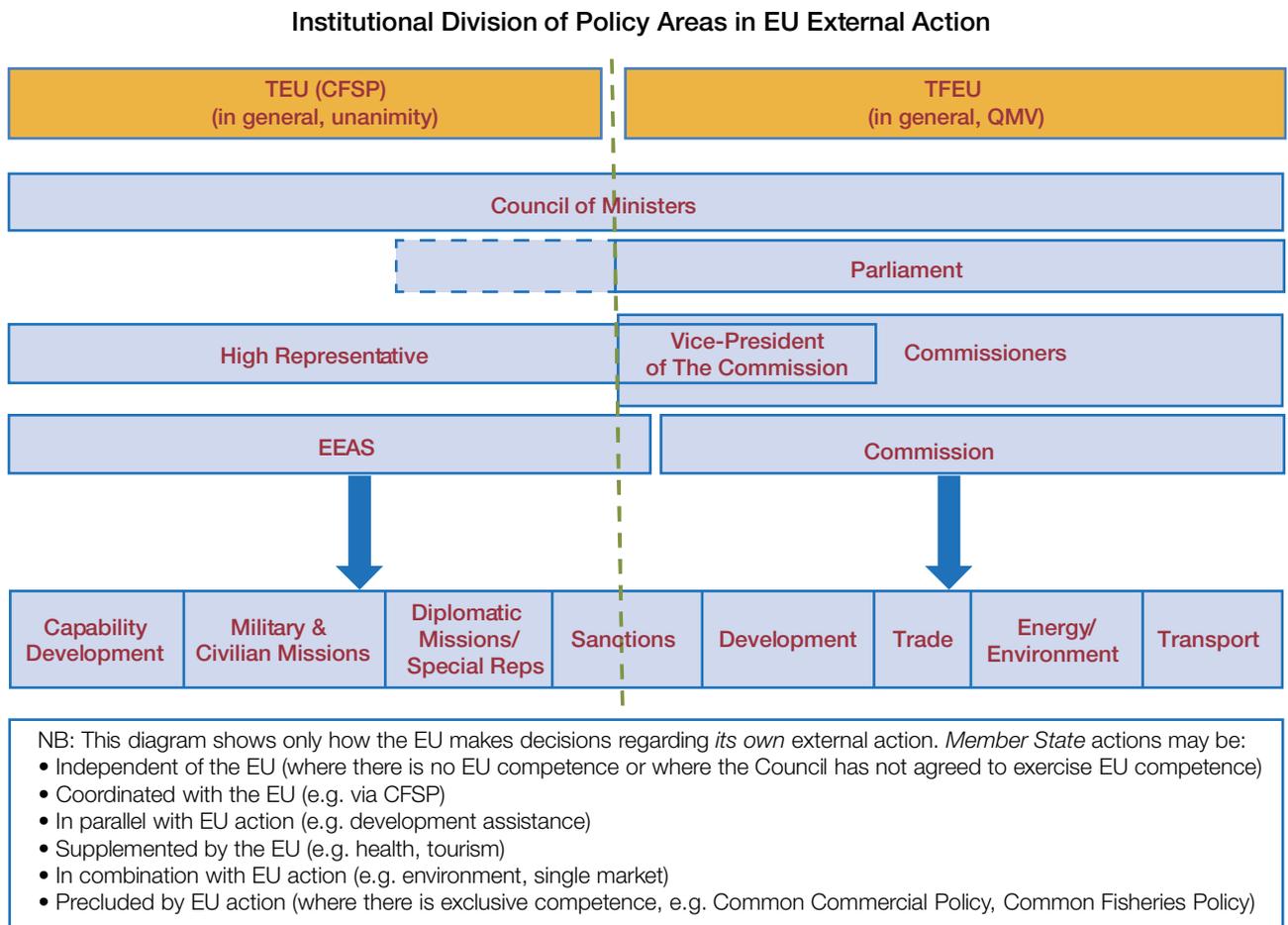
- 2.7 This is a complex area. We summarise here the essential points applicable since the entry into force of the Lisbon Treaty on 1 December 2009.
- 2.8 There are broadly two sources of EU external competence: the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). Article 21 TEU sets out common principles for all EU external action.⁵
- 2.9 The TEU confers competence on the EU to act externally in the area of CFSP. The nature of CFSP is described in more detail below.
- 2.10 The TFEU expressly provides the EU competence to act externally in certain policy areas, such as development assistance, environment, and trade. In other policy areas under the TFEU, while there are no express powers to act externally, the EU has implied powers, in accordance with the AETR principle noted above and set out in Article 216(1) TFEU, to take external action where it is necessary to achieve its internal objectives. TFEU competence is described in greater detail below.
- 2.11 It is important to note that even where the EU has competence to act externally, before doing so it needs specific authorisation from the relevant EU institutions according to the procedures the Treaties set out for that particular policy. As illustrated in Figure 2A below, the EU's decision-making procedures flow from whether action is being taken under the TEU (that is, CFSP/CSDP) or the TFEU. In general, under CFSP/CSDP, decision-making is by unanimity in the Council, which comprises Member States' government ministers

⁴ The European Community (previously the European Economic Community), the European Coal and Steel Community (assimilated into the European Community since 2002), and the European Atomic and Energy Community (known as Euratom).

⁵ Article 21 lists these objectives as: preserving peace and strengthening international security in accordance with the principles of the United Nations Charter; promoting international cooperation; developing and consolidating democracy and the rule of law and respect for human rights and fundamental freedoms.

(see paragraph 26 below). In areas of external competence under the TFEU, the Council's decision-making procedure depends on the subject, but in general is qualified majority voting (QMV).⁶

Figure 2A



TEU Competences (CFSP and CSDP)

2.12 In broad terms, CFSP is concerned with the political, security and defence aspects of external relations. CSDP is an integral part of CFSP.

2.13 The scope of CFSP competence is defined in Article 24(1) TEU as covering “all areas of foreign policy and all questions relating to the Union’s security, including the progressive framing of a common defence policy that might lead to a common defence”. However, CFSP does not cover the aspects of foreign policy that are dealt with by the TFEU, such as matters relating to trade or the environment.

2.14 The specific provisions for CFSP are in Title V of the TEU, in contrast to all the other legal bases for EU external action, which are found in the TFEU. CFSP is subject to distinctive legal, institutional and procedural arrangements – a distinctiveness that is explicitly acknowledged by the second subparagraph of Article 24(1) TEU. It follows that CFSP

⁶ Qualified Majority Voting (QMV) is a voting technique provided for under the Treaties which allows decisions to be taken by the Council according to a prescribed formula of weighted votes, without needing the agreement of all the Member States. The Lisbon Treaty made some significant changes to how a QMV would be calculated, and introduced a double majority mechanism, which requires a majority of the Member States representing a certain percentage of the population of the EU. However, these provisions will not fully enter into force until 2017; certain transitional arrangements apply in the interim, found in the Transitional Protocol to the Treaties.

competence is excluded from the categories of exclusive, shared and supporting EU competences set out in the TFEU (see below).

2.15 Under the provisions of Chapter 2 of Title V TEU, Member States are subject to:

- A duty to inform and consult one another within the European Council and the Council on any matter of foreign and security policy “of general interest” before taking action on the international scene (Article 32);
- The obligation to comply with any CFSP decisions that have been taken under Article 28 or Article 29;
- The obligation to coordinate their action in international organisations and at international conferences and to allow the High Representative to organise this cooperation (Article 34(1));
- for those that are members of the UN Security Council, a duty, where the EU has defined a position on a subject on the Council’s agenda, to request that the High Representative be invited to present that position (Article 34(2), third subparagraph).

2.16 CSDP provides the EU with the capacity to draw on Member States’ civilian and military assets for peacekeeping, conflict prevention and strengthening international security. Article 43(1) TEU specifies joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peacekeeping tasks, and tasks of combat forces in crisis management, including peacemaking and post-conflict stabilisation. Chapter 4 of this report looks in more detail at the EU’s role under CSDP.

TFEU

2.17 In general terms, TFEU competences relate to the commercial, economic, financial, social and environmental aspects of international relations. Part Five of the TFEU contains provisions governing EU external action. These include both express and implied powers to act externally, as set out in Article 216. The TFEU also contains some overarching procedural rules.

2.18 The first part of Article 216(1) states that the EU can conclude agreements with third countries or international organisations “where the Treaties so provide”. The TFEU expressly gives the EU power to act externally – but not always the power to enter into binding agreements – in relation to a broad range of areas, as set out in Figure 2B below. This report does not deal with these competences in detail: they will be covered by corresponding reports elsewhere in the Balance of Competences review.

Figure 2B

| Policy Area | TFEU Article(s) |
|--|-----------------|
| International monetary system | 138 |
| Education and sport | 165(3) |
| Vocational training | 166(3) |
| Culture | 167(3) |
| Health | 168(3) |
| Trans-European Networks | 171(3) |
| Environment | 191(4) |
| Common Commercial Policy | 207 |
| Development cooperation | 209 |
| Economic, technical, and financial cooperation | 213-14 |
| Humanitarian aid | 214 |
| Association Agreements | 217 |

2.19 The second part of Article 216(1) describes when the EU has the implied power to enter into international agreements even when the Treaties do not expressly say so. As noted above, the AETR judgement established that the EU had implied power to enter into agreements with third countries in order to achieve its internal objectives. Article 216(1) TFEU confirms this by providing that the EU may enter into an international agreement “where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union’s policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding act of the Union or is likely to affect common rules or alter their scope”. This means in particular that when EU law gives the institutions power to act internally in order to attain EU objectives, the EU implicitly also has the power to enter into international obligations “necessary” for the attainment of that objective, even when there is no express provision allowing it to do so. In construing “necessary” in the case law, the ECJ only asks whether the external action in question pursues an objective of the Treaties, rather than whether external action is indispensable to the attainment of that objective.⁷

2.20 There are different types of EU competence: exclusive, shared and supporting. The differences between them are set out in Articles 2-6 TFEU. Only the EU can enter into those parts of an international agreement that are within its exclusive competence (unless Member States are expressly empowered to do so by an EU act, for example to deal with a situation where it is for other reasons impossible for the EU to act in its own name). To the extent that competence remains shared, either the EU or Member States can enter into external agreements in that area. In areas of supporting competence, both the EU and the Member States may act, but action by the EU does not prevent the Member States from taking action of their own.

⁷ See, for example, Opinion 2/91 (ILO) [1993] ECR I-1061, paragraph 17 (“The Community thus enjoys an internal legislative competence in the area of social policy. Consequently, Convention No 170, whose subject-matter coincides, moreover, with that of several directives adopted under Article 118a, falls within the Community’s area of competence.”).

- 2.21 Article 3 TFEU sets out the areas where the EU has exclusive competence. The most important for the purposes of EU external action is the Common Commercial Policy defined in Article 207 TFEU, which covers all matters relating specifically to international trade. The EU also has exclusive competence to act externally in the circumstances set out in Article 3(2) TFEU, that is, when the conclusion of an international agreement “is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or insofar as its conclusion may affect common rules or alter their scope”. This test is not easy to apply, and has often given rise to litigation.⁸
- 2.22 The position can become complex if an international agreement contains some elements where the EU exercises its competence and others where the Member States exercise their own competence. The mechanisms for deciding whether the EU will in fact become a party are described below. Insofar as an agreement contains elements to which the EU is a party and elements to which Member States are parties, it is a “mixed” agreement.

Relationship between TEU and TFEU external competence

- 2.23 Whether a given measure should be adopted under the TEU (that is, CFSP/CSDP) or the TFEU is a question to be considered when the EU acts externally. It can be controversial.⁹ It affects the scope of the EU’s power and the applicable institutional framework (discussed below). Article 40 TEU is designed to ensure that TEU and TFEU external competences do not encroach on each other.

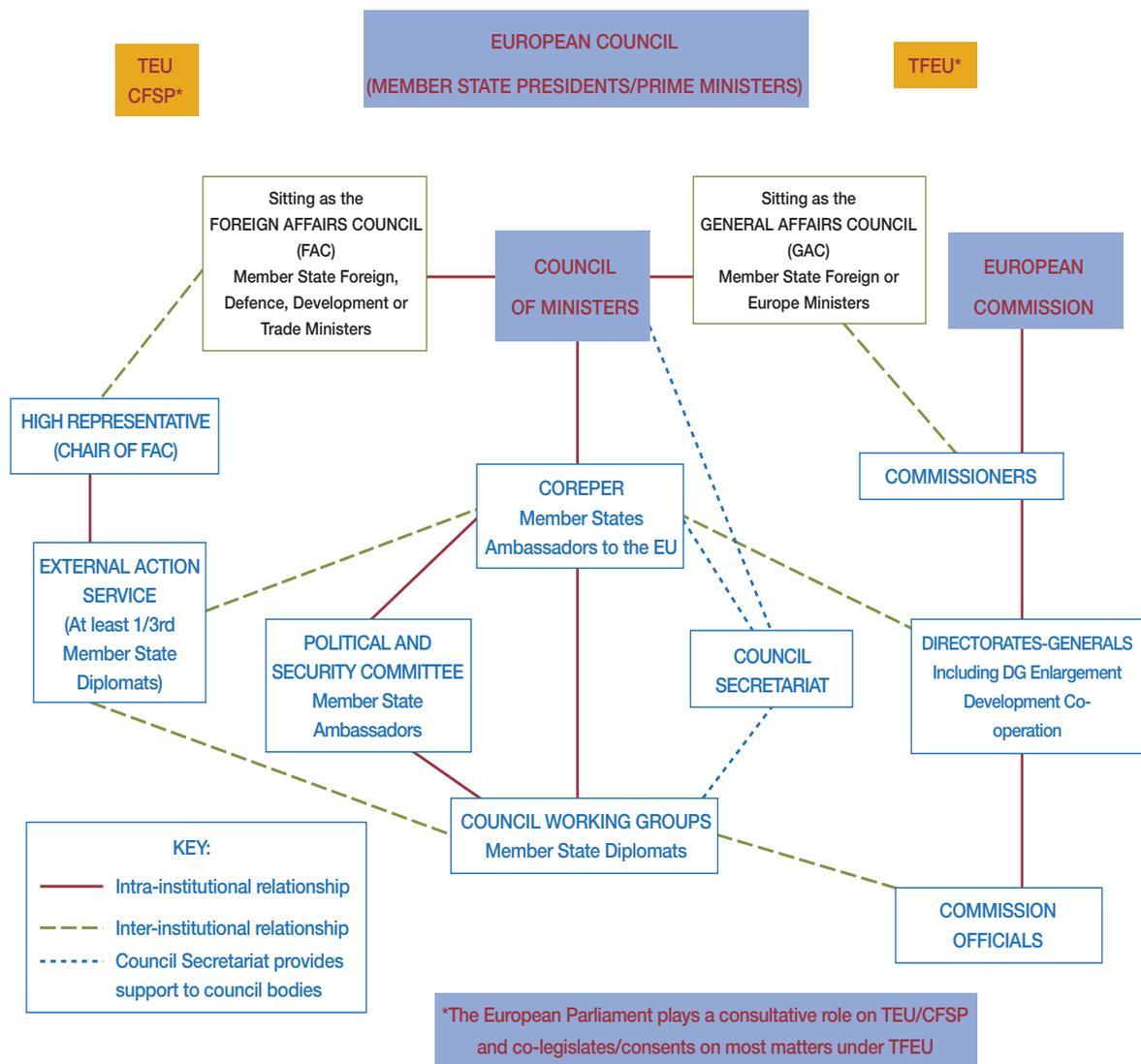
EU Institutional Framework

- 2.24 The Lisbon Treaty introduced institutional changes to EU external action, creating new bodies and redistributing the roles of existing ones. Figure 2C below illustrates in simplified terms the current institutional framework.

⁸ Originally in the AETR case, referred to in footnote 3, and also in cases such as Opinion 1/76 (*Rhine Navigation*) [1977] ECR 741 and Opinion 1/03 (*Lugano*) [2006] ECR I-1145.

⁹ For instance, in Case C-91/05 *Commission v Council* (*Small Arms and Light Weapons*) [2008] ECR I-361, decided before the Lisbon Treaty came into force, the European Court of Justice held that a decision under CFSP aimed at combating the proliferation of trade in small arms and light weapons should have been adopted under what is now the TFEU.

Figure 2C



2.25 Under the TEU, the primary responsibility for setting the strategic direction and objectives of all aspects of EU foreign policy rests with the European Council (the Member States' heads of state or government). In a post redefined by the Lisbon Treaty, the President of the European Council chairs its meetings and is responsible, along with the High Representative for Foreign Affairs and Security Policy (a post currently occupied by the UK's Baroness Ashton), for ensuring the EU's external representation on CFSP issues.

2.26 The Council of the European Union, also known as the Council of Ministers, comprises government ministers of the Member States. It can sit in any of a number of different configurations, according to the policy area being dealt with. For external action, it sits as the Foreign Affairs Council, usually comprising foreign ministers but also sometimes defence, development and trade ministers. Together with the High Representative, the Council is tasked with ensuring "the unity, consistency and effectiveness" of EU action in the external sphere. It plays a key role in defining and implementing the strategy decided by the European Council.¹⁰

¹⁰ Other configurations of the Council, including the General Affairs Council, also play a role in external action, when specific topics fall within their purview.

- 2.27 For the purposes of international agreements, the Council's role is to "authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them".¹¹ For these purposes, the Council acts by qualified majority, except that it acts by unanimity where unanimity would be required to adopt internal EU legislation and in the case of association agreements or cooperation agreements with candidate countries for EU accession.¹²
- 2.28 Since the Lisbon Treaty, the High Representative post involves also being one of the Vice-Presidents of the Commission. As High Representative, the incumbent oversees all CFSP activity and chairs the Foreign Affairs Council. As Commission Vice-President, s/he oversees the Commission's activity in external relations. The decision to give one person both roles was designed to ensure greater coherence in EU external action. The High Representative is also responsible for representing CFSP externally, a role formerly played by the Member State presiding over the Foreign Affairs Council.¹³
- 2.29 Another important change made by the Lisbon Treaty was the creation of a European External Action Service (EEAS). The primary role of the EEAS is to assist the High Representative in the conduct of CFSP. Its organisation and functioning is established under Council Decision 2010/427/EU of 26 July 2010. This provides that at least 60% of its staff should be from the Commission and Council Secretariat and at least one-third seconded from Member States' diplomatic services.
- 2.30 A key function of the EEAS is to staff and operate EU delegations in third countries and international organisations, replacing the former Commission and Council delegations abroad. The delegations take instructions from and report to the High Representative and the EEAS as well as the relevant Commission Services, depending on whether the subject matter falls under the TEU (EEAS remit) or the TFEU (Commission lead).
- 2.31 Under the responsibility of both the Council and the High Representative is the Political and Security Committee (PSC), made up of ambassadors from the Member States. It is responsible for the political control and strategic direction of crisis management operations, and is authorised to take decisions on the practical management of a crisis. It is assisted by a Politico-Military Group, a Committee for Civilian Aspects of Crisis Management, and the Military Committee and Military Staff. The remit of the PSC is to monitor the international situation in the areas covered by CFSP, to contribute to the definition of policies, and to monitor the implementation of the decisions taken under the responsibility of the High Representative.
- 2.32 The Commission has a significant role in EU external relations in matters falling under the TFEU. It plays an important part in the negotiation of agreements with third countries and international organisations, and makes recommendations to the Council on the position that the EU should take in international negotiations relating to TFEU matters. Authority is vested in the relevant Commissioners, including those for development, trade and enlargement. But the Commission is a relatively marginal player in CFSP.
- 2.33 Negotiations are conducted by the EU's negotiator or negotiating team – very often the Commission – in accordance with negotiating directives adopted by the Council.¹⁴

¹¹ Article 218(2) TFEU.

¹² Article 218(8) TFEU.

¹³ Before the Lisbon Treaty, the Member States took turns to preside over the Foreign Affairs Council in six-month stints.

¹⁴ Under Article 218(3) the Commission submits recommendations to the Council nominating the negotiator to be appointed on behalf of the EU; it is for the Council to make the decision on the identity of the negotiator.

Frequently a “special committee” is appointed in consultation with which the negotiations must be conducted.¹⁵

- 2.34 The Lisbon Treaty gave the Parliament a co-legislative role in trade policy, where formerly it had only a right of consultation, and extended the requirement for the Parliament to consent to a range of international agreements under the TFEU. However, under CFSP, the European Parliament has no role in the adoption of decisions: it is limited to asking questions and making recommendations to the Council and the High Representative, and holding a debate on CFSP twice a year.
- 2.35 The Court of Justice plays an important role under the TFEU: under Article 218(11) TFEU its Opinion can be sought prior to the EU entering into an external agreement. Under Article 263 TFEU, it can be asked to review the legality of acts of the EU’s institutions, and has frequently been asked to do so in relation to the terms of external agreements or negotiating mandates.¹⁶ The Commission may also bring proceedings against Member States if they act externally on their own behalf in breach of EU law.¹⁷
- 2.36 However, the jurisdiction of the European Court of Justice in relation to the provisions of the TEU governing CFSP remains highly restricted. Article 24(1) TEU states that the Court “shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second subparagraph of Article 275 [TFEU]”. The first of the exceptional cases is where the Court is called upon to decide whether a measure adopted under CFSP competence properly falls within one of the TFEU external competences, and vice versa. This enshrines in the Treaty a principle first recognised in case law. The second jurisdiction is a new one, allowing CFSP decisions that provide for restrictive measures against natural or legal persons to be challenged under the usual procedure for seeking the annulment of acts invalidly adopted by EU institutions or bodies. Other CFSP acts, however, are not reviewable. The Court does not have an infringement jurisdiction, to compel compliance by Member States with their obligations under CFSP; nor jurisdiction to entertain references for preliminary rulings from courts in the Member States on the interpretation of the provisions of the TEU’s CFSP chapter or the interpretation or validity of acts adopted under it.

External Relations Instruments and Tools

International Agreements

- 2.37 The EU, on its own or in conjunction with its Member States, enters into a variety of international agreements spanning the whole range of EU action. These range from complex agreements with third countries, to participation in multilateral conventions such as the UN Convention on the Law of the Sea.
- 2.38 Article 218 TFEU sets out the procedural framework to be followed for conducting negotiations on agreements on behalf of the EU, including their signature and conclusion. The framework governs all cases where an agreement will apply to the EU, irrespective of whether it is entered into by the EU alone or is a “mixed agreement”, entered into by both the EU and its Member States. A mixed agreement happens when the international agreement in question partly covers areas where the EU is exercising its competence (exclusive or shared) and partly areas where the Member States are exercising their

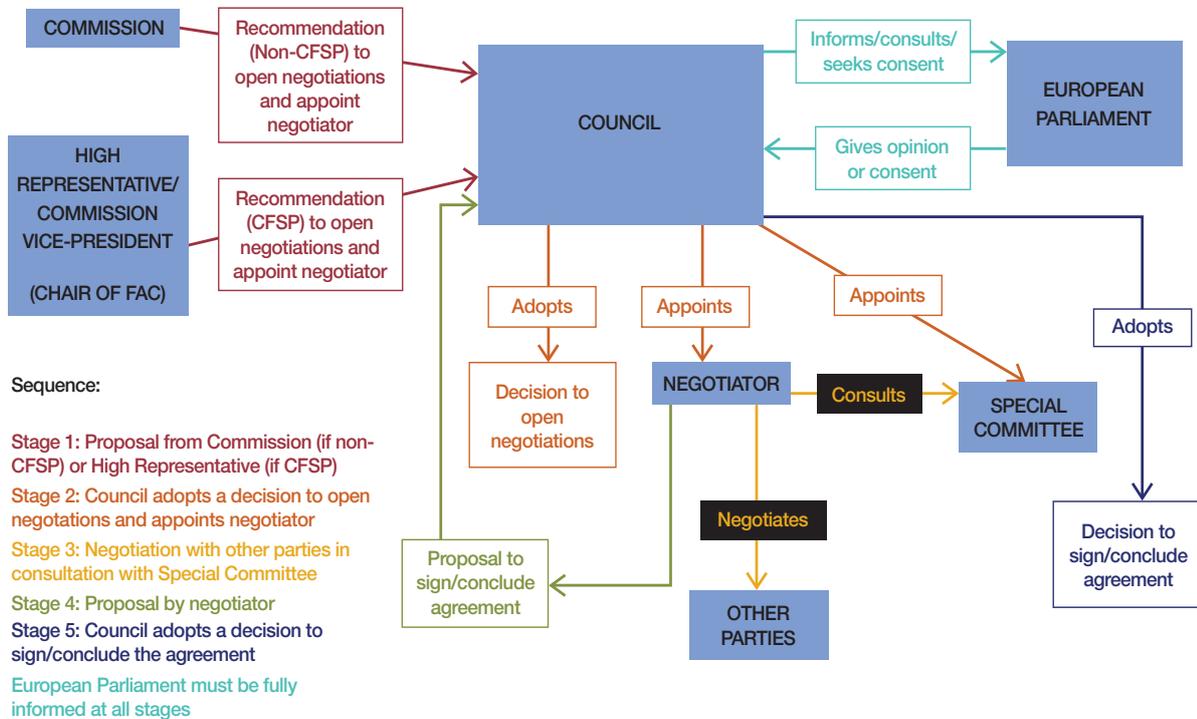
¹⁵ Article 218(4) TFEU.

¹⁶ See, for example, Case C-411/06 *Commission v Council (Waste Shipments)* [2009] ECR I-7585.

¹⁷ See, for example, Case C-45/07 *Commission v Greece* [2009] ECR I-701.

competence (exclusive or shared). These rules apply to negotiation of agreements under CFSP and in respect of agreements relating to TFEU matters; the exact procedure varies depending on whether the agreement relates to CFSP or the TFEU.¹⁸ Figure 2D sets out the procedure.

Figure 2D



2.39 Where an agreement has substantive content which includes both EU exclusive competence and shared competence, in principle it would be open to the Member States to authorise the EU to enter into all parts of the agreement, so that it would be an EU-only agreement. The Commission and the EEAS have expressed their preference for such agreements to be EU-only. The UK's practice is that Member States should also be party to such agreements when they cover areas of shared competence that the EU has not previously exercised, so that they constitute "mixed agreements" with both the EU and the Member States being parties.

2.40 In addition to legally binding agreements, the EU may enter into non-legally binding understandings or arrangements with third states or international organisations, such as memoranda of understanding.¹⁹

External Representation

2.41 There is also a set of questions around who should represent the EU in international fora and how. Articles 220-21 TFEU set out some general provisions on EU relations with international organisations and third countries, and the role to be played by EU delegations. As with international agreements, these provisions apply in respect of both matters falling under the TFEU and the CFSP competence.

¹⁸ A single agreement might cover CFSP and non-CFSP issues. Article 218 TFEU sets out procedure.

¹⁹ The Treaties do not provide any formal mechanisms relating to the negotiation of memoranda of understanding. The procedures applicable have evolved through practice, consistently with the Treaties.

- 2.42 In addition, the EU's ability to participate in its own right in international bodies or organisations may be constrained by their rules. Their membership may be limited to states only, or there may be specific provision for the participation of regional entities, such as the EU, including for example a requirement that they deposit a declaration of their competence to participate in an organisation or agreement.
- 2.43 Where the EU wishes to accede to an international body or organisation established by an international agreement, the normal procedures in Article 218 TFEU applicable to the negotiation of an international agreement will apply. In order for the EU to participate in an international organisation or body of which it is already a member, when that organisation is discussing the adoption of acts having legal effects, Article 218(9) TFEU provides for a specific procedure to be followed within the EU.
- 2.44 Difficulties may arise where the EU or Member States wish to speak or present statements in meetings of international bodies or organisations outside formal negotiations, in circumstances where both the EU and Member States are able to participate and a range of competences may be engaged. There are both general and more specific arrangements governing how the EU and its Member States are represented externally, attempting to reconcile speaking with one voice “on behalf of the EU and its Member States” with respect for the delimitation of competences.²⁰ We explore these issues further in Chapter 3.

Autonomous Measures

- 2.45 The EU may also adopt internal measures – so-called “autonomous measures” – which seek to govern specific aspects of its foreign policy, particularly in relation to trade. For example, the EU has adopted a number of trade defence instruments aimed at protecting the EU market from third country goods being sold at artificially low prices (“dumped”) or which have been heavily subsidised. These instruments are outside the scope of this report, but will be addressed in the later report on trade policy. In addition, when legislating internally in respect of its TFEU competences, the EU may provide for measures which impact on third countries or their nationals: for example, environmental measures regulating the movement of waste, the use of chemicals, or aircraft emissions.

Financial Instruments

- 2.46 The EU has significant and varied financial instruments at its disposal to implement its external policies, as shown in Textbox 2E below.

²⁰ General Arrangements agreed by Council on 22 October 2011, <http://register.consilium.europa.eu/pdf/en/11/st15/st15901.en11.pdf>.

Textbox 2E

EU External Financial Instruments

The EU's external financial instruments are currently set out in a number of legislative instruments which expire at the end of 2013. They are structured as follows.

Geographical instruments directly supporting European external policies, including:

- Instrument for Pre-accession Assistance (11.5 billion euros), by which technical assistance is delivered to countries that are candidates for EU membership;
- European Neighbourhood and Partnership Instrument (11.2 billion euros), which provides assistance to 17 countries on the EU's southern and eastern borders;
- Development Cooperation Instrument (16.9 billion euros), providing development assistance to 47 countries in Latin America, Asia and central Asia, the Gulf, and South Africa, as well as thematic programmes for all developing countries;
- European Development Fund (22.7 billion euros for 2008-13), providing development assistance to 78 African, Caribbean and Pacific states and to EU overseas countries and territories. This is not part of the EU budget: it is an intergovernmental fund financed directly by Member States;
- Instrument for Cooperation with Industrialised Countries (0.2 billion euros), promoting cooperation between the EU and 17 industrialised and other high-income countries and territories in North America, the Asia-Pacific region, and the Gulf.

Instruments for disaster and crisis response and management, conflict prevention, peace-building, and security:

- Humanitarian Aid and Civil Protection (5.7 billion euros);
- Instrument for Stability (2.1 billion euros), giving financial and technical assistance to help stabilise developing countries;
- Macro-Financial Assistance (0.8 billion euros); and
- Funding from the CFSP budget for civilian crisis management missions under CSDP.

Thematic instruments:

- Nuclear Safety Cooperation Instrument (0.5 billion euros), based on the Euratom Treaty;
- European Instrument for Democracy and Human Rights (1.1 billion euros), contributing to the development of democracy, the rule of law, and respect for human rights and fundamental freedoms;
- EU Food Facility (1 billion euros for 2009-11), providing rapid response to soaring food prices in developing countries;
- Emergency Aid Reserve (1.7 billion euros for 2007-13), providing for humanitarian and civilian crisis operations in rapid response to unforeseen events.

Sanctions

2.47 The EU plays an increasingly active role in implementing sanctions imposed by the UN Security Council and adopting its own autonomous measures against third countries or individuals or entities. Sanctions involve action under both CFSP and the TFEU. Figure 2F shows those currently in force.

2.48 Their adoption follows a two-stage process. First the EU adopts a CFSP decision by unanimity. This sets down the framework for the sanctions and may include measures which will require implementation by both the EU and the Member States. Second, as regards aspects of the decision which require implementation by the EU, the Council, on a joint proposal from the Commission and the High Representative, adopts a measure by QMV under Article 215 TFEU.

Figure 2F

EU Restrictive Measures (Sanctions) in Force

| | |
|---------------------|--|
| Combating Terrorism | Economic (funds and financial services); police and judicial cooperation among Member States. |
| Belarus | Arms and related material; equipment for internal repression; admission; funds and economic resources; provision of certain services. |
| Bosnia Herzegovina | Admission (certain persons and natural or legal persons associated with them). |
| Burma | Arms and related material; equipment for internal repression; provision of certain services. |
| China | Arms. |
| Egypt | Funds and economic resources. |
| Côte d'Ivoire | (In addition to UN measures:) Equipment for internal repression; admission; funds and economic resources; provision of certain services. |
| Guinea Conakry | Arms and related material; equipment for internal repression; admission; funds and economic resources; provision of certain services. |
| Guinea Bissau | (In addition to UN measures): Admission; funds and economic resources |
| Iran | Technology and equipment (dual-use, nuclear related; petrochemical, naval, industrial software, telecommunications); arms and related material; funds and economic resources (investment, grants, financial assistance, claims, loans, transfers, insurance, trade, banking, bonds); access to EU airports; admission (of certain persons); natural resources (oil, petroleum, petrochemical products, gold, diamonds, precious metals, gas); provision of certain services. |
| North Korea | Arms and related material; UN-listed goods and technology; programmes for weapons of mass destruction (technology, finances); luxury goods; economic (financial assistance, loans, grants, trade, banking; bank notes and coins); admission; cargo; certain specialised teaching/training; bunkering and ship supply; provision of certain services. |

| | |
|-----------------------|--|
| Libya | Equipment for internal repression; admission (of listed natural persons); funds and economic resources; grant of certain claims to listed persons. |
| Moldova | Admission (persons responsible for the campaign against Latin-script schools in the Transnistrian region). |
| Sudan and South Sudan | Arms and related material; provision of certain services. |
| Syria | Arms and related material; equipment for internal repression; technology (telecommunications, oil and gas equipment); resources (oil and gas, electricity production); funds and economic resources (trade, loans, investment, insurance, banking); luxury goods; airport access; admissions; provision of certain services. |
| Tunisia | Funds and economic resources of certain persons and associated entities and persons. |
| Yugoslavia | Admissions (President Milosevic and natural persons associated with him). |
| Zimbabwe | Arms and related material; equipment for internal repression; admission; funds and economic resources; provision of certain services. |

Civil Protection and the Solidarity Clause

2.49 The legal base for EU action in the field of civil protection – that is, the prevention of, preparedness for, and response to natural or man-made disasters – is Article 196 TFEU. EU competence is confined to supporting, coordinating or supplementing the actions of Member States; it does not supersede the competence of Member States to act, and EU acts do not entail harmonisation of the Member States' laws. In addition, the Solidarity Clause at Article 222 TFEU requires the EU and the Member States to act jointly, in a spirit of solidarity, if a Member State is a victim of a terrorist attack or a man-made or natural disaster. Both of these articles were new in the Lisbon Treaty, and there is no relevant case law on their provisions. The UK enjoys no special status.

2.50 The current EU instruments for civil protection pre-date the TFEU: they were adopted unanimously under the general provisions of Article 308 of the Treaty establishing the European Community and Article 203 of the Euratom Treaty. They cover prevention, preparedness and response:

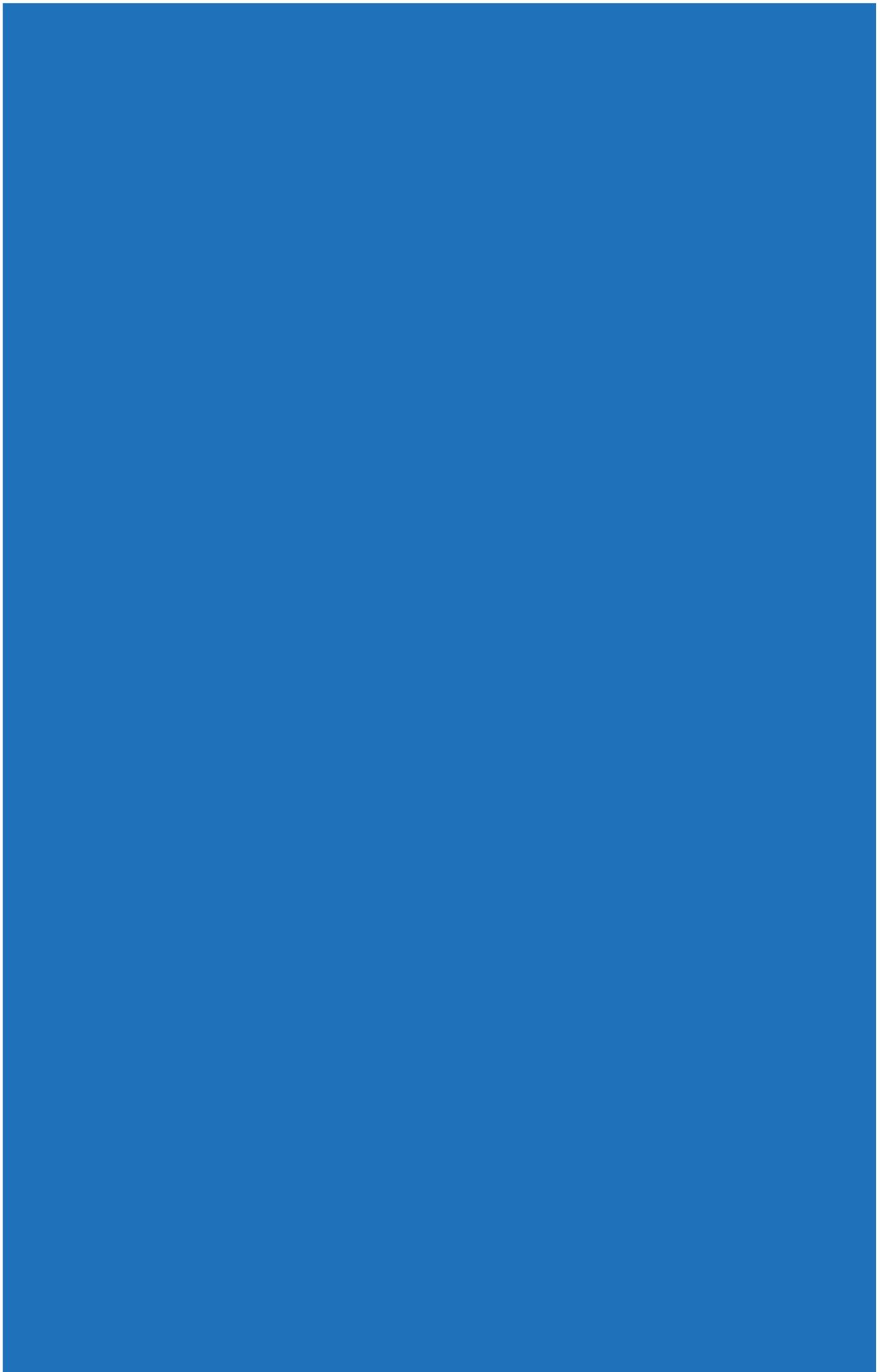
- Council Decision 2007/162/EC, Euratom of 5 March 2007 establishing a Civil Protection Financial Instrument; and
- Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism (recast).

2.51 A proposal to establish a new Civil Protection Mechanism is under negotiation and, if adopted, will replace the existing Council Decisions.²¹ It aims to protect people, the environment and property (including cultural heritage) against the consequences of natural or man-made disasters occurring inside or outside the EU, including acts of terrorism. It will be subject to co-decision, that is, by the European Parliament and, by QMV, the Council.

²¹ Proposal for a Decision of the European Parliament and of the Council on a Union Civil Protection Mechanism COM(2011) 934 Final.

- 2.52 Under the Solidarity Clause, the EU is to mobilise all the means at its disposal, including military resources made available by Member States, in the event of a terrorist attack or natural or man-made disaster. Member States are obliged to provide assistance if requested to do so by the affected Member State. Declaration 37 to the Treaties, however, makes clear that Article 222 is not intended to prevent Member States choosing the most appropriate means of providing assistance.
- 2.53 Arrangements to implement the Solidarity Clause are to be defined in a Council Decision, and will be agreed by QMV unless they have defence implications, where unanimity will be required. The European Parliament must be informed, but plays no formal legislative role. The High Representative and the Commission have jointly proposed implementing arrangements, which include provisions on response arrangements and integrated threat and risk assessment.²²

²² Joint proposal for a Council Decision on the arrangements for the implementation by the Union of the Solidarity Clause, JOIN(2012) 39 Final.



Chapter 3:

EU External Action in Practice

Introduction

- 3.1 Having set out the complex legal and institutional framework for the EU's foreign policy and its instruments and tools, in this and subsequent chapters we will illustrate how these arrangements work in practice, using case studies of prominent foreign policy issues in which the EU is or has been involved, such as human rights in Burma, the Arab Spring, Iran's nuclear ambitions, and the strategic relationships with China, Russia and the US. This will show, in different ways, how the political, security and defence aspects of international relations are increasingly interdependent with the broader aspects of foreign policy, such as international trade, energy, transport and environment relationships. In EU terms, this is how action under the Common Foreign and Security Policy (CFSP), led by the Member States by unanimity in the Council, is intertwined with external action under TFEU provisions, largely led by the Commission and, in general, with only a qualified majority agreement from the Member States.
- 3.2 The case studies will not cover everything in which the EU is involved around the world, and detailed consideration of the EU's external action under TFEU provisions will be for other reports: Development Cooperation and Humanitarian Aid (semester 1), Transport (semester 2), Environment (semester 2), Trade and Investment (semester 2), Energy (semester 3), Agriculture (semester 3), Enlargement (semester 4), and so on. But we will demonstrate here the geographical and substantive range of EU foreign policy, and the ways in which – and how effectively or otherwise – different tools and competences combine. For example, CFSP objectives on human rights in Burma and the nuclear programme in Iran have been supported by the application of sanctions under both CFSP and TFEU. Fostering nascent democracies in countries emerging from the Arab Spring involves forging new trade and migration relationships under TFEU mechanisms. Restoring long-term security and prosperity in the Western Balkans involves not just diplomacy led by the EU's High Representative, and military and policing missions under the Common Security and Defence Policy (CSDP), but also the key incentive of potential EU membership, including the pre-membership financial and technical assistance administered by the Commission.
- 3.3 Leading into the case studies, we present the evidence received on general issues in the balance and exercise of foreign policy competences:
- the UK's ability to draw on a range of options for action;
 - the coherence of the EU foreign policy institutions and instruments;

- the effectiveness of the European External Action Service (EEAS);
 - the influence of the European Court of Justice and European Parliament;
 - tensions over where competence lies to negotiate international agreements involving the EU; and
 - differences of opinion over how EU policy is represented at meetings of international organisations.
- 3.4 Drawing on that evidence, we will analyse with each case study the balance of competence between the EU and the UK by focusing on three questions: what value EU action adds for the UK; the disadvantages of working with or through the EU; and whether a different balance of competence would lead to better outcomes for the UK.

The UK's Ability to Draw on a Range of Options for Action

- 3.5 Chapter 1 set out the UK's ability to pursue its foreign policy via a complex network of alliances and groupings. Several evidence contributors highlighted this as a key feature of how EU competence in external action interacts with the UK's national interest. It is open to the UK to act unilaterally, in partnership with another country or countries, through one international organisation or a combination of international organisations, or through a blend of those options. Sir Alan Munro writes: "The UK still finds herself in a position of privilege, with the options of acting in unilateral, limited multilateral or wider alliance modes."²³ Robert Cooper, previously a senior adviser in the EEAS, argues: "In a complex world a choice of identities is a plus not a minus."²⁴ The Senior European Experts Group of British former high officials (SEEG) similarly argues: "[CFSP/CSDP's] eventual success will depend [partly on] the willingness of Member States, perhaps most of all the UK, to exploit the potential [...] while of course not excluding other fora where they are more appropriate, notably NATO or bilateral cooperation."²⁵
- 3.6 A brief account of the UK and European military roles during Libya's revolutionary conflict in 2011 will demonstrate this. When in March the UN Security Council authorised its Member States to "take all necessary measures [...] to protect civilians and civilian populated areas under threat of attack [in Libya]" (UN Security Council Resolution 1973), the UK and France took the lead in mounting an air operation to enforce a No Fly Zone. We needed the US to help, since Europeans could not provide enough assets, particularly for air-to-air refuelling and for intelligence, targeting and reconnaissance. The US was willing to do so but did not want to lead, and was anxious to spread the military burden. France had been looking for an EU military role, potentially including maritime enforcement of an arms embargo and rapid ground deployment to secure a humanitarian corridor. In view of Member States' limited capabilities and the need to work closely with the US, the UK was sceptical. Germany reduced the scope of the debate by abstaining in the vote on UNSCR 1973: it did not want to take part in any military operation in or over Libya, and did not want the EU to either. After a week of air sorties by an ad hoc coalition led by the UK and France with US support, it was finally agreed to absorb the air campaign into NATO, with political control by an expanded NATO format including participating Arab countries. As NATO Allies, several EU Member States took part in air strikes. The EU continued planning for military assistance to humanitarian action in the event that the UN requested it, on the condition, at German insistence, that it did not involve EU "boots on the ground" in Libya.

²³ Munro, p. 1.

²⁴ Cooper, p. 4.

²⁵ SEEG, p. 4.

- 3.7 Many commentators characterise the Libya case as a failing of EU security policy. A Polish academic argued: “CSDP uselessness was clearly demonstrated in Libya [...] The two main EU military powers (UK and France) acted in the Libyan operation on their NATO and not their EU status while the third one (Germany) distanced [itself] from them.”²⁶ The Fresh Start group of Conservative parliamentarians wrote: “In many respects [Libya] provided the final evidence of the irrelevance of CSDP. EU representatives had desperately sought a CSDP role [...] but these were all rejected in favour of intervention under NATO command.”²⁷ Others, such as John Peterson, see it as reflecting European, as opposed to EU, shortcomings: “The Libyan NATO action was an eye-opener: Europe’s lack of military firepower was only compensated by heroic levels of contribution of US military firepower, in an exercise which Washington was ‘leading from behind’.”²⁸
- 3.8 However, much of the evidence implies that in this context the Libya campaign is essentially a lesson about different organisations offering different advantages in different contexts. Stefan Wolff writes: “While it is easy (and not wrong) to belittle the inability of the EU to offer any substantial military support [...] the EU has been a significant player in a different way: by providing significant humanitarian assistance [...] The EU is not good at hard security policy, but does a very decent job when the task is about dealing with the aftermath of conflict.”²⁹ SEEG argues: “When [Member States act outside the EU] over major issues (Iraq, Libya), it is often seen as a failure of CFSP, even if CFSP was not designed to deal with issues with substantial US involvement, leadership or resources, notably military.”³⁰ Jan Techau of Carnegie Europe points out: “[NATO’s flexible political framework] allowed for alliance unity in action despite considerable differences [...] concerning the usefulness of a military operation, and the readiness to participate in it [...] The EU has similar provisions for flexibility [but it] would not have been possible within the EU framework in the case of a massive and robust deployment of combat forces for a protracted period of time.”³¹
- 3.9 This fits the nature of British choices over Libya. We used our close bilateral relationship with France, including as the two permanent European members of the UN Security Council, to deliver a UN mandate for action, and, together with the US, developed the air operation in an ad hoc coalition. We used NATO as the best military command option and to gather further contributions from partners. We did not look for an EU military role, but were content for the EU to prepare for the less challenging task of assistance to humanitarian activity. The EU’s main role has been in providing humanitarian and development aid, and over time it will be key in partnering Libya on such issues as security capacity building, democratic and economic development, migration, and energy. The EU has, for example, just established a civilian CSDP mission to help improve border management. The UK will continue to work to make EU engagement in Libya successful.

Coherence of EU Foreign Policy Institutions and Instruments

- 3.10 Much of the evidence commented on the institutional changes brought by the Lisbon Treaty to enable greater coherence and effectiveness in EU foreign policy. Overall, there was acknowledgement of some positive developments, but with a strong vein of opinion that there remains considerable room for improvement.

²⁶ Przemysław Żurawski vel Grajewski, p. 4.

²⁷ Fresh Start, *Defence Chapter*, 2012, p. 259.

²⁸ Peterson, *Europe and America: What Next?*, Foreign Policy Centre, *Europe in the World*, 2013, p. 40.

²⁹ Wolff, *Libya’s Arab Spring: What Lessons for the EU?*, pp. 1-2, at www.stefanwolff.com <<http://www.stefanwolff.com>>.

³⁰ SEEG, p. 4.

³¹ Techau, *Will Europeans Ever Agree on the Use of Military Force?*, Notre Europe, *Think Global – Act European IV: Thinking Strategically About the EU’s External Action*, 2013, p. 270.

- 3.11 A thread of argument running through many contributions was the need for the EU to have a clearer strategy for its external action. Participants in a seminar in Paris argued that the EU's 2003 "European Security Strategy" should be revised, and welcomed the planned focus of the December 2013 European Council on strategic defence issues.³² Participants suggested that it would be too easy to lay blame for the lack of strategy at the High Representative/Vice-President's (HR/VP) door. Under the Treaties, however, this responsibility fell to the European Council.
- 3.12 Many contributors thought that the roles of the institutions were insufficiently defined, or overlapped, which had a negative impact on policy coherence. From a legal seminar, the conclusion emerged that this was the case for the roles of the General Affairs and Foreign Affairs Councils, compounded by the same representatives often attending meetings of both configurations.³³ Similarly, the evidence pointed to overlap in the roles of the President of the European Council, rotating Council Presidency, and High Representative. Some thought that inter-institutional tensions were inevitable, given that the Commission had lost some of its powers to the High Representative, but questioned whether this necessarily led to an undermining of foreign policy. Many considered that the inter-institutional tensions were serious enough to damage the EU's ability to act effectively, and therefore needed to be addressed.³⁴
- 3.13 There was general agreement that the double-hatting of the HR/VP – that is, oversight of both CFSP and Commission foreign policy activity – was not working. The role of Commission Vice-President was not being used to the full. An example often cited was the EU's response to the Arab Spring, where many contributors felt that the EU did not deploy the range of its instruments, in particular on trade and mobility, as effectively as it might have (see the case study on the Arab Spring, below). At a seminar in Brussels, it was noted that the post-Lisbon group of external relations Commissioners had rarely met.³⁵ Some laid responsibility for this at the HR/VP's door. Others suggested it was due to the current presidential nature of the Commission, and that the HR/VP needed to be given greater structural authority. However, others at the legal seminar were not convinced that changing structures was the solution; the influence of those in different high offices was a significant factor.
- 3.14 One of the reasons given by the evidence for the failure of double-hatting was that the HR/VP role was overburdened. Many contributors were in favour of deputies for the HR/VP. Participants in the Brussels seminar thought that current arrangements, whereby the Commissioner responsible for the EU's neighbourhood deputised for the HR/VP, should be formalised. They were working well, not least because the EEAS worked for both the HR/VP and the Neighbourhood Commissioner.³⁶ A senior British Member of the European Parliament (MEP) thought that ad hoc arrangements, whereby the HR/VP asked the Council Presidency or other Commissioners to step in as necessary, worked well and should not be changed.³⁷

³² Paris seminar, p. 1.

³³ Legal seminar, p. 6.

³⁴ Legal seminar, p. 5.

³⁵ Brussels seminar, p. 2.

³⁶ Brussels seminar, p. 2.

³⁷ Meeting with Charles Tannock MEP, p. 2.

- 3.15 At the legal seminar, it was argued that there was a need to be realistic about the extent to which cross-departmental coordination was truly obtainable either at EU or national level.³⁸ At national level, Member States had a ministerial cabinet for coordination; the European Council might fulfil a similar role.

The Effectiveness of the European External Action Service

- 3.16 There was a great deal of debate in our evidence about the performance of the EEAS. Critics argued that it was unclear about its role;³⁹ lacked strategic focus and a policy planning division;⁴⁰ was less dynamic than previous good rotating Council presidencies;⁴¹ was reactive rather than proactive;⁴² was less expert than it should be on important TFEU aspects of external action, such as climate change and energy, because relevant staff had reverted to the Commission upon the EEAS's creation;⁴³ was insufficiently joined up with the Commission on external instruments; and had low staff morale, with training needed to create a common culture, given the mixed institutional and national backgrounds of staff.⁴⁴ A House of Lords report noted that the EEAS annual administrative budget has risen to over 500 million euros, notwithstanding an earlier commitment to budget neutrality.⁴⁵ It needed a modern corporate agenda, designed to exploit savings and to produce more resource flexibility in a crisis and greater efficiency. One major British company argued that it was the Commission, rather than the EEAS, which called the shots in the EU's key external relationships, with countries such as Russia.⁴⁶
- 3.17 Some believed that EU delegations overseas should do more to provide Member States with information and other services.⁴⁷ A few contributors argued that delegations lacked expertise in political work or hard language skills.⁴⁸ Examples were also given of delegations providing an excellent service.⁴⁹ It was generally agreed that the current system whereby heads of delegation were accountable to the HR/VP for policy and administrative spend, but to other Commissioners for programme spend (for example, development assistance), created administrative difficulties and needed changing.⁵⁰
- 3.18 There was also positive evidence about the EEAS. Many thought it had played a valuable role on a number of issues, such as Iran, Burma, the Horn of Africa, and the development of a comprehensive approach combining a range of instruments. There was much praise for its work on sanctions. The EEAS's own assessment is that it is "a work in progress". It argues that Member States have different views on priorities; that it has taken steps to reduce costs, such as using 10% efficiency savings to free up resources for priority delegations; and that Member States do not take account of the start-up costs of a new organisation, or those of taking on the tasks previously carried out by the rotating Council

³⁸ Legal seminar, p. 10.

³⁹ Hillion.

⁴⁰ Paris seminar, p. 2; Brussels seminar, p. 2.

⁴¹ Helwig, Ivan and Kostanyan, *The New EU Foreign Policy Architecture: Reviewing the First Two Years of the EEAS*, Centre for European Policy Studies, 2013, p. 75.

⁴² Meeting with Charles Tannock MEP, p. 2; Brussels seminar, p. 2.

⁴³ Brussels seminar, p. 2.

⁴⁴ Legal seminar, p. 10.

⁴⁵ House of Lords, *The EU's External Action Service*, 2013, p. 15.

⁴⁶ Evidence given in confidence.

⁴⁷ Legal seminar, p. 5.

⁴⁸ House of Lords, *The EU's External Action Service*, 2013, p. 27; 16 January seminar, p. 8.

⁴⁹ House of Lords, *The EU's External Action Service*, 2013, pp. 18-19.

⁵⁰ House of Lords, *The EU's External Action Service*, 2013, p. 22.

presidencies.⁵¹ The House of Lords report acknowledges the difficulties of creating a new organisation from scratch, concluding: “The EEAS has made a good start in its first two years [but] there is more to do.”⁵² The Government agrees with the House of Lords assessment.

The Influence of the European Court of Justice and European Parliament

- 3.19 Participants in the legal seminar agreed that the European Court of Justice was playing an increasingly important role in defining the boundaries of competence between the EU and the Member States. It was argued that, in recent judgements relating to external relations, the Court had been far more dogmatic than pragmatic. It was noted that the Court relied substantially on policy documents and imperatives, and that its reasoning might therefore be problematic. This meant that the Court’s role might become even more political, in an area that is already highly politicised.⁵³
- 3.20 The legal seminar noted new areas where the European Parliament had become a co-legislator and therefore had increased influence.⁵⁴ The MEPs who gave evidence all agreed that the Parliament had gained some powers of oversight of EEAS action, which they saw as positive.⁵⁵

Competence to Negotiate International Agreements

- 3.21 As set out in Chapter 2, the EU enters into a variety of international agreements, on its own or in conjunction with its Member States, ranging from bilateral trade deals, such as the Transatlantic Trade and Investment Partnership envisaged between the EU and the US, to multilateral conventions, such as the UN Convention on the Law of the Sea. Differences in interpretation of the complex web of foreign policy-related competences in the TEU and TFEU, have led to continuing tensions between the Commission and the Member States in this area, particularly over how such agreements should be negotiated for the EU. We illustrate this here via a brief account of the negotiation of the Arms Trade Treaty (ATT).
- 3.22 For some six years, the international community has been working towards a legally binding ATT to set high regulatory standards for the global trade in conventional arms, thus helping to reduce the harm and suffering caused by weapons in the wrong hands. After a first, inconclusive UN negotiating conference in July 2012, a second conference, in March 2013, overcame the final hurdles. The treaty will enter into force once 50 states have ratified it. The UK aims to be one of the first to do so.
- 3.23 Shortly before the first conference, the Commission asserted that the ATT fell within the scope of the EU’s Common Commercial Policy for external trade, and that it would also affect rules regulating trade within the EU. In line with related TFEU provisions (described in Chapter 2), it argued, the EU therefore had exclusive competence for some of the ATT, and the Commission should be authorising the Member States to negotiate those parts on behalf of the EU on the basis of agreed instructions. At the same time, the EEAS proposed another, apparently complementary, Council Decision, authorising the Member States to negotiate the ATT where it fell within the scope of CFSP.

⁵¹ EEAS evidence to the House of Lords, from the latter’s report *The EU’s External Action Service*, 2013, p. 2.

⁵² House of Lords, *The EU’s External Action Service*, 2013, p. 52.

⁵³ Legal seminar, p. 4.

⁵⁴ Legal seminar, p. 7.

⁵⁵ For example, meeting with Charles Tannock MEP, p. 2; meeting with Sir Graham Watson MEP, p. 2.

- 3.24 The UK, along with other Member States, was concerned by these proposals. The Commission's claim to exclusive competence had potential consequences for Member States' sovereignty over important issues such as arms export controls. Article 346 TFEU provides that EU law cannot curb the right of a Member State "to such measures as it considers necessary for the protection of the essential interests of its security [...] connected with [...] trade in arms". Taken together, the institutions' proposals seemed to ignore the possibility of the Member States being parties to the ATT in their own right.
- 3.25 The proposals also included the requirement that the ATT should contain provisions enabling the EU to become a party. This introduced another complication, since many countries, outside the EU as well as within, are opposed on principle to the EU as an organisation gaining privileges which other regional bodies do not have.
- 3.26 In the event, the Commission's role in the negotiations was considerably restricted by its limited status at the UN. It failed to secure a provision allowing the EU to be a party. The UK played a major role in delivering the final text.
- 3.27 Participants in the legal seminar characterised this kind of issue as a "power struggle" which tends to weaken the EU's negotiating position.⁵⁶ SEEG notes that the Government has been particularly firm in guarding against "competence creep", that is, the institutions incrementally expanding the scope of their competence by pushing at its boundaries.⁵⁷

Representation of EU Policy in International Organisations

- 3.28 Beyond the question over competence to negotiate international agreements, the ATT example above touches on a more general issue: the EU's relationship with, and action within, international bodies. The EU has over many years sought, in one way or another, to increase its role and present itself as a "single voice" in international organisations such as the UN. The practice has become widespread as the extent of the EU's competence has evolved, and there are now few international organisations where there is not at least some effort to forge a common EU position, and have that position, even if it only amounts to a lowest common denominator, expressed by one participant on behalf of all the Member States.
- 3.29 This desire for a common position in international organisations has been driven in large part by a belief, held by many Member States and some of the EU institutions, that a united front on behalf of what has now become up to 28 EU members of the international organisation in question, carries greater weight than 28 individual national positions. This applies particularly in pursuit of so-called "global issues", that is, those challenges which affect the whole world, and which need therefore universal membership bodies such as the UN to address them. It is also a function of safety in numbers for those issues where non-EU members of an organisation might be seeking to put the EU on the defensive, or to bring about a split between the EU members. In addition, having one spokesperson for the EU should in principle guarantee that the EU will secure a prominent place around the negotiating table. The Government shares some of these views to some extent, but has significant reservations, as will become clear below.
- 3.30 Article 34(1) TEU obliges EU Member States to coordinate their action in international organisations and at international conferences, and to allow the High Representative to organise this cooperation.

⁵⁶ Legal seminar, p. 8.

⁵⁷ SEEG, p. 9.

- 3.31 Evidence received suggests that, as a general principle, there is much to be said for the EU playing an active role in international organisations, and that this does not detract from the UK's own scope to act effectively. This is based on a belief that the influence which the UK exerts in fora such as the UN Security Council, NATO, and G20, is in no sense inhibited by its membership of the EU; and that it can in fact be enhanced whenever the UK can persuade other EU Member States to share its views. The SEEG also believes that disagreements over foreign policy have "markedly declined" since the UK joined the EU. This, they say, may reflect a greater sense of realism about the influence individual Member States can have on their own.⁵⁸
- 3.32 Participants in a Foreign and Commonwealth Office seminar highlighted the positive impact which the EU can or does have in key areas of multilateral work, such as UN budget discipline and management reform, sanctions, conflict diamonds (via the Kimberley Group), human rights, and conflict prevention.⁵⁹ The UN for its part relies heavily on the EU. According to seminar participants, in areas such as peacekeeping and conflict resolution, cooperation with the EU is seen by the UN as closer than with any other regional organisation. The UN is also dependent to a large degree on European financial support: not least, the EU Member States together provide 35% of its regular budget and 36.8% of its peacekeeping budget for 2013-15.
- 3.33 There are, however, tensions within this dynamic, stemming from a complex set of questions over who should represent such common EU positions, on behalf of whom, and how.
- 3.34 As set out in Chapter 2, in many international organisations the EU is not a full member, since such bodies generally comprise sovereign states. In the UN, for instance, the EU has only observer status, which can limit the effect it can deliver in the General Assembly on behalf of the 28 EU members. In an effort to circumvent this problem, the EU sought, after entry into force of the Lisbon Treaty, to acquire enhanced participation rights. This was a fraught process: first because of disagreements within the EU (not least between the Member States) over how far to push for enhanced rights, and second because other UN members took exception to the EU, seen by them as a regional body no different from any other, gaining special privileges. A deal was eventually struck which, for example, allows the EU to speak in formal sessions earlier than was the case before, but the EU's status as observer is unchanged.
- 3.35 There have been keenly competing views – to the extent that the EU has occasionally been unable to intervene at all in international meetings – on how to make a statement of a common EU position, particularly where the statement would contain a mixture of types of competence. The Government has taken the firm position that any statement containing issues where competence is shared between the EU (that is, the institutions) and the Member States, must make clear that it is delivered on the Member States' behalf as well as on the EU's. The UK also takes a more restrictive view than the Commission of the extent of EU delegations' right to deliver EU statements in line with Article 17 TEU. The Government takes this position because it believes that, in the absence of clarity over EU representation in international organisations, there is a risk that the Commission (or the EEAS) assumes that, having represented the Member States on an issue, it has gained unfettered competence to act. Put simply, the UK sees a risk that representation comes to equate to competence.

⁵⁸ SEEG, p. 3.

⁵⁹ 16 January seminar, p. 2.

- 3.36 It has become clear that many Member States, particularly the smaller ones, either share the Commission's views or do not feel strongly enough about representation to take issue with them. But as a result of persistent UK efforts, a political agreement was reached in October 2011 which met our concerns to ensure clarity, including by making clear that the act of representing the EU in an international body does not, and cannot, confer competence on the EU institutions to act without prior agreement with the Member States. Consistent implementation of the agreement is, however, a continuing effort of often difficult case by case negotiation of EU statements.
- 3.37 SEEG acknowledges the Government's firmness against "representation creep", seeing it as an extension of its vigilance against "competence creep" (noted above) – terms which SEEG believes no other Member State uses. They suggest that such disputes, when they arise, have to be sorted out pragmatically, not least to ensure that the UK does not impede its primary policy objective in the negotiation in question which, they argue, will normally equate to the EU position.⁶⁰ During the legal seminar, it was noted that the Commission's reliance on Article 17 TEU to justify its representation of EU views on a number of issues without resort to the Council, gives rise to a lack of trust and is therefore a cause for genuine concern.⁶¹

Case Study I: EU External Action and Human Rights

- 3.38 The EU is part of a network of international institutions, including the UN, the Commonwealth, the Council of Europe, and the Organisation for Security and Cooperation in Europe, which provides a framework of laws, standards and tools through which the UK can pursue its human rights work.
- 3.39 The EU's commitment to promoting human rights and democracy is enshrined in Article 21(1) TEU. The EU seeks to promote them both within its Member States and in its external relations. This principle was reaffirmed by the High Representative in June 2012: human rights were "a silver thread that runs through everything that we do in external relations".⁶²
- 3.40 In June 2012, EU Foreign Ministers agreed a strategic framework on human rights and democracy, the first comprehensive statement of related EU values and commitments since 2001. It sets out priorities including freedom of expression, the rights and empowerment of women, freedom of religion or belief, the prevention of torture, and the abolition of the death penalty; and describes how the EU will work with bilateral partners, civil society and multilateral institutions. Ministers also agreed an action plan setting out in detail how the institutions and Member States would work, including 97 objectives with individual deadlines. In 2012 the EU also appointed former Greek foreign minister Stavros Lambrinidis as Special Representative for Human Rights, the first special representative with a thematic, rather than geographical, remit.
- 3.41 As set out in Chapter 2, the EU uses a number of instruments to further its human rights objectives, including, increasingly and to good effect, sanctions.

⁶⁰ SEEG, p. 9.

⁶¹ Legal seminar, p. 10.

⁶² Baroness Ashton, "Stepping up EU human rights activities worldwide", www.consilium.europa.eu/homepage/highlights/stepping-up-eu-human-rights-activities-worldwide.

Burma: Sanctions for Human Rights and Democracy

By the mid-1990s, the Burmese military regime's deteriorating human rights record attracted widespread international condemnation. Supporting Burma's transformation towards good governance is a major UK foreign policy objective. We led in highlighting the growing number of abuses; our concerns were shared throughout the EU. It first imposed sanctions ("restrictive measures") on Burma in 1996 under CFSP. In 1999, with concerns over forced labour, it suspended its trade scheme with Burma. EU-led resolutions have been presented annually to the UN Human Rights Council and General Assembly.

In November 2010, Burma's military regime handed control to a nominally civilian government. The Burmese opposition leader Aung San Suu Kyi was released from house arrest. In March 2011, President Thein Sein outlined a broad reform programme; significant human rights progress followed. In response, the EU was among the first to ease sanctions, suspending all but the arms embargo in April 2012. After progress on forced labour, it is discussing reinstatement of the trade scheme. An EU office in Rangoon is identifying areas for EU funding, including the peace process and electoral reform. In April 2013, after almost two decades, the Council lifted the sanctions. Sanctions are at their most powerful, practically and politically, at the points of imposition and lifting.

- 3.42 Another powerful tool at the EU's disposal is enlargement policy. The Treaties stipulate that any European state that respects and is committed to promoting EU values of "respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities", may apply for EU membership. Candidate states progress towards membership on the basis of their merits in meeting the accession criteria, which include political obligations to guarantee respect for human rights. This requirement serves as a strong incentive for generating good human rights records in countries seeking membership. This report will not look at enlargement in detail: it will be covered in a report in the fourth semester. We illustrate enlargement policy's force, however, in a case study on the Western Balkans in Chapter 4.
- 3.43 Human rights and democracy are also a core element of the European Neighbourhood Policy, the EU's main framework for engaging with the countries which share its borders to the east and south. The EU includes human rights conditionality in agreements and autonomous measures aimed at supporting the development of civil society and rule of law, and sets out its positions in political demarches and statements in international bodies. All dialogues with non-EU countries (known as "third countries") include a human rights element, and related progress is rewarded by greater EU engagement. We consider this further in the case study below on the Arab Spring.
- 3.44 The EU is also well placed to promote human rights as the world's largest aid donor. This will be covered by the first semester's Development Report.

How the EU Adds Value

- 3.45 The majority of evidence argued that the EU was a clear multiplier for the UK in human rights work. By working with the EU, the UK benefited from a louder voice, had more moral authority, and was less likely to face bilateral retaliation.⁶³
- 3.46 EU action on Burma is widely cited as a success story. For example, SEEG assesses: "EU leadership, including EU-imposed sanctions, on Burma has contributed to the new

⁶³ 16 January seminar, pp. 1-2.

situation in that country.”⁶⁴ Robert Cooper suggests that Burma is typical of what the EU can offer in terms of range of action: “The EU is in the process of switching from a policy of targeted sanctions to one of supporting change through development assistance and trade preferences. As this illustrates, access, or denial of access, to the EU market represents important leverage.”⁶⁵ He also notes: “The UK has succeeded in mobilising EU support in cases of particular interest to the UK and when it was in a numerical minority – for example, Burma and Zimbabwe.”⁶⁶

- 3.47 The US thinktank Center for Strategic and International Studies (CSIS) judges: “The British government has established a specific set of human rights objectives in its relationship with Burma [...] To advance these goals, the UK raises human rights concerns with Burmese ministers, develops a network of contacts throughout Burma, and provides updates to the UN Human Rights Committee. At the European level, the EU has also imposed an arms embargo and other restrictions on Burma. This example demonstrates there is no identifiable disadvantage in conducting a policy both at the EU and the UK level. The UK human rights policy regarding Burma doesn’t undermine EU policy, but instead allows for more specific actions and thereby increases the general effectiveness of the western sanctions on the Burma regime.”⁶⁷

The Disadvantages of Working Through the EU

- 3.48 Some commentators, such as Rosa Balfour and Kristi Raik, argue that human rights are one of “the ‘declaratory priorities’ that are formally high on the EU agenda but where Member States willingly shift the burden to the EU”, in a technique of “offloading”.⁶⁸
- 3.49 Others suggest that, although the EU speaks with one voice on human rights, it has little influence.⁶⁹ Human rights clauses in third country agreements, they argue, are rarely, if ever, invoked; and when they are, it is more likely to be against some countries, for example, Cotonou countries, than others.⁷⁰ The same applies to human rights dialogues. In sum, this evidence argues that the EU is better at grand rhetorical statements than at really promoting the values it purports to represent. A London seminar pointed out that the need for consensus in CFSP decision-making could lead to lowest common denominator outcomes.⁷¹
- 3.50 Some expressed concern about the mushrooming of the EU’s human rights agenda since the Lisbon Treaty. A particular case cited is the EU’s envisaged accession to the European Convention on Human Rights, where there are real questions about whether the impact would be complementary to Member State action, or duplicatory. The London seminar debated the EU’s role in the UN Human Rights Council.⁷² It was seen as broadly positive, but its very strength ran the risk of solidifying unhelpful regional group mindsets; and slow and opaque internal EU coordination could be resented by like-minded states who

⁶⁴ SEEG, p. 5. See also 16 January seminar, pp. 1-2.

⁶⁵ Cooper, p. 2.

⁶⁶ Cooper, p. 1.

⁶⁷ CSIS, pp. 4-5.

⁶⁸ Balfour and Raik, *Equipping the European Union for the 21st century: National Diplomacies, the European External Action Service and the Making of EU Foreign Policy*, Finnish Institute of International Affairs, 2013, p. 36.

⁶⁹ For example, Smith, *The European Union at the Human Rights Council: Speaking with One Voice but Having Little Influence*, *Journal of European Public Policy* 17(2), 2010, pp. 224-41.

⁷⁰ On the Cotonou Agreement between the EU and 79 African, Caribbean and Pacific countries, see p. 110.

⁷¹ 16 January seminar, p. 2.

⁷² 16 January seminar, pp. 1-2.

wanted to collaborate. Not all thought it helpful to have a single EU voice, rather than all 28 Member States speaking, on important human rights issues.

- 3.51 On Burma, some commentators said that the sanctions contained loopholes which European companies had exploited. Burma Independence Advocates argued that the presence of western energy companies in Burma highlighted the “schizophrenic way the sanctioning states deal with Burma’s crisis”: their investment had diluted the measures they themselves had put in place. Europe was the largest investor in Burma between 1995 and 2005, with cumulative foreign direct investment of US\$1.8 billion.⁷³
- 3.52 Konstanty Gebert, of the thinktank European Council on Foreign Relations (ECFR), argues that EU sanctions did not sufficiently weaken the military junta as there was not enough multilateral buy-in: “With the brief exception of Japan [...] no Asian country participated in the sanctions. In particular, China availed itself of the investment opportunities created by the sanctions-imposed withdrawal of western companies, and hugely extended the scope of its trade with Burma and its direct investment in that country.” Nevertheless, he also argues that this in itself, that is, forcing Burma to be reliant commercially on China, may have led paradoxically to the success of the measures: political reform was the price to pay for an alternative to China.⁷⁴

Case Study II: The EU Role in the “Arab Spring”

In 2010-11 a series of popular revolutions swept across North Africa: the Arab Spring. Supporting progress towards good governance and prosperity in Arab Spring countries, with increased social, economic and political participation, is a UK foreign policy priority.

The EU responded to the Arab Spring by launching a new strategy under its European Neighbourhood Policy, “A Partnership for Democracy and Shared Prosperity”. It was a new incentive-based approach built on the concept of “more for more”: EU support would be determined by the extent of genuine democratic progress, and was defined in terms of the “Three Ms”, money, markets and mobility, the three main ways in which the EU could help. Having fought hard to shape this outcome, the UK largely felt we had been successful, by making the EU’s approach more conditional and securing a more ambitious regional offer.

The EU undertook to make available nearly one billion euros on top of the 5.7 billion already budgeted for support to the Neighbourhood in 2011-13. It also announced that the European Investment Bank had been authorised to increase its lending by one billion euros for Mediterranean countries undertaking political reform; as well as the creation of several funding tools, including a European Endowment for Democracy, a Civil Society Facility, and an “umbrella” programme of 26 million euros, named SPRING, to supplement reform efforts in existing regional country programmes.

To stimulate economic growth, the EU offered greater levels of integration with its single market via Deep and Comprehensive Free Trade Agreements (DCFTAs). In December 2011, DCFTA mandates were agreed with Morocco, Tunisia, Jordan and Egypt. Since then the EU has been undertaking a series of scoping studies to assess countries’ readiness and political appetite. The EU launched negotiations with Morocco in March 2013, and is continuing discussions with the others. The EU has also launched discussions on mobility partnerships with Tunisia and Morocco to facilitate and manage legal migration.

⁷³ Gebert, *Shooting in the Dark? EU Sanctions Policies*, European Council on Foreign Relations, 2013, p. 4, reporting the comments of Burma Independence Advocates.

⁷⁴ Gebert, *Shooting in the Dark? EU Sanctions Policies*, ECFR, 2013, pp. 4-5.

3.53 The evidence identifies four main areas where the EU has added value to the UK response to the Arab Spring, all relating to different ways in which the EU can exert leverage to help support change:

- The EU's soft power, in the form of political statements and lobbying, which adds the weight and moral authority of the other Member States to bilateral UK action. Nick Witney and Anthony Dworkin argue: "With some active individual diplomacy (Catherine Ashton, Štefan Füle, Bernardino León), authorities across North Africa [...] seem to have been persuaded both of the EU's good intentions, and of its potential value as an external validator of their reforming efforts."⁷⁵
- The EU's offer on economic development and mobility for workers. Rosemary Hollis, City University, reflects a view widely held in our evidence that progress in those areas is what Arab Spring countries most need, and that the EU has much more to offer than the UK could alone.⁷⁶ German thinktankers, for example, judged that EU engagement with Egypt and Tunisia on economic cooperation had brought them closer to the EU framework.⁷⁷ A senior MEP thought: "The EU has played an activist role helping transition in Arab Spring countries, although arguably more effectively when a transition process is already under way. The Taskforce for Tunisia and the country's successful elections which followed, are notable examples."⁷⁸ The Brussels and Europe Liberal Democrats agree on the value of the taskforces concept.⁷⁹
- One Member State commends "the EU's response to the Arab Spring, mainly with the EU work and allocation of resources to accompany the transition period and the democratic reforms in the Arab Spring countries".⁸⁰
- Rosemary Hollis argues that EU policy can act as a multiplier of UK policy, given the alignment of goals: "The UK already had in place a combined FCO-DfID initiative called the Arab partnership, the goals of which are commensurate with those of the EU's 'deep democracy' programme."⁸¹ This alignment is due not least to the UK's influence in shaping the EU response.

The Disadvantages of Working Through the EU

3.54 Several commentators argue that the EU's strategy is insufficiently thought through, and predicated on a false assumption that North African countries aspire to join the EU. Witney and Dworkin, for example, argue that the European Neighbourhood Policy "aims to achieve gradual but wholesale transformation of the countries to which it is applied – embedding not just democracy but the whole European way of doing things [...] For a 'European' neighbour such as Ukraine, which might one day aspire to membership of the EU, it is arguable that this makes sense. For the countries of North Africa, which see themselves as part of the wider Arab, Muslim and African worlds rather than as Europe's periphery, it does not".⁸²

⁷⁵ Witney and Dworkin, *A Power Audit of EU-North African Relations*, ECFR, 2012, p. 7. Ashton, Füle and León are respectively the HR/VP, the Commissioner for the Neighbourhood, and EU Special Representative for the Southern Neighborhood.

⁷⁶ Hollis, p. 2; see also Paris seminar, p. 2.

⁷⁷ Berlin thinktank event, p. 2.

⁷⁸ Richard Howitt MEP, *Can EU Foreign Policy Make A Difference?*, Foreign Policy Centre, *Europe in the World*, 2013, p. 53.

⁷⁹ Brussels and Europe Liberal Democrats, p. 2.

⁸⁰ Evidence given in confidence.

⁸¹ Hollis, p. 4.

⁸² Witney and Dworkin, *A Power Audit of EU-North African Relations*, ECFR, 2012, p. 8.

- 3.55 Some evidence suggests that the EU's conditionality approach is ill adapted or applied. As the change in North African countries was not the result of the EU's previous policies, but triggered from within, it is difficult, or regarded as unjust by these countries, for the EU to seek to apply conditionality now. Hazaim Amirah Fernandez comments: "EU conditionality was to become more objective and more effective. Arguably neither goal has been met [...] Rewards [have been] dispensed in random fashion, [...] the Egyptian crisis not tackled."⁸³ A House of Commons report argues: "For many years the UK did not do enough to prevent, or apply conditions to, the EU's provision of support to authoritarian governments in Egypt and Tunisia before the revolutions [...] This has had consequences for attempts to do so now."⁸⁴
- 3.56 British MEP Edward McMillan-Scott broadly agrees with this critique: "The EU's strategy in the Middle East still too often lacks effect, [for example] its response to the decision of Egypt's first democratically elected president Mohamed Morsi to grant himself sweeping powers towards the end of 2012. [Baroness] Ashton diminished the EU response by a feeble call for all relevant parties to engage in dialogue. No threat to withhold the EU's substantial aid package to Egypt was made."⁸⁵ While acknowledging the difficulties of engaging with countries in transition, the House of Commons report expresses "disappointment" that results to date have been "limited" and that "the EU has yet to engage with Egypt during a critical period for that country".⁸⁶
- 3.57 Witney and Dworkin observe: "Deep and Comprehensive Free Trade arrangements are proposed, as though the countries of North Africa need an arduous, protracted economic makeover to fit them for eventual entry to the EU single market rather than urgent, near-term improvements to their ability to export to the EU."⁸⁷ Kristina Kausch, of the Spanish thinktank FRIDE, suggests that EU policy for the Mediterranean is a "technocratic strait-jacket" when what is needed is "a set of more agile, targeted and effective partnerships, starting from specific shared goals rather than from institutions and instruments".⁸⁸ The House of Commons report concludes: "The number of separate EU funding programmes contributes to a lack of transparency about where and how money is spent. We regret that this inhibits proper parliamentary scrutiny."⁸⁹
- 3.58 Some evidence holds that lack of EU institutional coherence has contributed to slow delivery. Michele Cornelli argues: "Examples of the non-use of Lisbon foreign policy provisions abound [...] In particular all the legal and institutional provisions aimed at ensuring more vertical coherence (between [Member States] and the EU) and horizontal coherence (between CFSP/CSDP and supranational external action) have been seriously neglected."⁹⁰ Rosemary Hollis pleads for institutional streamlining and clarifying the EEAS's remit.⁹¹
- 3.59 Witney and Dworkin on the other hand argue that, if results are short of expectations, it is Member States, rather than the EU institutions, that are responsible: "As revolutionary optimism across the Mediterranean has faded, so in Europe [...] the initial impulse was

⁸³ Fernandez, *The Missing Spring in the EU's Mediterranean Policies*, Notre Europe, 2013, p. 220.

⁸⁴ House of Commons, *British Foreign Policy and the "Arab Spring"*, 2012, p. 8.

⁸⁵ McMillan-Scott MEP, *Effectiveness of EU policy*, Foreign Policy Centre, *Europe in the World*, 2013, p. 57.

⁸⁶ House of Commons, *British Foreign Policy and the "Arab Spring"*, 2012, pp. 53-54.

⁸⁷ Witney and Dworkin, *A Power Audit of EU-North African Relations*, ECFR, 2012, p. 10.

⁸⁸ Kausch, *Can the Crisis Unlock Euro-Mediterranean Relations?*, FRIDE, 2012, pp. 2-3.

⁸⁹ House of Commons, *British Foreign Policy and the "Arab Spring"*, 2012, p. 54.

⁹⁰ Cornelli, *Potential and Limits of EU Policies in the Neighbourhood*, Notre Europe, 2013, p. 202.

⁹¹ Hollis, p. 6.

tempered by other concerns [...] Youth unemployment in Tunisia may be at 30% but it is 50% in Spain [...] Europe's governments [are not] disposed to open the door so that North African immigrants, or fruit and veg, can come and 'steal European jobs'. The three Ms [money, markets and mobility], in short, begin to look more promise than delivery."⁹²

Distribution of Competence and Policy Outcomes

- 3.60 The UK has bilateral relations with all Arab Spring countries and pursues its foreign policy objectives through a range of the alliances set out in Chapter 1. As well as with the EU, the UK works closely in the Middle East with the US, the other permanent members of the UN Security Council, the UN, and the G8.
- 3.61 The tools the EU has used in its response to the Arab Spring span the three different types of external competence set out in Chapter 2, namely: CFSP; TFEU areas such as trade, which are largely concerned with areas of exclusive EU competence; and visa policy (mobility agreements), which relate to the external dimension of internal EU policies. There was no suggestion in the evidence that a different distribution of competence would have resulted in better outcomes. On the contrary, Rosemary Hollis concludes: "The UK is at one with the EU in wanting economic growth and job creation, while also controlling immigration and combating terrorism. On these counts the balance of competences is such that without the EU the UK cannot be the answer by itself, however creative and well received its policies. Working with and through the EU, the UK can make a difference."⁹³

Case Study III: The EU and Iran/Nuclear

Preventing Iran from obtaining a nuclear weapon, while seeking progress on human rights and other key issues, is a top British foreign policy priority. The UK works closely with the EU on the nuclear issue to secure a peaceful, negotiated solution through the "dual-track approach": engagement with Iran through the E3+3 (three European countries, namely the UK, France and Germany, and the US, Russia and China); and pressure, including from sanctions, to persuade Iran to negotiate seriously.

On engagement, UN Security Council Resolution 1929 (2010) "encourages" and "endorses" the High Representative's support for the diplomatic efforts of the E3+3 to achieve a negotiated solution, which has included support to convene E3+3 negotiations with Iran in Istanbul, Baghdad, Moscow and Almaty. The High Representative acts as the E3+3's informal spokesperson in these efforts.

On sanctions, the EU has taken a global lead, supported by the UK, in increasing pressure on Iran. Its autonomous sanctions regime is currently its most far-reaching. The wide range of measures includes a ban on the EU import of Iranian oil; an asset freeze against Iran's central bank; asset freezes and travel bans on entities and individuals involved in the nuclear programme; and, most recently, the imposition of financial measures that prohibit transactions with Iranian banks unless authorised, for example for humanitarian purposes.

How the EU Adds Value

- 3.62 The EU's role on the Iran/nuclear issue is probably the example most often cited in the evidence of EU success in foreign policy. Contributors offer three main reasons why EU activity adds value for the UK.

⁹² Witney and Dworkin, *A Power Audit of EU-North African Relations*, ECFR, 2012, p. 7.

⁹³ Hollis, p. 7.

- 3.63 Many highlight the useful role the High Representative has played in convening the E3+3-Iran negotiations. Whereas any member of the E3+3 could be perceived as partial by other members of the E3+3 or by Iran, the High Representative can act as a neutral facilitator or “honest broker”. SEEG describes this role as “a distinctive and useful contribution” which none of the other players could do as well, serving to add credibility to the process.⁹⁴
- 3.64 Commentators also agree that the EU acts as a multiplier for UK influence on Iran. Rem Korteweg, of the thinktank Centre for European Reform (CER), points out that the UK gets several bites of the cherry through working with the EU: “Since the EU High Representative is also a party to the Iran negotiations and the UK gets to shape the EEAS position on the negotiations, London effectively has two channels through which it is involved.”⁹⁵
- 3.65 All commentators stress the key role of EU sanctions in increasing pressure on Iran. They argue that, due to its size as a trading bloc and because several European countries import large amounts of Iranian energy, the EU has the ability to impose far more painful sanctions than the UK could do alone. Adam Hug cites the oil embargo in this regard.⁹⁶
- 3.66 The evidence also argued that the fact that sanctions are imposed collectively by the EU shows that pressure is not just exercised by the big powers. The measures complement those taken by the US. This in turn has helped to have a positive knock-on effect on other like-minded states outside the EU.
- 3.67 It was noted at the London seminar that there will be times when the UK has an imperial legacy with a country which complicates achieving policy outcomes. In such circumstances, working through the EU can be an asset: for example, by the UK acting through the EU, Iran is forced to listen.⁹⁷ Adam Hug notes that, given tensions in the bilateral relationship, were the UK to act alone or to lead on Iran, it would be easy for Iran to dismiss its interventions.⁹⁸ Robert Cooper notes: “The UK has also been able to attract [EU] support in cases of bilateral difficulties; again Iran provides an illustration – when members of British Embassy staff were arrested, or naval personnel were detained.”⁹⁹

The Disadvantages of Working Through the EU

- 3.68 Many commentators noted that one of the general disadvantages of working through the EU is the time it takes to reach decisions. Iran is no exception. The UK, with France and Germany in particular, has been highly influential in shaping the internal EU policy debate on Iran sanctions, on both the nuclear dossier and human rights. Without UK influence, both regimes would be much less far-reaching. But this has costs, as with all negotiations, in terms of diplomatic resource, time (sanctions can take weeks to negotiate), and negotiating capital.¹⁰⁰ There is, however, no other alliance through which the UK could achieve the same or better results, given the economic weight of the EU.

Distribution of Competence and Policy Outcomes

- 3.69 Iran is another example where the UK works simultaneously through a range of alliances: with the US; in the “P3” and “P5” groupings of permanent members of the UN Security Council; in the E3+3; in the wider UN and EU; and with like-minded Commonwealth

⁹⁴ SEEG, p. 5.

⁹⁵ Korteweg, *The EU and Iran*, CER, 2013, p. 23.

⁹⁶ Hug, *Can EU Foreign Policy Make an Impact?*, Foreign Policy Centre, *Europe in the World*, 2013, p. 13.

⁹⁷ 16 January seminar, p. 4.

⁹⁸ Hug, *Can EU Foreign Policy Make an Impact?*, Foreign Policy Centre, *Europe in the World*, 2013, p. 13.

⁹⁹ Cooper, p. 1.

¹⁰⁰ Korteweg, *The EU and Iran*, CER, 2013, p. 23.

states. Rem Korteweg notes that the E3+3 framework works well, and that “additional negotiating partners would muddy the waters”.¹⁰¹

- 3.70 The majority of EU action on Iran falls under CFSP via unanimity of the Member States. Sanctions are an area where CFSP sets down the broad scope of the measures to be applied, but implementation may fall both to the EU, in matters falling within its competence (such as asset freezes), and to Member States, in other matters (such as visa bans).
- 3.71 There were no suggestions in the evidence that a different distribution of competence would enable the UK to achieve better policy outcomes on Iran. Korteweg notes: “Were the EU a unitary actor in foreign policy, it could possibly act with greater resolve and speed [...] Even so, it is questionable what more the EU would be able to do, than it has done now. Strong sanctions and diplomatic pressure have been mobilised.”¹⁰² Evidence is also cited of sanctions working. Korteweg again: “[EU sanctions] have led to a virtual stop in Iranian oil exports, a fall in the local currency, and a depletion of Iranian foreign currency reserves.”¹⁰³ Following the January 2012 EU sanctions package, Iran came to the negotiating table requesting sanctions relief.

Case Study IV: The EU’s Strategic Partnership with China

China matters to the UK. Building Britain’s prosperity by boosting trade and investment opportunities, encouraging China’s emergence as a responsible world player, and supporting its process of modernisation and internal reform, are important UK foreign policy priorities. The EU-China strategic partnership, initiated in 2003, is central to achieving those objectives. The EU and China trade to the value of well over one billion euros a day, with the EU absorbing 20% of Chinese exports. The EU is China’s biggest trading partner, while China is the EU’s largest source of imports and second largest two-way trading partner. Together, China and the EU account for over one-third of global GDP.

The partnership is structured around an annual summit, currently led on the EU side by Herman van Rompuy, President of the European Council, and Jose Manuel Barroso, President of the Commission, assisted by High Representative Baroness Ashton. China is represented by its Premier (formerly Wen Jiabao, now Li Keqiang). The next summit will probably be held in autumn 2013. A number of high-level dialogues help prepare the summit, including on economic and trade issues and strategic foreign policy issues. Baroness Ashton visited Beijing in April 2013.

The UK and other Member States have been active in supporting a more strategic approach by the EU that leverages effectively its position as China’s largest export market and a strategic political partner. Securing more effective cooperation on market access, fair treatment for EU firms in China, and progress on human rights, are UK priorities in 2013. China’s leadership transition has given new opportunities for the EU to engage on these issues. We are keen that the EU carefully consider how to get the most out of China’s offer of a “cooperation package”, presented last year by outgoing Premier Wen Jiabao, and this year’s EU-China Summit.

¹⁰¹ Korteweg, *The EU and Iran*, CER, 2013, p. 24.

¹⁰² Korteweg, *The EU and Iran*, CER, 2013, p. 24.

¹⁰³ Korteweg, *The EU and Iran*, CER, 2013, p. 23.

How the EU Adds Value

3.72 CER argues: “With both Russia and China, the EU has the potential to add much value to what the Member States can achieve on their own. Although it fails to fulfil much of that potential value, the EU nevertheless delivers real benefits. The EU can add value because the fundamental interests of the European states in these two important countries are broadly similar.”¹⁰⁴

3.73 Participants in the London seminar agreed that the EU’s collective leverage could help the UK secure greater market access and an improved business environment in China, including in relation to investment protection and intellectual property. Progress towards an investment agreement, as well as Commission activity pressing for China to respect international trade rules, including pursuing trade defence cases where warranted, could also have significant positive impact for the UK. On global issues, participants agreed that there was much to be gained from trying to steer China towards being a more responsible regional and international stakeholder. Encouraging a more constructive stance on, for example, Syria and Iran, would clearly be in the UK’s interests.¹⁰⁵

3.74 In the London and Brussels seminars, participants observed that many Member States did not raise human rights in their bilateral relations with China. The EU did, thereby acting as a multiplier for the UK’s own efforts.

3.75 Prof. Rana Mitter of Oxford University argued:

China’s engagement with different countries is dependent, in part, on those countries’ importance in China’s eyes [...] The UK, like France and Germany, is a significant medium-sized power with its own distinct relationship with China, both historical and in the present day. In a whole variety of areas, including higher education, manufacturing, and technology transfer, the two sides have deep and important relations. However, on the scale of global significance to China, Britain needs to consider carefully where along the spectrum it lies. Britain is less important in terms of economic investment in China than Germany by some measure. It is still considered a political and economic actor of some real significance, but a major part of the significance derives from Britain’s presence within the EU. Relations between China and the UK are generally smooth but not always trouble-free. It is worth considering whether (perhaps counter-intuitively in the eyes of some) a full and positive engagement with the European Union is in fact a mechanism which enables British bilateral relations with China to be simultaneously respectful where appropriate and robust where necessary.¹⁰⁶

3.76 The main positives cited in the evidence for how the EU adds value on Russia related to trade, energy, and human rights.¹⁰⁷ Robert Cooper noted the value of the EU’s policy of developing energy interconnections in central Europe, and of the Commission’s investigation of Gazprom.¹⁰⁸ One academic thought the EU had been effective in enforcing anti-dumping procedures on metallurgical products.¹⁰⁹ Another commentator thought the Baltic states had used the EU effectively to “counter Russia’s bullying”.¹¹⁰

¹⁰⁴ Grant, *The EU, Russia and China*, CER, 2013, p. 3.

¹⁰⁵ 16 January seminar, p. 6.

¹⁰⁶ Mitter, p. 1.

¹⁰⁷ See, for example, Grant, *The EU, Russia and China*, CER, 2013, p. 3.

¹⁰⁸ Cooper, p. 2.

¹⁰⁹ Przemysław Żurawski vel Grajewski, p. 2.

¹¹⁰ Lehne, *EU – Actor or Toolbox? How Do Member States Perceive the EU’s Foreign Policy?*, Foreign Policy Centre, *Europe in the World*, 2013, p. 16.

The Disadvantages of Working Through the EU

- 3.77 Commentators noted that the EU presidents and High Representative enjoyed warm relationships with their former Chinese counterparts. But progress on substance has been minimal; and the strategic partnership has never equalled the sum of its parts. The EU has struggled to bring together its many interactions with the Chinese – over 50 sectoral dialogues, as well as annual set-piece summits – into a strategic engagement which pursues clearly prioritised goals.¹¹¹
- 3.78 This lack of a strategic approach, commentators argued, was worrying given that the EU and China collectively produce over one-third of global GDP, and given the structural challenges faced by the global economy. It could and ought to provide a platform for serious engagement on the global security issues of the day. If there was any third country relationship where the EU could be a useful multiplier, the EU-China partnership was it.
- 3.79 Our evidence suggests that Member States broadly agree on the need for collective EU action and for the EU to articulate a common set of messages, but that few are prepared to see a greater EU role come at the expense of constraining their bilateral relationships.¹¹² Some hold that China has attempted to split the EU pack to reduce its effectiveness.¹¹³ The newly formed initiative between China and central and eastern Europe, led by China and including ten EU Member States, is cited as an example. Fuelling this concern are also rumours of a similar initiative with Mediterranean Member States.
- 3.80 Several commentators note that the heavy dependence of some Member States on Russia for energy has enabled Russia to “divide and rule” in the EU, preventing a strong and coherent EU policy in other areas, such as on Ukraine and the eastern neighbourhood.¹¹⁴ Stefan Lehne holds that Member States sometimes do “serious” work bilaterally and use the EU for “pseudo”-engagement; he pleads for a more rigorous common strategy.¹¹⁵ Others flag the risk of “EU foreign policy [...] becoming a dumping ground for issues that national governments pay lip service to but will not stand up for. For example, certain capitals say little about the erosion of democracy in Russia, but want the EU’s foreign policy to have a strong human rights component”.¹¹⁶ Najšlová, Řiháčková and Shumylo-Tapiola suggest that the EU is “too ambitious in rhetoric, too unfocused in action” in the east. It should understand that the Customs Union of the Eurasian Economic Community, in which Russia is joined by Belarus and Kazakhstan, is part of Russia’s quest to establish a predominant position in the post-Soviet space and for balancing against China, and adapt its policies accordingly.¹¹⁷

Distribution of Competence and Policy Outcomes

- 3.81 The UK pursues its foreign policy interests on China and Russia through a range of networks and alliances: bilaterally, through the EU and UN, within the G8 and G20, and so on.

¹¹¹ House of Lords, *Stars and Dragons: The EU and China*, 2010, pp. 15, 18 and 27.

¹¹² Grant, *The EU, Russia and China*, CER, 2013, pp. 3-4.

¹¹³ Parello-Plesner and Kratz, *How Can the EU Promote its Economic Interests with China?*, Notre Europe, 2013, p. 63.

¹¹⁴ Barysch, *The EU and Energy Security*, CER, 2013, p. 20.

¹¹⁵ Lehne, *EU – Actor or Toolbox? How Do Member States Perceive the EU’s Foreign Policy?*, Foreign Policy Centre, *Europe in the World*, 2013, p. 17.

¹¹⁶ Grant and Valasek, *A New Opportunity for EU Foreign Policy*, CER, 2011, at <http://www.cer.org.uk/publications/archive/bulletin-article/2011/new-opportunity-eu-foreign-policy>.

¹¹⁷ Najšlová, Řiháčková and Shumylo-Tapiola, *The EU in the East: Too Ambitious in Rhetoric, Too Unfocused in Action*, Notre Europe, 2013, pp. 1 and 5.

- 3.82 On China, Charles Grant of CER holds: “The EU’s policies [...] are stronger and more developed in areas where the EU has genuine competence (such as trade) and weaker in areas where it shares competence with Member States (energy) or has little authority (such as strategic foreign policy issues).”¹¹⁸
- 3.83 The majority of evidence on Russia focuses less on how shifts in legal competence could lead to more effective outcomes, than on the importance of buy-in from the Member States and consistent application of EU positions.¹¹⁹
- 3.84 The evidence also argues that the EU should not place too much stock in ideas of a strategic partnership or of Russia converging towards EU norms – something that President Putin has ruled out; that the EU short- to medium-term strategy should be based on an acceptance that Russia and the EU have largely different values; and that we therefore need to pursue a more pragmatic form of engagement based on interests. This would mean the EU setting out clearly its objectives and, taking account of Russia’s priorities, using whatever leverage it has to deliver them. Some also argue that the EU should try to build trust with Russia, by lowering the level of ambition and initiating small-scale joint projects in the common neighbourhood.¹²⁰

Case Study V: The EU and the US

There are a number of permanent structures for strategic transatlantic dialogue, formalised under the Transatlantic Declaration in 1990 and then expanded through the New Transatlantic Agenda in 1995. Annual summits between EU and US leaders serve as one of the most prominent fora for dialogue; they are supported by thematic bodies, including the Transatlantic Economic Council and the EU-US Energy Council.

Bilateral links between EU and US representatives serve as another channel for cooperation. For example, the High Representative and the US Secretary of State recently issued a joint statement on the Asia-Pacific region. The EU and the US work together closely on a wide range of foreign policy issues such as Iran, Syria, the Middle East Peace Process, Afghanistan, Burma, counter-terrorism, and so on. There are around 30 diplomats working in the EU delegation to the US.

A significant part of the EU-US dialogue concerns economic issues. Trade agreements are a key aspect of the EU’s external action to boost European prosperity, with significant successes including agreements with South Korea and central America, and discussions with Singapore ongoing. The last EU-US summit launched a high-level working group on jobs and growth, whose final report of February 2013 recommended that the two sides start negotiations on a Transatlantic Trade and Investment Partnership (TTIP).

The TTIP has huge potential commercial benefit for both the US and Europe. The EU and the US account for 47% of world GDP and one-third of global trade flows. Each day, bilateral trade in goods and services is worth almost two billion euros, contributing to creating jobs and growth in our economies. Aggregate investment stocks are over two trillion euros. A March 2013 study by the Centre for Economic Performance shows that a comprehensive and ambitious agreement between the EU and the US could bring gains of 119 billion euros of annual income to the EU economy and 95 billion euros of annual income for the US economy by 2027, with 80% of the benefits coming from reducing non-tariff barriers such as regulation. The TTIP would also increase GDP in the rest of the world by almost 100 billion euros and, some argue, give other partners an incentive to move to the new transatlantic standards.

¹¹⁸ Grant, *The EU, Russia and China*, CER, 2013, pp. 3-7.

¹¹⁹ For example, Hug, *Can EU Foreign Policy Make an Impact?*, Foreign Policy Centre, *Europe in the World*, 2013, p.11.

¹²⁰ Najšlová, Řiháčková and Shumylo-Tapiola, *The EU in the East: Too Ambitious in Rhetoric, Too Unfocused in Action*, Notre Europe, 2013, p. 6.

How the EU Adds Value

- 3.85 Most of the evidence argued that the EU adds value to the UK's bilateral relationship with the US.¹²¹ CER argues that the EU-US relationship acts as a multiplier for British interests, particularly where the EU has exclusive competence, such as on trade: "EU-US trade represents the world's largest intercontinental commercial flow", illustrating a clear link between EU-US negotiations and UK prosperity. Like other contributors, CER sees the discussions of a transatlantic free-trade initiative as holding enormous potential in this regard.¹²²
- 3.86 CER observes that while EU-US summits do not generally focus on foreign policy, there is cooperation on, and often a common approach to, "human rights, internet freedom, non-proliferation and strengthening of international regimes." The combined weight of the EU and the US enables specific issues to rise up the international agenda, at times with strong support from the UK: for example, the joint EU-US statement on the Asia-Pacific region in July 2012.¹²³ While recognising the limits of EU-US strategic dialogue, John Peterson points to successful cooperation on Iran and Afghanistan.¹²⁴
- 3.87 A general theme of the evidence received on defence was that the US no longer regards CSDP as a duplication of or threat to NATO, but that the US is now looking for the EU to use CSDP to take more responsibility in international security and defence.¹²⁵ A House of Lords report asserts that the US shift away from Europe and towards Asia is a major factor in forcing the EU to rethink CSDP.¹²⁶ Thomas Renard argues that the US is now expecting the EU to assume greater responsibility in stabilising its own neighbourhood.¹²⁷ Rem Korteweg notes that EU activities can complement those of NATO in certain areas, for example with civilian missions which NATO could not undertake, or by "using instruments of national power, such as development aid, to achieve certain objectives".¹²⁸
- 3.88 John Peterson argues that the EU grew in importance to the US during the second Bush administration, through the alternatives it offered to NATO and the G8, and as a bilateral link to European capitals; and that, while the shift of US focus to the Pacific under the Obama administration is a new development, it need not prevent aspects of the EU-US relationship becoming of increasing importance.¹²⁹ In one of her last speeches as US Secretary of State, Hillary Clinton was definitive that reorientation towards Asia was not a US withdrawal from Europe. She argued that, as Europe and America sought to ensure their global roles, there was scope for common strategic action in Asia and other areas, but increased transatlantic cooperation remained crucial.¹³⁰
- 3.89 Philip Gordon, the then US Assistant Secretary of State for Europe, said in January 2013 that the US benefited from a united Europe that included a strong British voice: it welcomed "an outward-looking European Union with Britain in it".¹³¹ Sir David Manning,

¹²¹ The Centre for Economic Performance study is at http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf.

¹²² Korteweg, *The EU and Transatlantic Relations*, CER, 2013, p. 25.

¹²³ Korteweg, *The EU and Transatlantic Relations*, CER, 2013, p. 26.

¹²⁴ Peterson, *Europe and America: What Next?*, Foreign Policy Centre, *Europe in the World*, 2013, p. 38.

¹²⁵ For example, Peterson, *Europe and America: What Next?*, Foreign Policy Centre, *Europe in the World*, 2013, p.40.

¹²⁶ House of Lords, *European Defence Capabilities: Lessons from the Past, Signposts for the Future*, 2012, p.5.

¹²⁷ Renard, *The EU Strategic Partnerships Review: Ten Guiding Principles*, FRIDE, 2012, p. 5.

¹²⁸ Korteweg, *The EU and Transatlantic Relations*, CER, 2013, p. 25.

¹²⁹ Peterson, *Europe and America: What Next?*, Foreign Policy Centre, *Europe in the World*, 2013, p. 38.

¹³⁰ <http://www.state.gov/secretary/rm/2012/11/201223.htm>.

¹³¹ <http://london.usembassy.gov/gb203.html>.

British Ambassador to the US in 2003-07, makes a similar point: “The UK’s membership of the EU is rather of central importance to why we continue to matter in Washington; central to why we continue to benefit from the special character of our bilateral relationship. Outside the EU, our influence in Europe would be sharply diminished; but so it would be in the United States.”¹³²

The Disadvantages of Working Through the EU

- 3.90 CER suggests that EU-US relations would benefit from greater coordination among Member States on foreign policy, arguing that discord within the EU on how to deal with Asia is having a negative impact on the EU’s ability to cooperate closely on the rise of China, an issue the UK feels strongly about.¹³³
- 3.91 According to CER, the US is “somewhat schizophrenic” in its approach to the EU, supporting “greater EU integration in the long term”, while preferring “bilateral relations with nation states in the short term”. CER argues that it is not clear what long-term positive agenda the US has for the EU, aside from trade, and the recent focus has been negative, due to the euro crisis. The UK should be wary of trading concrete advantages it currently enjoys in its relations with the US, for potential, but unspecified and abstract, longer-term benefits from a stronger EU-US relationship.¹³⁴
- 3.92 ECFR argues that there were frequent strains between the EU and the US in multilateral issues in 2012, particularly in crisis management, citing Syria as an example where the US administration did not want to get “dragged into a new war in the Middle East, especially during an election year”. The ATT negotiations, described at the beginning of this chapter, are another example: “European governments publicly invested a great deal of political capital in the negotiations, but the US, in tandem with Russia and China, eventually blocked an immediate agreement – and, in doing so, averted a clash with the domestic gun lobby.” ECFR cites further tensions over the Palestinian Authority’s bid for recognition as an observer state by the UN General Assembly.¹³⁵
- 3.93 Since the 11 September 2001 attacks, counter-terrorism has become an area of enhanced EU-US cooperation and of obvious concern for the UK. A US Congressional Research Service paper claims that Washington has “largely welcomed” EU efforts in seeking cooperation with the US on this, with bilateral links between officials increasing substantially; but that tensions over data protection and privacy, not least EU concerns about the handling of personal data on EU citizens, serve as a major challenge to further cooperation. Any changes in this arena may have consequences for the close US-UK links in law enforcement and counter-terrorism.¹³⁶

Distribution of Competence and Policy Outcomes

- 3.94 There was no suggestion in the evidence that a different division of competence would lead to better outcomes. It was noted, however, that the EU-US relationship brought most value to the UK where the EU had exclusive competence, such as on trade, and that EU-US cooperation was weakest where there was disunity among EU Member States.¹³⁷

¹³² Manning, p. 2.

¹³³ Korteweg, *The EU and Transatlantic Relations*, CER, 2013, p. 26.

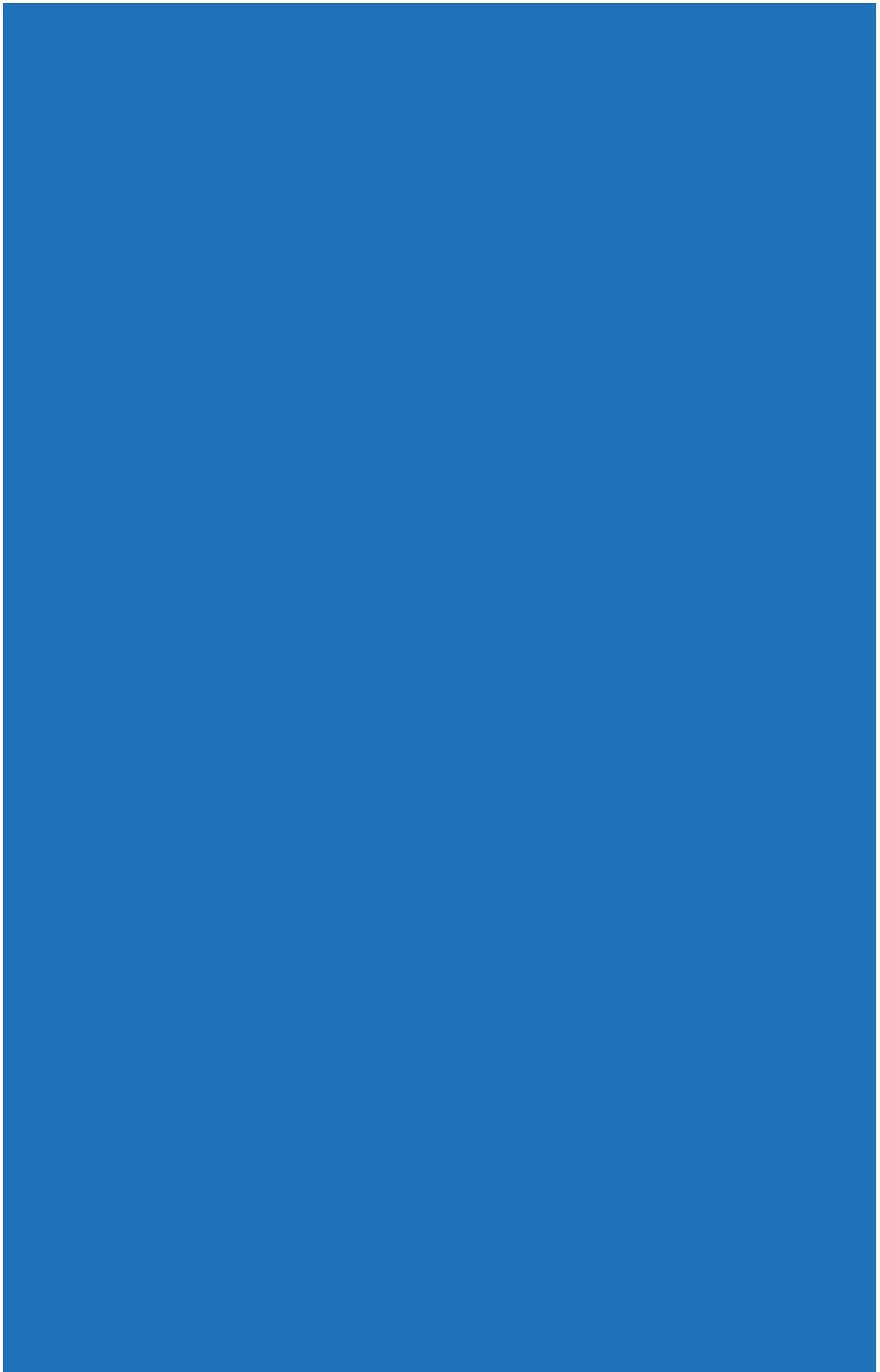
¹³⁴ Korteweg, *The EU and Transatlantic Relations*, CER, 2013, p. 27.

¹³⁵ ECFR Scorecard 2013, p. 112.

¹³⁶ Archick, *US-EU Cooperation Against Terrorism*, Congressional Research Service, 2013, pp. 8-15.

¹³⁷ Grant, *The EU, Russia and China*, CER, 2013, p. 3.

3.95 There is a sense in the evidence that the full potential of EU-US relations is yet to be realised. The envisaged trade partnership, TTIP, is the example most often given. Several pieces of evidence argue that the US wishes to see Europe take more responsibility for its own neighbourhood and defence, and that it has sought partners in its pivot towards Asia. The evidence sees opportunities for closer EU-US cooperation on broader security issues, such as counter-terrorism, cyber security, piracy, open seas, human rights, the rule of law, non-proliferation, climate change, and energy.



Chapter 4:

International Security and Defence

Introduction

- 4.1 This chapter sets out what the EU's Common Security and Defence Policy (CSDP) does, and its decision-making procedures, costs and institutions. It explains the arrangements for helping Member States improve the capacity of their armed forces and their ability to staff civilian security missions overseas, and it sets out the relationship between the EU and NATO. We look at the evidence relating to the overall balance of competence in defence matters, military capabilities, the EU-NATO relationship, and the effectiveness of civilian and military CSDP missions. The analysis uses case studies on Mali, Somalia, the Western Balkans and Afghanistan, as well as other examples. We do not consider other aspects of EU action in international security, such as counter-proliferation, which are covered elsewhere (for example, the account of the Arms Trade Treaty negotiation, and the Iran case study, in Chapter 3).
- 4.2 In CSDP the debate over the balance of powers between the EU and the Member States has been particularly intense, largely because of its military component, for two key reasons. First, it begs questions about how EU activity relates to NATO, which has guaranteed Europe's defence for more than sixty years and is the foundation of its security relationship with the US. Second, the principle that has driven the EU's development, namely the pooling of sovereign powers to make international cooperation easier, becomes most sensitive in this area. It touches on issues which go to the very heart of national sovereignty and the role of government: how and when to use our armed forces, how to ensure our citizens' security – ultimately, questions of peace and war.
- 4.3 The balance of competence in CSDP lies squarely with the Member States. All significant decisions are made by unanimity, so each Member State has a power of veto, not least over the deployment of EU military operations and civilian missions. Each Member State also retains full sovereign control of its troops, civilian personnel and other security assets. No British personnel can be deployed in an EU mission unless the Government makes a deliberate decision to do so. The key questions are rather ones of value and effectiveness: what value does the UK derive from its participation in CSDP, and how effective is CSDP at organising multilateral action? How could CSDP be made more effective, and does the UK want it to be so? Are any perceived bureaucratic inefficiencies in the CSDP decision-making system just an inevitable consequence of Member States retaining their autonomy in security and defence?

What Is CSDP?

- 4.4 Chapter 2 set out the legal framework for CSDP. Initiated by the UK and France at a bilateral summit in 1998, it has become a key tool of EU foreign policy. Through CSDP, the EU has so far launched 28 civilian and military missions outside the EU – in Europe, Africa and Asia – ranging from peacekeeping to building the professional skills of police officers and judges. For example:
- Peacekeeping and policing missions to improve security in the aftermath of conflicts in the Western Balkans;
 - A counter-piracy operation off the coast of Somalia, together with missions to train maritime security forces in the region's coastal states and to train the Somali army;
 - A police training mission alongside NATO's efforts in Afghanistan;
 - A civilian mission to monitor the ceasefire of the 2008 Russia-Georgia conflict over Abkhazia and South Ossetia;
 - Missions to build law enforcement and border management capacity in the Palestinian Authority.
- 4.5 The majority of CSDP missions are civilian. Out of the 16 current missions, 12 are civilian and four military.

Competence

- 4.6 Under the ultimate authority of the European Council, the Foreign Affairs Council (FAC) is the highest CSDP decision-making body. The Political and Security Committee (PSC) is the key body preparing CSDP decisions for the FAC, advised by subordinate committees. The EU Military Committee, comprising Member States' military representatives (including their Chiefs of Defence twice a year), also advises the PSC and Ministers.
- 4.7 Almost all CSDP decisions are made by unanimity, meaning that every Member State has a veto. So, just as in other international organisations, no mission can be launched without the UK's agreement, and no British troops or other personnel can be deployed unless the UK offers them voluntarily.
- 4.8 There are small exceptions to this unanimity rule, none of which to date has been exercised:
- In the European Defence Agency (see below), a qualified majority of Member States can set an annual budget, but only within a unanimously agreed three-year budget deal;
 - Under "Permanent Structured Cooperation", a qualified majority can establish a group of Member States who are committed to improving their armed forces;
 - Arrangements can be agreed by qualified majority to provide for rapid funding of the early stages of missions (a "start-up fund").
- 4.9 The British Parliament rigorously scrutinises the Government's CSDP policies, including related EU Council Decisions, especially any with British personnel or financial implications. For example, a number of explanatory memoranda and briefings were required by the European Scrutiny Committee before it approved the Government's decision to support the EU training mission in Mali.

Costs and Institutions

4.10 CSDP costs to the UK are for the related institutions (see below) and for missions. Mission costs fall into two categories: those for “common” elements supporting the mission as a whole, such as medical evacuation facilities and headquarters equipment; and those for the troops, heavy military equipment, police officers and so on contributed voluntarily by Member States. Common costs are agreed by unanimity; the UK’s share is currently about 15%. The costs of voluntarily providing personnel and equipment are met by the Member State concerned. Figures 4A and 4B below set out the common costs of current missions. In summary, the projected common costs of civilian missions for 2012-13 are around 318 million euros, of which the UK share will be around 49 million; the comparable 2013 military costs are around 52 million euros, with a UK share of some 8 million.

Figure 4A

CSDP Costs 2013: Military Operations

| Operation | Common costs (€m) | UK share (€m) | Total personnel | UK personnel contribution |
|--|-------------------|---------------|-----------------|---|
| Althea (Bosnia and Herzegovina peacekeeping) | 15.3 | 2.3 | 1,081 | Four military personnel in theatre. Until December 2013, an “over the horizon” reserve force of up to 120 troops. |
| Atalanta (counter-piracy off the coast of Somalia) | 7.5 | 1.2 | 1,424 | The operation commander and some 60 HQ staff. The UK has also contributed one frigate for three months every two years. |
| EU Training Mission Somalia | 7.8 | 1.2 | 91 | Three military and two civilians. |
| EU Training Mission Mali | 21.6 | 3.3 | 524 | 37 military. |
| Total | 52.1 | | | |
| UK share | 8.0 | | | |

- Costs are from January 2013 to January 2014.
- Costs and personnel numbers are subject to fluctuation and accurate as of May 2013.

Figure 4B

CSDP Costs 2012-13: Civilian Missions

| Missions | Common costs (€m) | UK share (€m) | Total personnel | UK personnel contribution |
|---|-------------------|---------------|---------------------------------|---|
| EUBAM Libya (border management assistance) | 30.3 | 4.6 | Up to 165. Deployment underway. | Four civilians, including Deputy Head of Mission. |
| EUCAP Sahel (capacity building for security forces) | 8.7 | 1.3 | 32 | One civilian. |
| EUAVSEC South Sudan (capacity building for aviation security) | 12.5 | 1.9 | Eight. | One civilian. |
| EUCAP Nestor (capacity building for maritime security forces in the Horn of Africa) | 22.9 | 3.5 | 29 | Four civilians. |
| EUJUST LEX (capacity building for Iraqi judicial sector) | 27.2 | 4.2 | 26 | Five civilians. |
| EUSEC Democratic Republic of Congo (security sector reform) | 11 | 1.7 | 46 | None. |
| EUBAM Rafah (border management assistance in the occupied Palestinian territories) | 1 | 0.2 | Three. | None. |
| EUPOL COPPS (police capacity building in the occupied Palestinian territories) | 9.3 | 1.4 | 49 | Four civilians. |
| EUPOL Afghanistan (police capacity building) | 57 | 8.7 | 258 | 18 civilians. |
| EUPOL Democratic Republic of Congo (police capacity building) | 6.8 | 1 | 28 | None. |
| EULEX Kosovo (executive and capacity building mission in rule of law) | 111 | 17 | 819 | 37 civilians. |
| EUMM Georgia (ceasefire monitoring) | 20.9 | 3.2 | 238 | 12 civilians. |
| Total | 318.4 | | | |
| UK share | 48.8 | | | |

- 2012-13 costs for each mission are for a year from the month in which the mission first started. EUAVSEC South Sudan costs are for 19 months.
- Costs are subject to fluctuation and accurate as of June 2013, personnel numbers as of February 2013. EUBAM Libya figures are accurate as of June 2013.

4.11 There are several EU institutions dedicated to CSDP, all in Brussels. Except for the European Defence Agency (see below), they are part of the European External Action Service (EEAS), which funds them except where indicated.

- The Crisis Management and Planning Directorate leads on preparing and implementing policy, including on relations with other security organisations such as the UN, NATO, and the African Union; and on planning for missions. It has about 60 staff.
- The Civilian Planning and Conduct Capability plans in detail, and runs day to day, all aspects of civilian missions. It has about 75 staff.
- The EU Military Staff leads on developing military concepts and doctrine, administering mechanisms for helping the Member States improve their armed forces, and providing military advice in the planning and running of missions. It has some 260 staff, nearly all on loan from Member States, who pay their costs. The UK currently has 12 personnel in the EU Military Staff.
- The European Security and Defence College provides training opportunities for officials, mostly by coordinating offers between the Member States. It does not offer military training. It has five staff and a budget set by unanimity. In 2013, the UK share was about £60,000.

Capability Development

- 4.12 Aside from missions, CSDP aims to help the Member States improve their security and defence capabilities, that is, the equipment, maintenance, training, and arrangements for working with other countries (known as interoperability), which together enable armed forces and civilian security actors to deploy and execute missions. Increased capacity in other Member States to act can result in them taking a greater share in the burden of providing forces for international operations, whether under the EU, NATO or other organisations. On the defence side, two key vehicles for this effort are the European Defence Agency and the Battlegroups Concept.
- 4.13 Set up in 2004, the Agency is directed by a steering board of the defence ministers of the 26 participating Member States, chaired by the High Representative.¹³⁶ Its activities have included: a series of exercises to improve the skills of Member States' helicopter crews; a project to help Member States contract efficiently for satellite communications; and a broad "pooling and sharing" programme to help deliver economies of scale when Member States purchase elements of military capability.
- 4.14 In 2012-13, the Agency's budget was around 30.5 million euros, with a UK share of 15.5%, about £4.7 million. The UK has long pressed the Agency to ensure that its activities lead to tangible improvements to what the Member States' armed forces can do, as opposed to being too thinly spread, too ambitious, or too bureaucratic. The UK reviewed its membership in 2010 and again in 2012, deciding both times to continue our membership subject to further review.
- 4.15 Designed by the UK and France in 2004, the Battlegroups Concept provides for two Battlegroups at a time to be on stand-by for deployment as a rapid reaction force. Battlegroups are multinational and comprise about 1,500 personnel. They must be able to get into theatre quickly, perform a range of tasks including limited combat, and supply themselves for up to 120 days. They should be small but robust forces, able to manage a crisis until, for example, the international community can assemble a larger peacekeeping force. Fielding such forces is a significant capability challenge, requiring many Member States to improve their armed forces (both capability and interoperability), often by learning from more capable partners.

¹³⁶ Denmark opts out of the military elements of CSDP.

- 4.16 Using multipurpose stand-by forces, the UK has had Battlegroups on the EU roster in 2005, 2008 and, with the Netherlands, 2010. The UK is also participating in a 2013 Battlegroup with Lithuania, Latvia, Sweden and the Netherlands. To date, all Member States except Malta and Denmark have participated. The EU has never yet deployed a Battlegroup under this concept, although, during particular crises, it has discussed whether to do so. From 2013, gaps are starting to appear in the roster.
- 4.17 EU-led efforts to develop capabilities for the civilian side of CSDP have been less extensive. Equipping and training civilian forces is much less costly and complex than for armed forces, so the budgetary and industrial incentives for cooperation are smaller. There is some activity elsewhere in the EU system, such as the network-based European Police College, which is funded by the Commission, has its secretariat at the UK's Police College in Bramshill, Hampshire, and falls under the purview of Member States' Interior Ministers. Civilian CSDP is also developing arrangements for storing and reusing equipment it has bought for missions via common costs, such as armoured vehicles for the ceasefire monitors in Georgia.

The Relationship Between the EU and NATO

- 4.18 CSDP has always been characterised by differences of view over its proper relationship with NATO. Many Member States, including the UK, have seen CSDP as complementary to NATO, or with a naturally distinct focus. In a joint letter to the High Representative in November 2011, the UK Foreign and Defence Secretaries wrote: "NATO will remain the UK's primary defensive alliance [...] but CSDP has a unique and complementary role to play." Without NATO's access to US firepower, CSDP is not capable of undertaking the more challenging combat tasks, especially the intense war-fighting involved in collective defence against external attack, for which NATO's Article V provides. But it is able to call on both military and civilian personnel, and to link up with the EU's political, humanitarian, economic and development tools.
- 4.19 Other Member States, most importantly France, have wanted the EU to achieve a measure of strategic independence from the US. They have pushed for high levels of ambition for military CSDP, for Member States to engage in challenging operations, and the establishment of CSDP institutions to drive and reflect the European 'autonomy' of decision-making and action to which they aspire.
- 4.20 There has been particular tension over how the EU should command military missions: France and others have wanted to establish a permanent EU headquarters; the UK and others have refused, on the grounds that this would be costly and duplicate existing facilities. Such a measure would need agreement by all the Member States. There are now seven EU options:
- NATO's headquarters in Mons, Belgium. EU access to these and other NATO assets is provided for by an agreement known as "Berlin Plus";
 - Five Member States (the UK, France, Italy, Germany, and Greece) have declared national facilities available to run EU operations. The counter-piracy operation Atalanta is run from our facilities in the national command complex in Northwood, London, and French and German headquarters have been used for EU operations in Africa;
 - An Operations Centre can be set up ad hoc in Brussels to "plan and conduct a joint civil-military response when a national operational headquarters is not identified".¹³⁷

¹³⁷ Council Decision 2008/298/CFSP amending Decision 2001/80/CFSP on the establishment of the Military Staff of the European Union, 7 April 2008.

The UK view is that this small, non-permanent facility is only suited to low-risk missions. Other Member States envisage it commanding a Battlegroup. In March 2012, the FAC agreed to activate the Centre to “facilitate coordination and improve synergies” in respect of the three EU missions in the Horn of Africa.¹³⁸

- 4.21 The tensions over EU-NATO relations are also reflected in the TEU. For example, Article 42(7) commits the Member States to come to the aid of any Member under attack “by all the means in their power”. To guard against this clause potentially undermining NATO’s crucial collective defence role, the UK negotiated text to clarify that “commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation”. As noted in Chapter 2, Article 43(1) sets out CSDP’s level of ambition in terms of tasks: “Joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peacekeeping tasks, tasks of combat forces in crisis management, including peacemaking and post-conflict stabilisation.” This list does not include the war-fighting or collective defence for which NATO military staffs plan. EU Member States have so far not agreed how to approach implementation of Article 42(7), although some, including non-NATO Member States, have been keen to do so.¹³⁹
- 4.22 When Cyprus joined the EU in 2004, its dispute with Turkey brought new complications. As Cyprus is not a member of NATO, and Turkey is not a member of the EU, their disagreement has impeded joint discussion of security challenges, cooperation where both organisations have missions, such as in Afghanistan and Kosovo, and collaboration on improving military capabilities.
- 4.23 Ahead of the case studies, as in Chapter 3, we now look at evidence received on general issues in the balance and exercise of security and defence policy competences:
- the overall balance of competence in defence matters;
 - the nature of the EU as a military power;
 - the degree of success of EU initiatives in improving the Member States’ armed forces;
 - whether the EU should have a permanent military headquarters;
 - the speed of CSDP action through civilian missions.

The Overall Balance of Competence in Defence Matters

- 4.24 The overwhelming weight of evidence agreed that the current balance of competences lies firmly with the Member States. British Influence, a lobby group, noted that decision-making powers “are firmly and indisputably in the competence of Member States and agreement is only possible by consensus”.¹⁴⁰ The thinktank Centre for European Reform (CER) wrote: “All significant decisions regarding EU defence matters continue to rest with the Member States.”¹⁴¹ For Nick Witney, a former European Defence Agency Chief Executive, now at the thinktank European Council on Foreign Relations: “There is nothing to repatriate on the defence side.”¹⁴² One contributing group wrote: “Active participation in EU-led operations

¹³⁸ Council Decision 2012/173/CFSP on the activation of the EU Operations Centre for the Common Security and Defence Policy missions and operation in the Horn of Africa, 23 March 2012.

¹³⁹ The non-NATO EU Member States are Austria, Cyprus, Finland, Ireland, Malta, Sweden.

¹⁴⁰ British Influence, p. 6.

¹⁴¹ O’Donnell, *The EU’s Common Security and Defence Policy*, CER, 2013, p. 14.

¹⁴² Witney, p. 1.

[...] is largely discretionary [...] It is open to the UK to reduce such involvement without the need for treaty change [...] New initiatives within CSDP, which require assent of the Council through the unanimity voting procedure, could be vetoed by the UK.”¹⁴³

- 4.25 A small number of contributors expressed concern that while the current distribution of competence is acceptable, the EU may incrementally gain further competence. A British MEP noted: “It may be correctly argued that decisions on CSDP are [...] for the most part taken by unanimity, the concern is that the EU subtly acquires additional competence.”¹⁴⁴ For him, the balance of competence is wrong: the UK should “reduce direct institutional engagement in EU defence matters, and adopt a political declaration publicising its intention to take a non-participatory role in CSDP [...] The European Union should be encouraged to focus on its civil capabilities.”¹⁴⁵
- 4.26 Almost all contributors, however, seemed to agree that competence in the non-legal sense, that is, effectiveness, is an issue.

The Nature of the EU as a Military Power

- 4.27 The evidence was clear that the EU lacks the capabilities and the political will to play a major military role. Prof. Anand Menon of King’s College, London, notes that EU military missions have been “profoundly limited in scale, scope, and ambition” and in many cases “designed more to illustrate that the EU could intervene than to tackle real security issues on the ground”.¹⁴⁶ At an Oxford academic roundtable, participants argued that CSDP was best at complementing what NATO did, or that it was really only able to act after NATO or another party had done the “heavy lifting”.¹⁴⁷
- 4.28 CER expanded on this point: “Many European countries are even more averse to incur the costs and risks of conflict when deploying under the EU flag than when deploying under NATO. As a result, a number of CSDP missions have been too short, too small or too cautious to make a lasting impact on the ground [...] European governments placed so many safety restrictions on their police officers that their ability to help Afghan forces was curtailed [...] The EU’s deployment to Chad was notably delayed by six months because of shortfalls in helicopters and transport aircraft.”¹⁴⁸
- 4.29 Some evidence argued more directly that the lack of political will among Member States limits what the EU can achieve, especially militarily. A British MP wrote: ‘Given the very differing levels of willingness to engage in military activity among Member States, and the existence of NATO, there are few advantages to working through the EU mechanisms.’¹⁴⁹ Nick Witney wrote: “The European Defence Agency could not aspire to be more than a conscience and catalyst; its efforts, like the wider European defence enterprise, would stand or fall by the Member States. [There is] no reason for Atlanticists to be smug – for NATO is equally being hollowed out. The failure should worry anyone concerned for European security, prosperity, and power and influence in the world.”¹⁵⁰

¹⁴³ Fresh Start group of Conservative parliamentarians, *Defence Chapter*, 2012, p. 268.

¹⁴⁴ Van Orden MEP, p. 1. See also Fresh Start, *Defence Chapter*, 2012, p. 249.

¹⁴⁵ Van Orden MEP, p. 6.

¹⁴⁶ Menon, *Europe’s Defence Deficit*, Foreign Policy Centre, *Europe in the World*, 2013, p. 23.

¹⁴⁷ Oxford roundtable, p. 2.

¹⁴⁸ O’Donnell, *The EU’s Common Security and Defence Policy*, CER, 2013, p. 14.

¹⁴⁹ Luff MP, previously Minister for Defence Equipment, Support and Technology.

¹⁵⁰ Witney, p. 1.

- 4.30 Some evidence concluded that the EU should accept a very limited military role and focus on civilian missions. A Chatham House contributor suggested: “The most urgent thing to do differently would perhaps be to focus on more focused civilian missions and capabilities instead of duplicating already existing military structures within NATO.”¹⁵¹ A Polish academic judged: “It is the EU citizens’ [...] lack of readiness to accept the indispensable costs of the CFSP/CSDP that determines [their] shortcomings [...] The practical military dimension of the EU will be limited to the small-scale post-conflict stabilisation operations [such as in the] Sahel [and] sub-Saharan Africa.”¹⁵²
- 4.31 Some evidence, however, such as that from a London seminar of academics, thinktanks, and foreign diplomats and defence attachés, argued that military CSDP missions contribute to burden-sharing by other Member States, freeing up UK forces for harder, riskier tasks such as fighting for NATO in Afghanistan.
- 4.32 The UK Government’s position has consistently been that the EU should act militarily only where NATO cannot or chooses not to act, or where it can add particular value. For example, with its counter-piracy mission off the coast of Somalia (see case study below), the EU is able to combine political, diplomatic, economic, development and civilian tools for Somalia and the region, as part of a comprehensive approach in cooperation with the wider international community.

The Degree of Success of EU Initiatives in Improving the Member States’ Armed Forces

- 4.33 Much of the evidence indicated poor European performance on producing effective armed forces for use not just in EU missions but in any crisis intervention. Jan Techau holds: “The key to European defence lies in understanding that spending more wisely (and maybe, at some point, spending more) on defence will be good for both NATO and the Europeans alone.”¹⁵³ A senior British MEP suggested that the EU Member States collectively spend one-half of the amount that the US does on defence, but have only one-tenth of the US’s firepower.¹⁵⁴ Ronja Kempin, of the German Institute for International and Security Affairs, wrote: “Even though the EU-27 has half a million more armed forces than the US, only 4% of this personnel can be deployed, compared to 16% of US forces.”¹⁵⁵
- 4.34 There was a significant amount of evidence about EU initiatives having fostered modest improvements to national armed forces. CER wrote: “Sweden for example took advantage of the Battlegroup initiative to overhaul its armed forces so that they can be deployed abroad. The desire to [contribute a Battlegroup] also led Spain to make its forces more rapidly deployable, Finland to upgrade its transport aircraft, Poland to buy similar planes and set up a joint operations command centre and Italy to set up a joint force headquarters.”¹⁵⁶
- 4.35 ADS, a trade organisation for the UK aerospace, defence, security and space industries comprising about 900 companies, wrote: “The European Defence Agency has now come to perform a useful role as a ‘marriage-broker’ between Member States in terms of the EU’s pooling and sharing initiative and in stimulating cooperation over [Research

¹⁵¹ Gomis, p. 2.

¹⁵² Przemysław Żurawski vel Grajewski, p. 4.

¹⁵³ Techau, *Will Europeans Ever Agree on the Use of Military Force?*, Notre Europe, 2013, p. 271.

¹⁵⁴ Meeting with Sir Graham Watson MEP, p. 1.

¹⁵⁵ Kempin, *How to Maintain Hard Capabilities in Times of Budget Cuts?*, Notre Europe, 2013, p. 277, referring to Valasek, *Surviving Austerity: The Case for a New Approach to EU Military Collaboration*, CER, 2011, pp. 11-12.

¹⁵⁶ O’Donnell, *The EU’s Common Security and Defence Policy*, CER, 2013, p. 13.

and Technology]. Equally, some of the [Agency's] capability projects have yielded tangible results. In operational helicopter training; there is common procurement of satellite services; and diplomatic clearances for military aircraft have been harmonised."¹⁵⁷

- 4.36 Several pieces of evidence commented on the Agency's efforts in relation to those in NATO. Fresh Start wrote: "In some cases, the [Agency] duplicates roles already being performed at NATO. NATO's Multinational Aviation Training Centre [...] provides training to helicopter pilots and ground crews."¹⁵⁸ Conversely, at a London roundtable, the view was expressed that the Agency and NATO had cooperated effectively on helicopters: NATO had facilitated equipment upgrades and the EU had facilitated training, resulting in the deployment of European helicopters to NATO's Afghanistan operation. It was also suggested that NATO's performance in improving European capabilities had not been better than that of the EU.¹⁵⁹
- 4.37 BAE Systems argued: "It is important that [EU capability initiatives] are closely coordinated with those of NATO [...] A consistent and permanent review of opportunities for cooperation among [EU] Member States is an advantage; and this work is not fully performed in NATO."¹⁶⁰ ADS wrote: "There has to be a limit to the [Agency's] competence beyond these practical examples in that the Agency lacks the deep technical and operational experience of NATO that is necessary to address matters of higher complexity."¹⁶¹
- 4.38 Most commentators thought that continued membership of the Agency was in the UK's interests, for reasons such as those set out in paragraph 35 above. For one group, "the UK should retain its membership of the [Agency] so long as it continues to deliver real, practical capability [...] Since we have a veto, we do not need to accept any recommendations presented within the [Agency] forum which fail to meet our objectives."¹⁶² ADS wrote: "There is merit in the UK extending its membership [...] after 2013 to ensure that British industry interests at [Agency] level are protected and have influence."¹⁶³
- 4.39 Some argued that the UK's Agency membership was also in other Member States' interests. BAE Systems noted: "The UK has brought not only its military competence but also its best practice and know-how to the table."¹⁶⁴ The Brussels and Europe Liberal Democrats went further: "If the UK can take the lead in military and security reform, the problematic state of Europe's defence capabilities could put the UK in a unique position to lead the whole of Europe towards new, effective ways of spending defence budgets. The UK would reap substantial practical and financial benefits [...] Smaller EU countries would find this highly beneficial [and it] would make Europe a really worthy partner for the US."¹⁶⁵
- 4.40 The UK has consistently taken the view that what is important is the quality and usability of capability, rather than the institution through which it is developed. Capability development via the EU is in principle good for the country concerned, NATO and Europe as a whole, as well as for CSDP.

¹⁵⁷ ADS, pp. 3-4.

¹⁵⁸ Fresh Start, *Defence Chapter*, 2012, p. 258. See also van Orden MEP, p. 4.

¹⁵⁹ 19 February roundtable, p. 3.

¹⁶⁰ BAE Systems, p. 1.

¹⁶¹ ADS, p. 4.

¹⁶² Fresh Start, *Manifesto for Change*, 2012, pp. 35-36.

¹⁶³ ADS, p. 1.

¹⁶⁴ BAE Systems, p. 1.

¹⁶⁵ Brussels and Europe Liberal Democrats, p. 2.

Should the EU Have a Permanent Military Headquarters?

- 4.41 CER argued: “The speed at which CSDP military missions can be deployed could be increased if EU states agreed to set up a small permanent operational headquarters in Brussels [...] The UK could also leverage the prospect of permanent EU headquarters to spur improvements in European armed forces.”¹⁶⁶
- 4.42 Others disagreed. One British MP thought: “Europe must pick up a greater share of its defence responsibilities, but this is best done through the existing structures and not by inventing new ones.”¹⁶⁷ For a Chatham House contributor, “rather than trying to set up an EU Operational Headquarters which is likely to face strong political opposition, [CSDP] should focus on civilian tasks.”¹⁶⁸
- 4.43 The UK position during successive governments, which has been shared by a number of Member States, has always been that a permanent EU military headquarters would be costly and duplicative of existing structures; could introduce an unnecessary ambiguity with respect to the role of NATO; and that improvements to the planning and delivery of operations could be achieved by making existing EU institutions and tools work better together.¹⁶⁹ Any decision to establish such a headquarters would require consensus amongst all Member States.

The Speed of CSDP Action Through Civilian Missions

- 4.44 Although the majority of missions are civilian, the bulk of the evidence we received concerned military CSDP. A key theme of the evidence on civilian missions was that many of them operate with less manpower than planned and with delays in obtaining equipment. As for military operations, the launch of civilian missions is not always backed by an ability or willingness to get them up and running quickly and effectively.
- 4.45 A 2011 House of Lords report on South Sudan commended the EU for establishing a “respected role in Sudan, supporting peace processes”, but expressed concern that the EU “has not built up its presence in Juba sufficiently or quickly enough”.¹⁷⁰ Another Lords report noted evidence of shortcomings in the EU’s budgeting and procurement systems for civilian missions: “Under EU law, individual Member States could not supply missions with equipment such as vehicles and computers. Supplies and services [for EUPOL Afghanistan] had to be put out to tender ‘with the order going to the lowest bidders regardless when they are able to deliver’ [...] Only a small part of the budget was used to fund projects. Consequently [the mission] had to ask for funds from the Americans to enable [it] to launch small projects quickly.”¹⁷¹ Richard Whitmann and Stefan Wolff, of the University of Birmingham, note: “It does not bode well for mission success if there are long delays in reaching full operability, as in the case of EULEX Kosovo and EUPOL Macedonia. Less ambitious missions, such as EULEX Georgia or the police mission in Macedonia, Proxima, however, experienced fewer difficulties in reaching operability and delivering on their mandates.”¹⁷²

¹⁶⁶ O’Donnell, *The EU’s Common Security and Defence Policy*, CER, 2013, p. 15.

¹⁶⁷ Luff MP.

¹⁶⁸ Gomis, p. 2.

¹⁶⁹ See Hansard, 10 October 2011, Column 40W.

¹⁷⁰ House of Lords, *The EU and South Sudan: On the Brink of Change*, 2011, p. 61.

¹⁷¹ House of Lords, *The EU’s Afghan Police Mission*, 2011, p. 31.

¹⁷² Whitman and Wolff, *The EU as a Global Conflict Manager*, Routledge, 2012, p. 212.

- 4.46 British Influence commented on CSDP generally: “The EU’s delivery mechanisms remain labyrinthine and ponderous, with too much centralised bureaucracy and an inability to act quickly or project a common point of view in a rapidly changing situation. This is mostly due to the battle over competences between the EU institutions and the Member States.”¹⁷³ Similarly, Conciliation Resources, an NGO, noted a “tension between the current focus on crisis response within the EU and the EU’s inability to react quickly to crisis situations due to the need to act by consensus.”¹⁷⁴ That is, the trade-off for Member States retaining sovereign power over security and defence is that EU decision processes are more cumbersome. Roundtable attendees identified the same problem of process delays, highlighting difficulties in the relationship between the EEAS and the Commission.¹⁷⁵
- 4.47 It should be noted, however, that in some cases the EU has got missions – military as well as civilian – up and running rapidly, to considerable effect. The outstanding example is the launch of the Georgia mission in 2008.¹⁷⁶ President Sarkozy of France, which held the Council Presidency at the time, brokered a Russian-Georgian ceasefire to the conflict over South Ossetia and Abkhazia. From a standing start, a 200-strong EU mission was on the ground within three weeks, thus helping to prevent further escalation.¹⁷⁷ According to Stefan Wolff, “the EU has markedly improved its capabilities to act and fund [...] Georgia is far from a success story for EU conflict management, but comparing the relative success of the French Presidency’s handling of the crisis in summer and autumn 2008 to the considerable difficulties the EU experienced in the Western Balkans throughout the 1990s indicates that the EU has come a long way in achieving some credibility as a conflict manager”.¹⁷⁸
- 4.48 Some evidence suggested that strong Member State leadership, particularly from the UK and France, can have a significant impact on the success of a mission, and help mitigate the EU’s institutional slowness. The US thinktank Center for Strategic and International Studies (CSIS) indicated an underlying dynamic: “The lack of efficiency in EU processes is a serious disadvantage [...] [If] this stems from a lack of leadership oversight [...] national engagement can minimize inefficiencies.”¹⁷⁹ Sir Alan Munro took the view: “The delay factor [...] does not invalidate the value or impact of joint European intervention.”¹⁸⁰

¹⁷³ British Influence, p. 5.

¹⁷⁴ Conciliation Resources, p. 3.

¹⁷⁵ 19 February roundtable, p. 2.

¹⁷⁶ See, for example, the Oxford roundtable, p. 2, and Paris seminar, p. 3.

¹⁷⁷ Further examples are in O’Donnell, *The EU’s Common Security and Defence Policy*, CER, 2013, citing the missions in Macedonia in 2003 and Aceh in 2005-06.

¹⁷⁸ Wolff, *The Limits of International Conflict Management in the Case of Abkhazia and South Ossetia*, paper presented at the Institute for European Studies, 2012, p. 154.

¹⁷⁹ CSIS, p. 2.

¹⁸⁰ Munro, p. 1.

Case Study I: Mali

The EU is supporting Mali on the basis of its Strategy for Security and Development in the Sahel, which emphasises regional cooperation on security and development issues, capacity-building, and economic growth. The EU has been using a range of tools, including those of the Commission, which allocated €337 million in humanitarian assistance to the Sahel during 2012, largely in response to a food and nutrition crisis.

The French military intervention in Mali from January 2013 accelerated planning for an EU military training mission. Launched in February, the mission aims to train the Mali armed forces to help enable them to restore democratic order, re-establish state authority, and neutralise the threat posed by organised crime and terrorism. The mission has 172 instructors with expertise including command and control, logistics, human resources, international humanitarian law and human rights, and the protection of civilians. The UK currently contributes 37 military personnel and in 2013 expects to pay some 3.3 million euros in common costs.

The EU has just appointed a Special Representative for the Sahel to enhance the coherence and effectiveness of its activity, including the training mission in Mali and a second, regional civilian mission based in Niger (EUCAP Sahel). His mandate includes maintaining close cooperation with the UN and regional organisations ECOWAS and the African Union.

The Disadvantages of Working Through the EU

- 4.49 Several contributors argued that Mali demonstrated that the EU is weak at rapid military responses to a crisis. Nick Witney wrote: “When Mali blew up in early 2013 the EU kept its head down, continued with its interminable planning for a mission to train the Malian army, and left the risky intervention to France [even though] the situation was tailor-made for the deployment of one of its famous ‘Battlegroups’.”¹⁸¹ A British MEP agreed, arguing that the EU failed to trouble-shoot in Mali, even though the writing had been on the wall, and France had been forced to intervene.¹⁸²
- 4.50 Benoit Gomis of Chatham House suggested: “Mali matched [the Battlegroups’] criteria for engagement [...] The EU does not add value for first military responses to a crisis: national or bilateral interventions (e.g. Libya 2011, Mali 2013) can be put together more quickly and NATO can then provide command structures to take over if needed.”¹⁸³
- 4.51 Robert Cooper took a more positive view: “The EU has been preparing a long-term policy – primarily at French instigation. An urgent situation has obliged France to intervene with military support [...] The fact that France has generated work on Mali within the EU has probably meant that the reactions of Member States have been better informed and more supportive [...] The EU is not a state: it depends on a consensus among its members and cannot act with the same speed that they can.”¹⁸⁴

Distribution of Competence and Policy Outcomes

- 4.52 CSDP action in relation to Mali takes place through unanimity. There was no suggestion in the evidence that a different distribution of competence would enable the UK to achieve better outcomes. But the evidence suggested that EU decision-making and

¹⁸¹ Witney, *Where Does CSDP Fit in European Foreign Policy?*, Notre Europe, 2013, p. 258.

¹⁸² Meeting with Sir Graham Watson MEP, p. 1.

¹⁸³ Gomis, p. 2.

¹⁸⁴ Cooper, p. 3.

planning processes can be too slow to enable a rapid military response to a crisis, and that this function is better carried out by NATO, or by Member States working unilaterally or bilaterally. Some of the evidence implied that a lack of political will to undertake such missions is an underlying factor.

Case Study II: Somalia

Somalia's recent history has been one of conflict, drought and state failure. In 2004 the UN sponsored the formation of a Transitional Federal Government (TFG) to work towards a new democratic consensus. After the emergence in 2006 of an Islamist group, Al Shabaab, fighting the TFG, the African Union launched a military mission (AMISOM) to train TFG soldiers and help create a safe environment for humanitarian aid.

The stabilisation of Somalia is a British foreign policy priority. In February 2012, the UK hosted a major international conference which made progress on tracks such as regional agreements for prosecuting suspected pirates, and greater involvement of the Somali diaspora in rebuilding the country. A second conference in May 2013, co-hosted by the UK and Somali governments, agreed further measures in three key areas: security, justice, and financial management.

The EU has played an increasing role on Somalia, using several instruments. There are now three CSDP missions:

The military counter-piracy operation Atalanta launched in 2008 to protect aid shipments and other vulnerable vessels. The UK provides the headquarters, including the operation commander and about 60 staff, and in 2013 expects to pay some 1.15 million euros in common costs. We also contribute one frigate for three months roughly every two years. Backed by UK diplomacy and military relationships, Atalanta has led good coordination with other counter-piracy forces, including a US-led force with multiple regional roles and a UK deputy commander; a NATO operation set up after Atalanta, also commanded from London; and the Russian, Chinese, Indian and other navies. Piracy decreased by 65% in 2012 relative to 2011.

The EU Training Mission for Somalia, based in Uganda, has about 90 military personnel to train and mentor Somali soldiers. We expect to pay some 1.19 million euros in common costs in 2013, and currently contribute three military personnel and two civilians. The mission works closely with AMISOM and the US. So far it has trained some 3,000 soldiers. From May 2013, the EUTM has started transferring its centre of operations from Uganda to Somalia.

Launched in July 2012, EUCAP Nestor trains and helps equip maritime security agencies in the region, such as navies and coastguards. It will do so in Somalia, Kenya, Djibouti and the Seychelles, and has some 89 personnel. We expect to pay about 3.5 million euros in common costs in 2013, and are contributing eight civilian personnel. Nestor has had under-manning problems, and has not yet delivered fully on its potential.

The Commission has been the second largest aid donor to Somalia, after the US. It has helped develop the water supply, agriculture and livestock, and education. Since 2008, it has also contributed over 400 million euros in humanitarian assistance in the region as a whole. To enhance the coherence of all this EU activity, in 2012 the Member States agreed a new strategy for the Horn of Africa and appointed an EU Special Representative.

How the EU Adds Value

- 4.53 In the evidence received on Somalia, some commentators thought that the EU has a distinctive “brand” which can be an advantage. A contributor from Chatham House commented: “The EU can be a useful international framework that provides anonymity and legitimacy to the UK for politically sensitive negotiations and operations, e.g. cooperating with Russia and China on maritime security.”¹⁸⁵ Others noted that Operation Atalanta had been able to pull in navies from non-aligned countries such as India – cooperation which would have been more problematic for NATO to achieve.¹⁸⁶
- 4.54 Robert Cooper wrote: “The EU is not as equipped as NATO for military action but there are times when its softer image can be an advantage [...] Some third countries for example find the idea of collaborating with an EU military operation easier to accept than would be the case for NATO.”¹⁸⁷
- 4.55 The evidence also suggested that UK leadership and expertise can mobilise CSDP to help deliver UK objectives. For example, the House of Lords EU Committee reported in August 2012: “UK leadership of Atalanta is effective and it brings credit to the UK.”¹⁸⁸ Sir Alan Munro suggests: “Prominent examples where integration of national policy into a broader and more influential EU front best serves the UK’s purpose include [...] the UK-coordinated naval operation to suppress maritime piracy out of Somalia.”¹⁸⁹ Robert Cooper again commented: “Bilateral efforts can be critical to collective EU policy – for example UK lobbying in favour of agreements on trial and custody of pirates in Africa.”¹⁹⁰ The London roundtable noted that the concerted efforts and leadership of the British command persuaded some reluctant Member States to agree to tactical strikes against pirate logistic dumps on the Somali shore.¹⁹¹
- 4.56 More broadly, academics Richard Whitman and Stefan Wolff thought: “Working through the EU in selected areas leverages UK capabilities to achieve desirable outcomes while not exposing the UK directly as an actor to success or failure of a particular policy.”¹⁹² At a meeting of Brussels-based thinktanks, the view was expressed that the UK was best among Member States at adopting an instrumental approach, effectively using the EU as a framework to promote its objectives.¹⁹³
- 4.57 Various contributors gave Somalia as an example of how the EU can add value by combining its various instruments. A recent non-paper by Belgium, Spain and France suggests: “To achieve an operational comprehensive approach, the EEAS, the Commission and the Member States could exploit two precedents [including] the Horn of Africa, where Operation Atalanta made it possible to launch other operational CSDP engagements [...] and to mobilise specific Commission instruments to build the capacities of states in the region.”¹⁹⁴ In considering the EU as a “magnifier” of British policy, CSIS wrote: “Combining different policies at the EU and national level can have a mutually reinforcing, ‘multiplier’ effect on all policies [...] [Operation Atalanta] benefits from EU

¹⁸⁵ Gomis, p. 2.

¹⁸⁶ See, for example, the 19 February roundtable, p. 1.

¹⁸⁷ Cooper, p. 4.

¹⁸⁸ House of Lords, *Turning the Tide on Piracy, Building Somalia’s Future*, 2012, p. 12.

¹⁸⁹ Munro, p. 1.

¹⁹⁰ Cooper, p. 3.

¹⁹¹ 19 February roundtable, p. 2.

¹⁹² Whitman and Wolff, p. 1.

¹⁹³ Brussels seminar, p. 1.

¹⁹⁴ Non-paper by Belgium, France and Spain, pp. 2-3.

policy work to address the root causes of piracy by contributing to Somalia's social and economic development. The EU is one of the very few players able to use such a broad range of instruments."¹⁹⁵

- 4.58 At the Oxford roundtable it was suggested that the EU was becoming more influential in African conflict resolution, and that African Union troops funded by the EU, as in Somalia, had become a viable model.¹⁹⁶ The Seychelles Foreign Minister told a House of Lords committee that the EU and African Union had a good working relationship on Somalia. However, the EU Special Representative for the Horn of Africa, and a Chatham House representative, told the Lords that the EU should engage more with the Intergovernmental Authority on Development in eastern Africa, an important actor in Somalia stabilisation.¹⁹⁷

The Disadvantages of Working Through the EU

- 4.59 In relation to counter-piracy, one submission asserts: "There may well be occasions when nations other than the US must take the lead in a crisis, but this does not automatically lead to a role for the EU."¹⁹⁸
- 4.60 Daniel Keohane notes that the EU's "comprehensive approach" "has rarely worked well in practice, albeit at least the EU is now increasingly trying to fit CSDP missions into broader regional strategies [...] One challenge for the EU will be to further improve its ability to coordinate all its existing instruments, both in Brussels and in the field."¹⁹⁹

Distribution of Competence and Policy Outcomes

- 4.61 CSDP action in relation to Somalia takes place through unanimity. There were no suggestions in the evidence that a different distribution of competence would enable the UK to achieve better policy outcomes. There were, however, suggestions that the EU needs to continue to make progress in using its crisis management tools with greater coherence, in relation to each other and to other international actors.

¹⁹⁵ CSIS, p. 2.

¹⁹⁶ Oxford roundtable, p. 1.

¹⁹⁷ House of Lords, *Turning the Tide on Piracy, Building Somalia's Future*, August 2012, p. 23.

¹⁹⁸ Fresh Start, *Defence Chapter*, 2012, p. 257.

¹⁹⁹ Keohane, *EU Defence: The Capabilities and Credibility Conundrum*, Notre Europe, 2013, p. 246.

Case study III: The Western Balkans

The UK's key foreign policy objective in the Western Balkans is to ensure long-term stability and prevent a return to the violence of the mid-1990s. The best way to achieve this is through integration into the EU and NATO. Croatia joined the EU in July 2013. Albania, Bosnia and Herzegovina (BiH), Serbia, Kosovo, Montenegro, and Macedonia are at various stages of the process. The EU is playing a central role in helping these countries implement the reforms needed. Some of its political and security efforts in Bosnia and Herzegovina and in Kosovo are described here. We do not cover the Commission's pre-membership tools: that will be for the Enlargement Report, which will gather evidence from autumn 2013.

After the end of the fighting in 1995, the Dayton Peace Accords gave the international community safeguards in BiH to help maintain security until the country stabilised. On the civilian side, a High Representative was appointed with executive authority (known as the Bonn powers) to intervene in the running of the country if needed. Since 2011 the EU has had a separate Special Representative in BiH to coordinate its engagement. Both roles have worked to promote reform, good governance, and cooperation between politicians, but progress towards EU membership has stalled in recent years due to a lack of will amongst BiH leaders to make the compromises needed.

On the military side, the EU's Operation Althea guards against renewed insecurity in BiH. It launched in 2004 to take over peacekeeping duties from NATO as the US in particular withdrew. The headquarters remained at NATO, under a senior British general. At first, Althea comprised some 7,000 troops, including roughly 1,500 British personnel. It is now much smaller, with about 600 troops in theatre. The UK provides four staff officers in country and, for 2013, up to 120 readily deployable reserve troops. In 2013 we expect to pay some 2.3 million euros in common costs.

When Kosovo declared independence from Serbia in 2008, the EU established its largest civilian CSDP mission, EULEX, to perform both executive and capacity-building roles in policing, the judiciary and customs. It has an annual budget of around 111 million euros, of which the UK share is around 17 million, and comprises up to 1,250 international and 1,000 local staff. The mission includes a significant US contingent (over 70 personnel in the past, currently 37), as well as staff from other non-EU states, such as Turkey (currently 39), Norway (two) and Canada (one). EULEX has achieved significant results in capacity-building projects, and made good progress in sensitive court cases on, for example, war crimes, organised crime and corruption, and inter-ethnic crimes.

Since 2010 the EEAS, led by Baroness Ashton, has engaged Serbia and Kosovo in a dialogue to help them move towards normal relations and a reduction in tensions. In April 2013, it delivered a historic deal which settles several issues in northern Kosovo and provides de facto Serbian recognition of Kosovan state institutions for the first time. The success so far is partly due to the way in which EU Member States, the EEAS and the Commission have worked together: progress in Belgrade/Pristina relations is a crucial part of the conditions for Serbia to move towards EU membership.

How the EU Adds Value

- 4.62 In addition to NATO's crucial role in transatlantic security, CSDP gives a mechanism for US-European collaboration. The US's major contribution to EULEX Kosovo's manpower is an important example. CER argues: "The Union's growing expertise in civilian crisis management is a helpful asset to the UK and its EU partners (and one which NATO notably lacks). [...] At times, USAID [the US equivalent of the Department for International Development] has even tailored its aid programmes to support EU crisis management efforts [for example] in Macedonia."²⁰⁰
- 4.63 Other non-EU countries, not least Turkey, Canada and Norway, also use CSDP as an extra vehicle for international security contributions. Turkey makes a key contribution to Operation Althea, currently some 160 troops. The Macedonian Ministry of Foreign Affairs acknowledged: "[CSDP missions in Macedonia] helped the Republic of Macedonia grow from a security consumer into a security provider participating in international crisis management missions in the region and beyond. For example, in [NATO's military operation in] Afghanistan, Macedonia has been the fourth largest contributor per capita."²⁰¹
- 4.64 In general evidence, there was a widely shared view that CSDP missions can represent good value for money for the UK. The Senior European Experts Group (SEEG) wrote: "CFSP/CSDP can be highly effective in advancing the UK's interests at low cost; as such it has become an essential foreign policy tool."²⁰² A British MEP argued that CSDP missions were good value for money for the British taxpayer.²⁰³ Nick Witney argued a similar point, recalling strong British influence in central and eastern Europe, "for the cost of a few embedded defence advisers", as countries prepared for 2004 EU accession: "[Yet] we've contrived to make defence the source of positive European resentment towards us, by vetoing trivial increases in the [European Defence Agency's] budget."²⁰⁴
- 4.65 This case study would seem to support these views about value for money. At a current UK cost of just 2.3 million euros in common costs, 120 reserve troops (representing a cost of some £1.7 million in 2013-14), and only four military personnel on the ground, Operation Althea is ensuring security in Bosnia and Herzegovina. The EULEX mission costs the UK about 17 million euros per year and just 37 staff out of some 1,150.

Distribution of Competence and Policy Outcomes

- 4.66 As with Somalia, there was no suggestion in the evidence that a different balance of competence would lead to more effective policy outcomes in the Western Balkans.

²⁰⁰ O'Donnell, *The EU's Common Security and Defence Policy*, CER, 2013, p. 12.

²⁰¹ Macedonian Ministry of Foreign Affairs.

²⁰² SEEG, p. 5.

²⁰³ Meeting with Sir Graham Watson MEP, p. 1.

²⁰⁴ Witney, p. 1.

Case Study IV: Afghanistan

As part of the international community's effort to rebuild Afghanistan, in 2007 the EU launched a police training and advisory mission (EUPOL) of up to 400 personnel, to work alongside NATO's ISAF military forces in Provincial Reconstruction Teams. In 2009, NATO launched its own 2,000-strong police training mission (NTMA). The two police missions had different focuses, with NTMA looking mainly at training the Afghan rank and file, while EUPOL targeted middle and senior levels.

The Turkey-Cyprus dispute made it difficult for EU and NATO Member States and planning staffs to discuss cooperation between ISAF and NTMA on the one hand, and EUPOL on the other. This meant that the EU personnel, many of whom were from countries with troops in ISAF or at least paying NATO costs for it, could not be properly supported by ISAF infrastructure. Most seriously, EU personnel's movements around the country were not reflected in the "blue force tracker", a system for avoiding accidental ISAF strikes on friendly forces. It also meant that NTMA and EU training activities were poorly coordinated, even though, with NTMA focusing primarily on basic training and the EU on more advanced topics such as community and intelligence-led policing, they could have partnered each other well. Cooperation only improved slowly, through the efforts of leaders on the ground using informal arrangements. This was more easily achievable in provinces such as Helmand, where the UK ran the NATO team and most EU personnel were UK secondees. In 2011, EUPOL, NTMA and a German police mission signed agreements on standardised police training.

How the EU Adds Value

4.67 Sebastian Bloching noted that EUPOL's focus on civilian policing compared favourably with NTMA enabling the Afghans "to close immediate security gaps to the detriment of long-term civilian policing"; but that this was being undermined by the EU's difficulties in providing security for its staff outside Kabul, and by under-manning.²⁰⁵

The Disadvantages of Working Through the EU

4.68 A 2011 House of Lords report noted: "[EUPOL] was too late, too slow to get off the ground once the decision was made, and too small to achieve its aim; or perhaps, worst, too small to receive respect from other actors." It concluded: "In terms of civilian policing, the EU has provided a unique and vital capability for the stabilisation of Afghan society [...] However, the level of that capability remains a problem [...] The low degree of EU commitment to providing staff [...] means that there is a real risk that the EU will fail in an area where it should show leadership."²⁰⁶

4.69 The Lords also noted that obstacles to EU-NATO relations are a serious problem in Afghanistan: "The lack of a formal cooperation agreement between the NATO forces [and EUPOL] on the security of [EU] personnel has increased the risk to the lives of [EU] personnel, including British citizens. This is unacceptable."²⁰⁷

²⁰⁵ Bloching, *Policing in Conflict: An Overview of EUPOL Afghanistan*, ISIS Europe, 2011, p. 4.

²⁰⁶ House of Lords, *The EU's Afghan Police Mission*, 2011, p. 29.

²⁰⁷ House of Lords, *The EU's Afghan Police Mission*, 2011, p. 36. It should be noted, however, that the EU mission made its own security arrangements, including with private security companies, and that these complied with UK standards for duty of care.

4.70 The Fresh Start group focused on the lack of coordination of activities, implicitly blaming the EU: “A division of labour [between the EU and NATO] rather than duplication would be helpful. If the EU had coordinated its civil missions in Afghanistan with NATO and got them right, the situation there might have been improved.”²⁰⁸

Distribution of Competence and Policy Outcomes

4.71 The evidence identified a number of weaknesses in the EU mission in Afghanistan. There was nothing to suggest that the balance of competence was the cause of these issues.

Conclusion

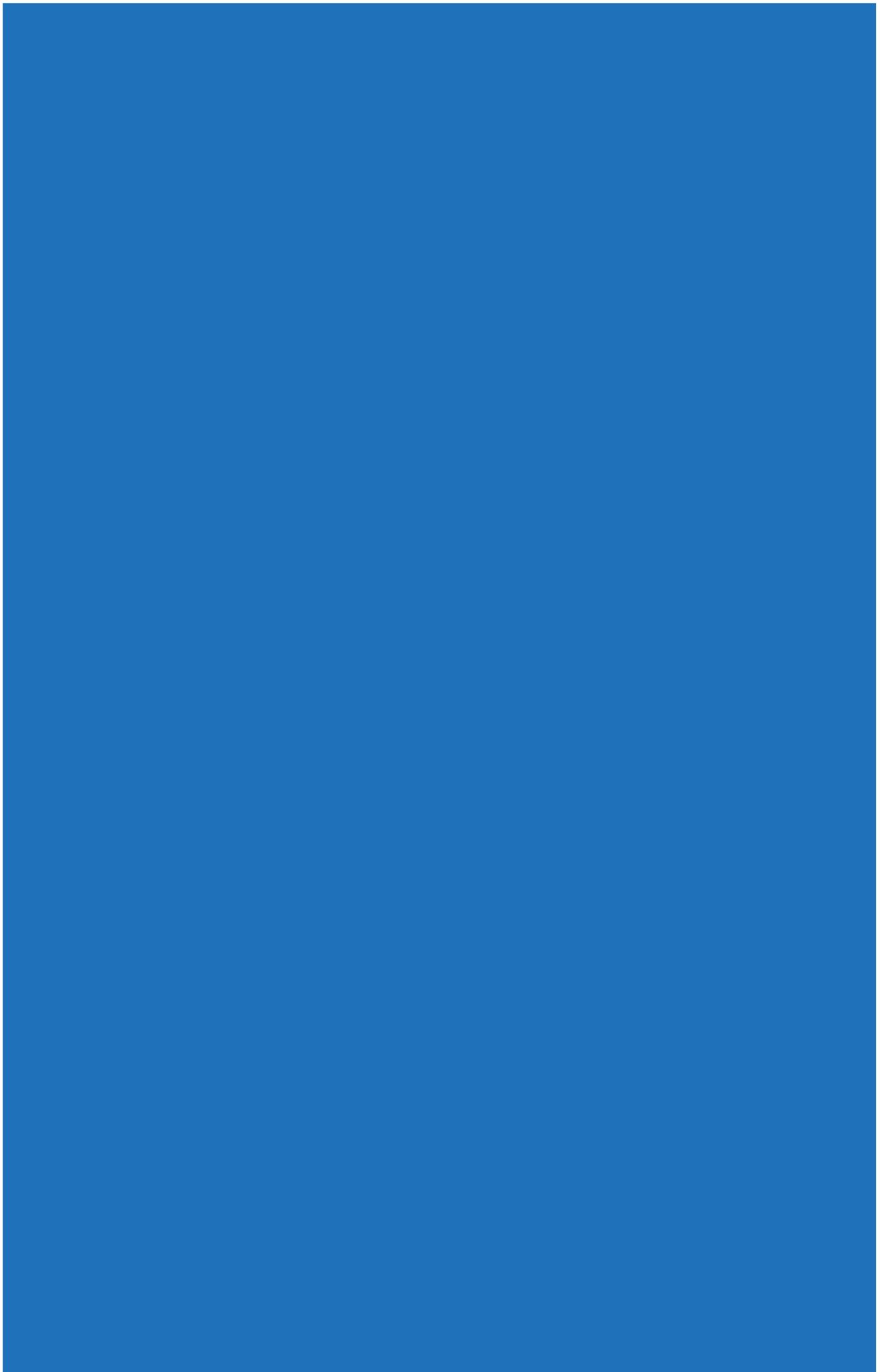
4.72 A key theme in this chapter, as in the rest of the report, is that competence in the sense of effectiveness concerns most commentators more than legal competence does. In the case studies discussed above, legal competence is seldom mentioned.

4.73 CSDP, especially military CSDP, cuts to the heart of issues of national sovereignty. Decisions are taken by unanimity, that is, consensus of all the Member States. There are only three small areas where qualified majority voting applies, and these have never yet been used. Member States retain the power to veto potential operations, and to decide when to deploy their personnel and assets. There was no support in the evidence for greater transfer of power to the EU. A very small number of contributors raised the possibility of “competence creep”, that is, that the UK could cede further competence to the EU through the creation of new institutions or the expansion of the remit of existing ones.

4.74 The evidence was unanimous on one point: that delivery of CSDP could be improved. For many contributors, this came down to Member States’ political will, both to deploy their personnel and to invest in capabilities. Most agreed that the relationship between CSDP and NATO needs to be improved, and there was strong support for the view that CSDP is not good at rapid military responses to crises.

4.75 There was debate in the evidence about how much benefit the UK has derived from participation in CSDP. A majority of the evidence submitted argued that the UK, on balance, gets more out than it puts in, although the achievements are often modest. For example, the evidence suggested that, in some other Member States, CSDP has led to some small improvements to military capabilities, although almost all agreed that there is scope to do significantly more in this area. There was agreement, too, that the EU has made progress towards developing a more comprehensive approach, and that this has brought benefits, for example, in the Horn of Africa and Western Balkans.

²⁰⁸ Fresh Start, *Defence Chapter*, 2012, p. 257.



Chapter 5: Civil Protection

Introduction

5.1 This chapter explains how the UK works through the EU in civil protection, that is, the prevention of, preparedness for, and response to disasters.²⁰⁹ It considers related evidence, in particular on the Civil Protection Mechanism (CPM), on which most contributors focused. It highlights the interconnections between civil protection and other areas of competence, most notably humanitarian and consular activity, which are dealt with in other reports. The chapter also considers the Solidarity Clause, a commitment by Member States and the EU to support each other in the event of a disaster.

How Civil Protection Works

5.2 The European CPM was established in 2001 to cover prevention, preparedness and response.²¹⁰ The Treaty of Lisbon provided a specific legal base for EU action in the field of civil protection for the first time: Article 196 TFEU. EU competence is confined to supporting, coordinating and supplementing Member States' actions in preventing, preparing for, and responding to disasters.²¹¹ A new civil protection mechanism has been proposed, and negotiations are ongoing between EU institutions.²¹²

5.3 If faced with a disaster, any state may request assistance from participating states through the EU's Monitoring and Information Centre (MIC).²¹³ Assisting participating states can then apply for up to 50% of the cost of transporting that assistance.

5.4 Since 2001, the CPM has been activated over 150 times, mostly in response to disasters outside the EU. In 2007-11, the UK responded to more than ten requests for assistance. To date, the UK has only requested assistance once, during severe winter weather in 2010, when it requested and received assistance from partners with road salt supplies.

²⁰⁹ UK ministers are responsible for negotiating international treaties. Responsibility for civil protection delivery within the UK is largely devolved, although devolution settlements vary.

²¹⁰ Council Decision of 23 October 2001 establishing a community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (2001/792/EC, Euratom) (OJ L 297, 15.11.2001). The CPM is now set out in the Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism (recast) (2007/779/EC, Euratom).

²¹¹ Article 6(f) TFEU.

²¹² Given the sensitivities around the ongoing negotiations, this report will not comment on the likely shape of the new civil protection mechanism, nor outline particular aspects of the Government's current negotiating stance.

²¹³ All 28 Member States and four non-EU states participate in the CPM.

Cyprus: The UK responds to a CPM request for assistance

In 2009 a ship carrying weapons from Iran in contravention of UN Security Council Resolution 1747, was intercepted and redirected to Cyprus. Two years later a fire ignited the gunpowder on board. The resulting explosion killed 13 people and destroyed a nearby power station, depriving the island of half its power supplies. Through the CPM, the government of Cyprus appealed for assistance from EU partners to help tackle the problem. Thirteen participating states, including the UK, responded with mobile generators, fire pumps, and various technical experts.

- 5.5 The EU civil protection budget for 2007-13 was 189.8 million euros, of which 133.8 million was for activities within the EU and 56 million was for external activities. The UK contribution was some 24 million euros.²¹⁴ The budget enables the financing of action to support civil protection, including activities managed by the Commission, such as the maintenance of the MIC, the deployment of EU-trained experts, and contributions to European early warning systems. In response to a disaster, Member States can apply for up to 50% of the costs of transporting their assistance. To date, the UK has requested and received 393,340 euros in such transport costs.
- 5.6 The budget also includes funding for multinational exercises and prevention and preparedness projects. For example, between 2007 and 2012, 18.2 million euros were available from the EU to finance multinational exercises. The UK participated in five exercises which received some 3.6 million euros in EU funding, with the UK receiving some 1.2 million euros. In the same period, 20.1 million euros was available for prevention and preparedness projects. The UK joined European partners in nine projects with costs totalling about 3.3 million euros. There were also non-monetary opportunities for the UK in these activities, such as exchanging practices and expertise, and raising the UK's profile and reputation.^{215 216}
- 5.7 The Solidarity Clause was introduced by the Lisbon Treaty. It states that the EU and its Member States will “act jointly in the spirit of solidarity” in the event that a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster.²¹⁷ In December 2012, the Commission and High Representative published a joint proposal for arrangements to implement the clause. It aims to translate the clause into a set of practical arrangements, and is currently being negotiated.

Competence

- 5.8 Most contributors did not argue for a role for the EU radically changed from that currently agreed under the CPM, which recognises the primary role of the Member State. As Rebecca Taylor MEP noted: “Participating states [should] maintain the primary responsibility to protect their own citizens.”²¹⁸ However, some noted that efficiency could be increased. For example, one responder commented that civil protection “lack[ed]

²¹⁴ Based on the UK's post-abatement contribution to the 2013 EU Budget.

²¹⁵ As highlighted by McAlister, by e-mail.

²¹⁶ Figures were calculated from the annual amounts available for exercises, prevention projects, and preparedness projects in 2007-2012, as detailed in the annual work programmes from 2009-12, the grant application guides for 2007 and 2008, and Commission exercise funding details. See: http://ec.europa.eu/echo/funding/financial_instrument_en.htm, http://ec.europa.eu/echo/civil_protection/civil/prote/pdfdocs/awp_2009.pdf, http://ec.europa.eu/echo/civil_protection/civil/prote/cp03_2007_en.htm, http://ec.europa.eu/echo/civil_protection/civil/prote/exercises.htm. UK share calculated from internal records.

²¹⁷ Article 222 TFEU.

²¹⁸ Taylor MEP, p. 2.

real capacity beyond coordination leaving the overall system lacking full efficiency”.²¹⁹ This theme reflected the Barnier Report of 2006, which advocated measures such as the establishment of an EU Civil Protection Force.²²⁰ There was also some disagreement between contributors about whether there needed to be greater standardisation of, for example, training.

- 5.9 It came out quite strongly in the evidence that the EU and the UK did not make enough of the expertise of civil society and front-line responders when framing and negotiating legislation. It was also felt that the EU, the UK, or both should get better at communicating the EU’s role in civil protection at a local level.

Disaster Prevention, Preparedness and Response

- 5.10 The majority of contributors judged that the UK benefitted from aspects of EU disaster prevention and preparedness: notably CPM training and exercises, and the exchange of experts programme. Benefits highlighted included improved interoperability (that is, the ability of experts from different countries to work together in the field), widening the skills base of British responders, and access to an international knowledge base which could be drawn on in an emergency.
- 5.11 There was general agreement that disaster response through the CPM was more effective than assistance given unilaterally or bilaterally. This is of benefit to the receiving country and to the assisting country, who will want to ensure that the assistance offered is of maximum value, especially where it has a wider foreign policy or humanitarian interest in that country.
- 5.12 The Fire Service Federation summed up the feelings of many: if the UK “were to operate from a stand-alone position [...] this would reduce [...] cohesion and [...] operational harmonisation”.²²¹ Similarly, as one MEP put it: “The EU’s capacity to muster resources from different Member States to deal with disasters and emergencies is a prime example of the added value of the structured cooperation the Union provides.”²²² However, importantly, others pointed out that this did not “mean the UK should not act individually where doing so would provide a more appropriate solution”, for example, potentially when responding to a request from a Commonwealth country.²²³
- 5.13 Given that the UK has only requested assistance once, opinion was mixed on the extent to which CPM participation was cost-effective. One contributor noted: “The majority of deployments within the EU have focused on southern and eastern European nations in response to the effects of seasonal forest fires, flooding and earthquake etc. [therefore] some nations benefit [...] far more than others.”²²⁴ Unless agreed otherwise, the costs of assistance offered through the CPM are borne by the requesting state in accordance with the “requester pays” principle, although in practice participating states often offer assistance at cost or for free.²²⁵ In addition, as one MEP noted, British tourists travelling in these areas could directly benefit from any assistance given.²²⁶

²¹⁹ Fire Sector Federation, p. 2.

²²⁰ Michel Barnier, *For a European Civil Protection Force: Europe Aid*.

²²¹ Fire Sector Federation, p. 3.

²²² Meeting with Sir Graham Watson MEP, p. 3.

²²³ Hampshire Fire and Rescue Service, by e-mail.

²²⁴ Wolf, p. 3.

²²⁵ Costs are often waived when civil protection assistance is offered to a third country as part of a wider humanitarian response.

²²⁶ Meeting with Sir Graham Watson MEP.

The UK May Need to Call on the CPM in the Future

5.14 Some contributors believed that environmental and social changes were transforming the nature and scale of risks facing states, making it more likely that the UK would need assistance in the future. In this case, they suggested, using the CPM would allow the UK to benefit from a coordinated and standardised approach. They cautioned against “over-confidence in the efficacy of national risk management and crisis response measures”.²²⁷

Response to a Broader Range of Emergencies

5.15 The CPM has been activated most often in response to natural disasters, but assistance can be coordinated for a broad range of emergencies, and can complement wider humanitarian and consular action. After the 2004 Madrid bombings, Spain requested assistance through the CPM. In Libya in 2011, it was used to “identify and facilitate the deployment of assets for evacuation [of EU citizens]”.²²⁸

Pakistan: The CPM Outside the EU

In 2010, severe flooding in Pakistan killed over 1,900 people, damaged over two million homes, and destroyed key infrastructure. The CPM was activated following Pakistan’s request for assistance. An EU civil protection team was deployed to assist national authorities and support UN teams in receiving assistance offered by 18 participating states, including the UK. The CPM provided 1.23 million euros to co-finance 16 flights bringing assistance, including three organised by the UK. The Commission provided 150 million euros in humanitarian aid by the end of 2010, money which originated from the Member States as part of a fixed annual contribution.

How to Improve the Efficiency of the CPM

- 5.16 Evidence contributors stressed the need for the EU institutions to avoid a “silo mentality”.²²⁹ The Commission thought that the CPM should complement other legislative and policy instruments, in particular, to work as part of CFSP operations, or in tandem with consular activities.²³⁰
- 5.17 In 2010, the Commission’s Directorate General ECHO, which leads on humanitarian aid, took responsibility for the CPM to provide “better coordination and disaster response”.²³¹ Although some contributors saw the benefits, others were more cautious.²³²
- 5.18 Noting that military resources can be deployed under the CPM if an assisting state voluntarily offers them, some stakeholders saw the importance of “improving synergies between civilian and military crisis management” and ensuring the most “appropriate

²²⁷ Miles, p. 1.

²²⁸ European Commission, *The European Commission Facilitates Support to Evacuate Europeans from Libya*, Press Release, 23 February 2011.

²²⁹ For example, Miles, p. 2.

²³⁰ European Commission Communication to the Council, the European Parliament, the European Economic and Social Committee and Committee of the Regions, *Improving the Community Civil Protection Mechanism*, COM (2005) 0137 final, April 2005, pp. 10-11.

²³¹ ec.europa.eu/echo/about/presentation_en.htm.

²³² Hanover Associates, by e-mail.

resources” were used to respond to a disaster.²³³ Others thought the civil-military link in civil protection could be problematic.²³⁴

- 5.19 For emergencies occurring outside the EU, evidence suggested that greater coordination between the Commission and the European External Action Service would be beneficial.²³⁵ It would help ensure a “coordinated and efficient” structure.²³⁶
- 5.20 Many contributors also noted that the extensive and complex bureaucracy of the funding application process for exercises and projects, presented a significant obstacle. One contributor wrote: “The manpower and knowledge needed to bid for funding is beyond what most [Local Authority] teams are able to do.”²³⁷

Role of Other International Organisations

- 5.21 Some contributors suggested that the EU’s role in civil protection could not currently be entirely replicated by another organisation or body. Others, however, saw the benefit of better drawing on other organisations’ areas of strength, especially in planning and prevention.
- 5.22 Organisations such as the UN and Organisation for Economic Cooperation and Development highlighted a number of collaborative opportunities. These included areas of work in which the UK is heavily involved, such as the Hyogo Framework for Action, under which the UK was the first country to have its disaster risk reduction activities peer-reviewed.
- 5.23 The UK collaborates with other nations on emergency planning through NATO. This was welcomed by some contributors, who highlighted NATO’s global nature, the value of its civilian experts, and the importance of its links to military expertise.²³⁸
- 5.24 In general, contributors were keen to avoid unnecessary duplication of effort across different organisations.²³⁹ This echoed a theme from the 2009 House of Lords report on civil protection.²⁴⁰

The Solidarity Clause

- 5.25 At the time of writing, the Solidarity Clause has yet to be invoked by any Member State. Contributions of evidence on this topic were few, and generally focused on Member States’ obligation to respond under the clause.

²³³ ADS, p. 5.

²³⁴ Voluntary Sector Civil Protection Forum, by e-mail; 16 January seminar, p. 11.

²³⁵ ADS, p. 5.

²³⁶ Fire Sector Federation, p. 5.

²³⁷ London Borough of Camden, by e-mail.

²³⁸ Comprehensive Training Solutions, by e-mail.

²³⁹ For example, Dell.

²⁴⁰ House of Lords European Union Committee, *Civil Protection and Crisis Management in the European Union*, 2009, p. 10.

- 5.26 Some contributors viewed the clause primarily as a statement of political will because, it was argued, “there [is] a lack of enforcement or obligation on the Member States to act.”²⁴¹ One suggested: “This essentially makes the [clause] operationally meaningless.”²⁴² This echoed a House of Lords Report of 2011.²⁴³
- 5.27 The clause requires the European Council to “regularly assess the threats facing the Union”.²⁴⁴ Some contributors believed that “an EU-level risk assessment may be of use to the UK if it looked at high-impact events that crossed international boundaries”.²⁴⁵ However, although some saw “the potential value” of an “EU approach to risk assessment”, they were clear that “any new risk assessment should not [...] require the UK to [duplicate] information [already held by EU institutions]”.²⁴⁶

²⁴¹ Workshop with academics, p. 2.

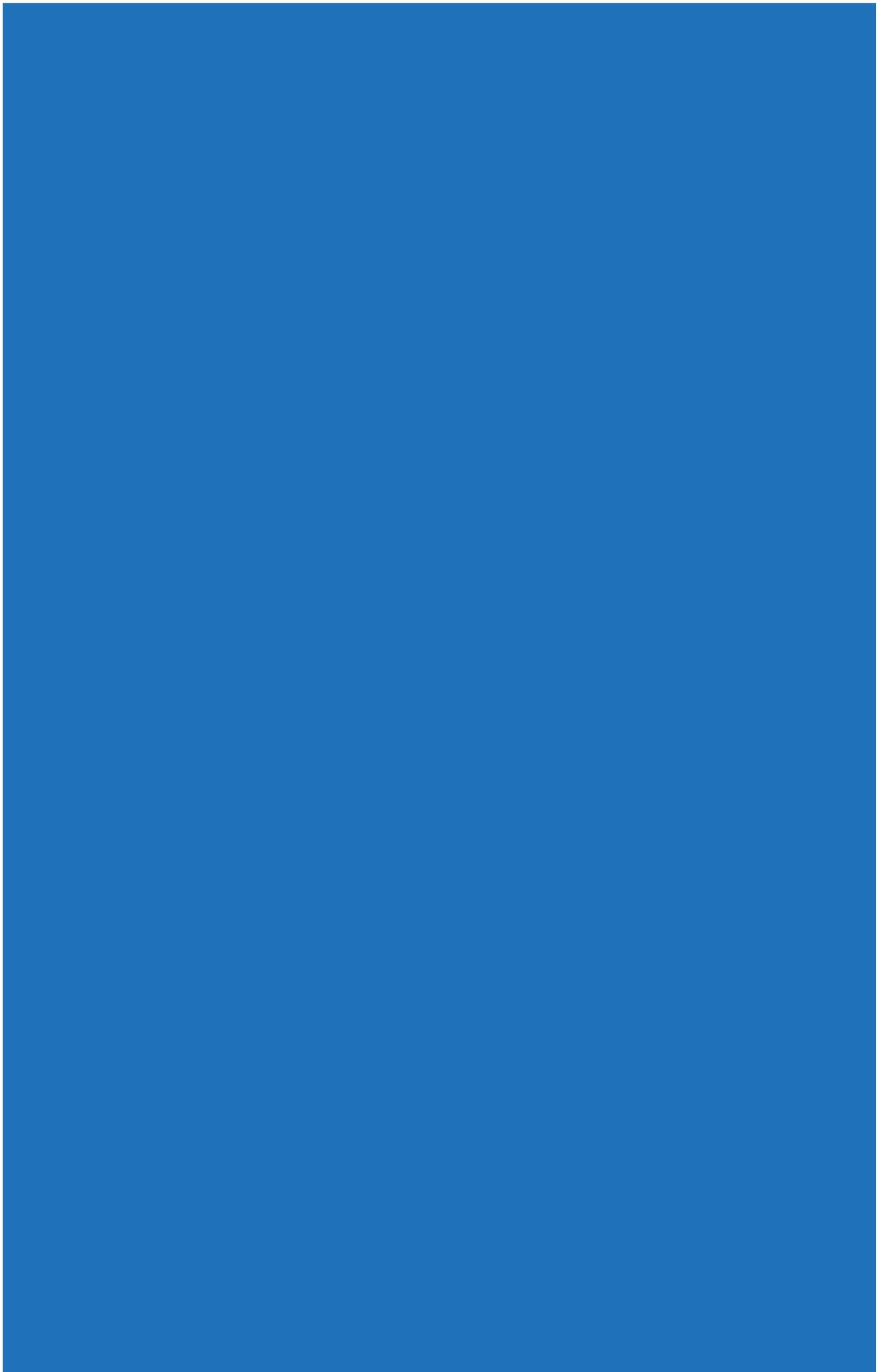
²⁴² Wolf, p. 5.

²⁴³ House of Lords European Union Committee, *The EU Internal Security Strategy*, 2011, p. 36.

²⁴⁴ Article 222(4) TFEU.

²⁴⁵ 16 January seminar, p. 12.

²⁴⁶ British Red Cross, by e-mail; workshop with practitioners, p. 13.



Chapter 6:

Conclusions and Future Challenges

Introduction

6.1 This chapter draws conclusions, based on the evidence submitted, about the value added and comparative disadvantages for the UK of working through the EU in foreign policy; summarises and comments on the views in the evidence about whether the balance of competence is currently in the right place; and identifies challenges and opportunities for the future.

How the EU Adds Value

6.2 The majority of the evidence we received argued that it was generally strongly in the UK's interests to work through the EU in foreign policy. The key benefits suggested included:

- Strength in numbers: The Australian Foreign Minister commented: "The 27 members of the European Union acting together form a force more powerful than they would speaking and acting separately." An example is the EU's use of sanctions, as in Burma and Iran.
- The UK's position in the EU gives it more influence internationally: The China and US case studies illustrate this.
- Size/economic weight of the single market: Many commentators argue that this has a direct influence on the EU's reach in other areas of external action: trade is used as a lever to promote human rights, democracy, and political reconciliation, for example in the Western Balkans and Burma.
- Commercial benefit: The UK draws, or stands to draw, significant commercial benefit from EU trade agreements with third countries.
- The reach and magnitude of EU financial instruments: Case studies such as the Arab Spring and Somalia illustrate how these funds often far outweigh those the UK could bring to bear bilaterally. The EU is the largest aid donor in the world.
- Maximising the use of UK resources: At a time of austerity, the evidence in some areas argues that EU action in one country or region, such as Bosnia and Herzegovina, can allow the UK to focus scarce national resources on priorities elsewhere, such as Afghanistan.
- The range and versatility of the EU's tools: With tools ranging from military missions to development aid, the EU can flex its approach as external situations evolve, as the Somalia case study shows.

- The EU's perceived political neutrality: The EU can play a useful role in convening the E3+3 negotiations with Iran because it is perceived as a neutral broker. It can also help deliver objectives where a Member State acting alone may be less effective due to a particular historical legacy or political relationship.
- The EU is often effective where Member States, and in particular the UK, France, and/or Germany, are fully aligned and driving policy.
- Coordination of assistance to an overwhelming crisis: The evidence suggested that, should the UK ever need to request incoming assistance for an overwhelming civil emergency, the coordination of Member States' assistance through the EU would be in the national interest. Some contributors also believed that this would become a more important option as environmental and social changes transformed the nature and scale of risks facing states, including the UK.

The Disadvantages of Working Through the EU

6.3 Our evidence also suggested there were comparative disadvantages in operating through the EU:

- Decision-making by unanimity or qualified majority voting can lead to “lowest common denominator” results.
- Strategy formulation: The EU would benefit from clearer, stronger strategy. The need for Member State unanimity makes this a challenge. The China/Russia case study is an example.
- Uneven leadership: Some contributors argued that the European Council and Foreign Affairs Council could play a more active role in setting the strategic direction, as could the leaders of the EU institutions.
- Institutional divisions can impede policy implementation: Many argue that the working links between the European External Action Service (EEAS) and the Commission could be better (further detail below). The alleged slow deployment of trade and mobility instruments to respond to the Arab Spring is cited by some as an example.
- Slow decision-making: Commentators note that the complexity of the relationship between the EU executive, legislative and judicial branches can be a brake on effective action. Mali is cited by some as an example of where the EU could not act quickly enough.
- The complexity of funding instruments can impede policy implementation: Some of the evidence relating to the Arab Spring and to civil protection argued this.
- Tensions between EU policy and Member State interests: The China and Burma case studies illustrate the tensions which arise at times between Member State economic interests and EU policy.

Distribution of Competence and Policy Outcomes

6.4 The majority of our evidence judged that Member States were firmly in charge of the Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP), and could act unilaterally when they judged fit, as the French did in Mali. Few competence issues were raised at this stage with regard to mixed or largely exclusive TFEU areas of external action, although specific areas, such as energy and trade, are scheduled to gather evidence at a later point in the review.

- 6.5 Nevertheless, the report also shows that an intrinsic part of the EU's value added in foreign policy is the integration of multiple policy instruments. This integration can present benefits in relation to impact. But the multiplicity also creates scope for disagreement about the legal basis for EU action, for example, when the EU is thinking of entering into an international agreement covering a mix of CFSP, exclusive EU competence and shared competence. Since the Lisbon Treaty, this has led to disagreements on the legal form of EU agreements with third countries, the EU's status in international organisations, and whether statements in international organisations should be on behalf of the EU or of the EU and its Member States. The question of how the EU is represented externally will be looked at in more detail in other reports.
- 6.6 Our legal seminar also noted the tendency of the European Court of Justice to take a dogmatic, rather than pragmatic, approach to competence issues. There was general agreement that Article 216 TFEU was intended to consolidate the Court's case law rather than substantively confer competence; but that it was poorly worded, and that it would have been helpful to make its purpose clearer through a declaration at the time of adopting the Lisbon Treaty. Views were mixed on whether the Court was likely to take an expansive or conservative approach to EU competence in the future.²⁴⁷
- 6.7 The legal seminar also discussed the European Parliament. It noted that its increased role under Article 218 TFEU inevitably complicated decision-making, with the potential for increased litigation to protect the Parliament's privileges. Views were mixed on whether the greater powers of the Parliament made the EU's external action more democratically accountable, with some pointing to the lack of accountability of the Council to the Parliament. It was noted that the Parliament had no formal role in adopting CFSP decisions; but that it was expressing greater interest, for example through debates, was entitled to be informed of developments and have its views taken into account, and could seek indirectly to influence CFSP, for example by exercising budgetary control.²⁴⁸
- 6.8 Several commentators pointed out that the EU is often at its most effective in areas where it has exclusive competence and a clear mandate, such as trade. This will again be addressed in more detail in later reports.
- 6.9 With regard to civil protection, Member States have the primary responsibility for preventing, preparing for, and responding to disasters. The EU's competence is confined to supporting, coordinating and supplementing the actions of Member States. The current framework for responding to civil emergencies at EU level is set out in the Civil Protection Mechanism; contributors were generally content with that framework. However, some contributors suggested ways in which they believed the Mechanism could be made more effective. Implicit in some of these suggestions was a potential broadening of the current framework, raising important questions about proportionality and subsidiarity.

The Need for More Effective Delivery

- 6.10 Evidence submitted did not generally see legal competence as an impediment to effective EU action. But the EU was not seen as punching its weight on foreign policy, often due to issues centred around delivery. As one commentator put it at our London seminar: "The issue is not legal competence, but competence in general."²⁴⁹

²⁴⁷ Legal seminar, pp. 3-4, 8.

²⁴⁸ Legal seminar, pp. 7, 11-12.

²⁴⁹ 16 January seminar, pp. 2, 8.

The Need for the UK to Work Through Multiple Alliances

- 6.11 Some evidence addressed the question of when the UK should act through the EU or through different alliances. The US thinktank Center for Strategic and International Studies (CSIS) suggests the UK should work through the EU when: the EU is a clear “force multiplier”; policies such as human rights and development assistance can be conducted in parallel without negative side effects; foreign policy objectives can be incorporated into trade agreements; and the UK can inform and direct the EU debate rather than be in reactive mode. In such areas, CSIS argues, the UK should try to improve the efficiency of EU policies and processes to maximise added value.²⁵⁰ One major British company agreed: if the UK was unable to steer the EU approach on a particular issue of importance, it would want the UK to use other alliances.²⁵¹
- 6.12 Many commentators noted that the UK had strong diplomatic assets including multiple alliances and networks, such as the Commonwealth, NATO, the UN, membership of the “P5” grouping of the five permanent members of the UN Security Council, and a global diplomatic network. There were times when a UK-France lead would be appropriate, as on Libya. At other times, the right vehicle might be working with UN Security Council or Commonwealth partners. In civil protection, the UK can, and does, use a variety of networks to augment response to, and planning for, civil emergencies. Commentators highlighted the importance of using those networks flexibly in the national interest. The UK would also often want to work simultaneously through a range of its alliances to achieve outcomes, as the Iran case study illustrates.
- 6.13 The range of the UK’s diplomatic assets was also one of the reasons given for the question of EU external representation troubling the UK more than some other Member States. There were times when a single EU voice would be appropriate in international organisations, but other times when the UK would judge it more effective to act independently, in combination with the EU, with other partners, or alone.

Challenges and Opportunities

- 6.14 The evidence pointed to challenges and opportunities for the UK in working through the EU to deliver foreign policy:
- Maintaining influence and prosperity in an era where the relative balance of global growth, population and power is moving away from the UK and Europe.
 - The impact of our political approach to the EU: Some argue that our political approach negatively affects our influence; for example, Heather Grabbe: “The UK is increasingly taking a transactional approach to policies at EU level, considering the costs and benefits of engagement on each rather than seeking to contribute to a common institutional and policy infrastructure that would enable the whole EU to play a greater role.”²⁵²
 - The impact of the euro zone crisis on European “soft power”: The European Council on Foreign Relations Scorecard 2013 indicated the negative impact of the crisis on the European brand and argued that, conversely, tackling the crisis effectively could reinforce the EU’s reputation and influence.²⁵³

²⁵⁰ CSIS, p. 7.

²⁵¹ Evidence given in confidence.

²⁵² Grabbe, p. 1.

²⁵³ European Council on Foreign Relations Scorecard 2013, p. 59.

- Overcoming decision-making blockages in CFSP and CSDP: Some believe that greater use of qualified majority voting could help resolve policy blockages. Given the centrality of foreign and defence policy to national sovereignty, the UK wishes to preserve unanimity arrangements.
- Initiatives with France and Germany: Some wonder whether the UK should look for more opportunities to work via the E3 (UK, France and Germany), or just with France. Others think that this approach needs to be handled with care: if overdone, they argue, it would be a threat to CFSP integrity.
- The limited global perspectives and engagement of smaller Member States.
- Prioritisation of objectives and resources: Some evidence argues that the EU lacks clarity about its foreign policy goals and, as a result, its institutions do not allocate resources well. The EEAS sanctions team is tiny, but is charged with delivering on important priorities. Some suggest that, as a result of inherited Commission priorities, the EEAS has unduly small or unbalanced presences in the Gulf and Asia.
- Improving the functioning of the institutions: Evidence argues that Baroness Ashton's mid-2013 EEAS review, and the appointment of a new set of Commissioners in 2014, are good opportunities to address institutional difficulties, including EEAS-Commission coordination. Some Member States, including the UK, prefer to see a further period of EEAS consolidation and incremental change. Others want to be more ambitious, to expand, for example, the extent of the EEAS's functions.
- The role of the EEAS: Some evidence suggested that smaller Member States had an expansionist vision for the EEAS because it offers a global reach they cannot achieve by themselves. Over time they would like to see it take on a consular role. Some smaller Member States also favoured colocating their diplomatic presence abroad with EU delegations, to save resources. The UK believes that consular protection should remain firmly the responsibility of Member States.
- Further pressure for "representation creep": The General Arrangements agreed by the Council in October 2011 were the product of difficult negotiations, and have reduced some of the practical problems in agreeing EU statements in international bodies. But some may seek to reopen the issue.
- A common vision for CSDP: The December 2013 European Council is due to discuss EU defence policy. It provides an opportunity to inject greater focus on delivering missions effectively and improving Member States' capabilities.
- Improvement of the Member States' armed forces: The evidence suggests that CSDP has induced some improvements to other Member States' national military capabilities, which can be used for EU or NATO purposes. But the Member States need to do better. The pressures on defence budgets across Europe mean that the incentive for collaboration is ever stronger.
- Barriers to EU-NATO cooperation: There was broad agreement that elimination of these would lead to a major improvement in CSDP. With 22 common members of the EU and NATO, some evidence suggested that the organisations' efforts in military capability development need mutually to be better rationalised. Contributors were also keen to avoid duplication between the two organisations in the area of civil protection.
- Maintaining the primary role of the Member State in civil protection: The limits of the EU's competence in this field are open to a degree of interpretation: for example, the extent to which the EU might take responsibility for providing and funding equipment

for Member States' resilience. One of the principal challenges for the UK will be to ensure that the EU focuses on adding appropriate value, is cost effective, and, crucially, does not undermine the primary role of the Member State. As the area is subject to qualified majority voting, active British engagement is important.

6.15 The overarching policy questions for the UK about the balance of external action competence are therefore:

- In CFSP and CSDP, what is the nature of the trade-off between the Member States retaining a high degree of sovereignty and control, and the perceived inefficiency or ineffectiveness of the EU institutions? How do we assess the assertions of some, in various policy areas, that the institutions would deliver greater impact if they had more latitude? Conversely, without changing the institutional or competence balance, is there a case for even more active UK leadership and involvement in areas such as military CSDP, to help improve the overall European performance?
- If the internal conditions of EU external action deteriorate, how will that affect our choices of how to deliver international impact in the British interest? If the institutions' performance does not improve; or if there is an undesirable shift in control away from the Member States, such as a greater role for the European Parliament; how will we alter our approach, what will the constraints be, and how will we use or develop our other partnerships and alliances as alternative vehicles?
- As the euro zone emerges from crisis, how might greater economic, monetary, and possibly political union between its members change the dynamics? Might stronger collective governance of a growing euro area, or more intense euro zone cooperation on TFEU policy areas, lead to a diminution of British influence on the external aspects of TFEU action? Might caucusing between the euro zone countries lead over time to erosion of sovereign control in CFSP and CSDP? If so, how can the UK guard against or counteract these tendencies?

The Global Context

6.16 Our evidence also considered the future global context in which the UK and EU would need to operate, and how it might affect the ability to deliver results in foreign policy.

6.17 Evidence observes that Europe currently accounts for 26% of global GDP. By 2020 it will be 20%. World population is increasing fast. Power is increasingly dispersed away from the centre, which will make it harder to govern. Climate change is progressing at an alarming speed in some parts of the world. Inequality is growing.²⁵⁴ Some evidence argues that this context may make natural or man-made disasters more likely.

6.18 To be effective in foreign policy in this context, evidence suggests that the EU and any Member State will need to be able to: act and react more speedily; bolster legitimacy, given the shift in power away from the centre; and become more flexible, drawing on networks as well as traditional hub-and-spoke arrangements. They will need to come to terms with the fact that Europe is no longer the centre of the world. The Senior European Experts Group argues, for example, that the amount of influence a country has is bound to change over time; to maintain its influence, a country must build alliances and networks. The group contends that statistics about the UK economy, such as that we are the seventh largest economy, flatter to deceive; that, in reality, the UK is lower down the global league table – and both the UK and Europe in general are in long-term relative decline,

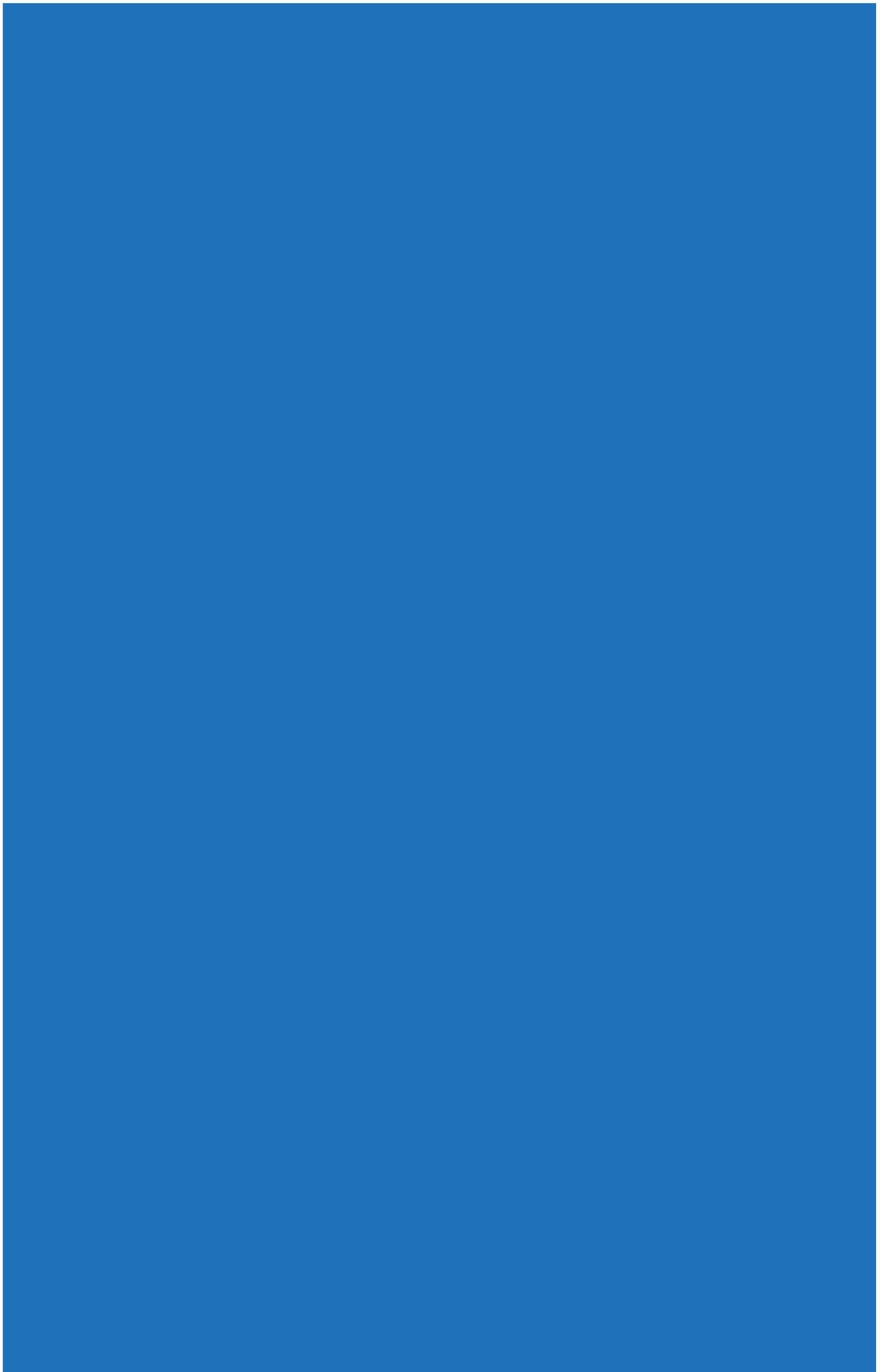
²⁵⁴ 16 January seminar, p. 8.

particularly when compared to huge countries such as China and India.²⁵⁵

- 6.19 Some contributors were concerned that the EU was too inward-looking, not least given the euro zone crisis, and would become increasingly marginalised. Others were confident that the EU is well positioned for the future, and fares relatively well in areas such as legitimacy, rule of law, climate measures, and building partnerships.²⁵⁶
- 6.20 In the Introduction to this report, we quoted the Prime Minister's speech on Europe of 23 January 2013: "Britain's national interest is best served in a flexible, adaptable and open European Union." The evidence submitted to this report suggests areas in which the EU could reform its external action to be more effective and meet the global challenges of the twenty-first century.

²⁵⁵ Senior European Experts Group, p. 2.

²⁵⁶ 16 January seminar, pp. 8-9.



Annex:

List of Contributors of Evidence, Other Sources, and Engagement Events

Organisations

ADS

Adviesraad Internationale Vaagstukken (Advisory Council on International Affairs)

All Party Parliamentary Group on Modern Languages

Atalanta Operation Head Quarters

Australian Foreign Ministry

BAE Systems

British Influence

British Red Cross

Brussels and Europe Liberal Democrats

Bulgarian Foreign Ministry

Carnegie Group

Center for Strategic and International Studies

Centre for Economic Performance

Centre for European Policy Studies

Centre for European Reform

Centre for International Relations

Civillence Limited

Comprehensive Training Solutions

Conciliation Resources

demos EUROPA

E3G

Emergency Planning Society, West Midlands Branch

Essex County Council

Essex Fire Service
European Commission
European Council on Foreign Relations
European External Action Service
Fire Sector Federation
Foreign Policy Centre
The Freedom Association
Fresh Start
FRIDE (Fundación para las Relaciones Internacionales y el Diálogo Exterior)
Government of Japan
Governments of Jersey, Guernsey and the Channel Islands
Greater London Authority
Hague Centre for Strategic Studies
Hampshire Fire and Rescue Service
Hanover Associates
House of Commons European Scrutiny Committee
House of Commons Foreign Affairs Committee
House of Lords European Union Select Committee
Index on Censorship
International Lesbian, Gay, Bisexual, Trans and Intersex Association Europe (ILGA-Europe)
ISIS Europe
London Borough of Camden
Macedonian Foreign Ministry
Monckton Chambers
NATO International Staff
Notre Europe
Organisation for Economic Cooperation and Development
Quaker Council for European Affairs
Scotch Whisky Association
Senior European Experts Group
SHIP Peace Practitioners
Singapore Management University
Stonewall
Swedish Research Defence Institute
TaxPayers' Alliance

United Nations Office for Disaster Risk Reduction

Voluntary Sector Civil Protection Forum

Wilton Park

Wine and Spirit Trade Association

Members of Parliament and Members of the European Parliament

Richard Howitt, MEP for East of England

Peter Luff, MP for Mid Worcestershire

Edward McMillan-Scott, MEP for Yorkshire and the Humber

Dr Charles Tannock, MEP for London

Rebecca Taylor, MEP for Yorkshire and the Humber

Geoffrey van Orden, MEP for East of England

Sir Graham Watson, MEP for the South West of England

Academics, Thinktankers, and Other Individuals

Hussam Al Hussein

Kristin Archick, US Congressional Research Service

Graham Avery, University of Oxford

Rosa Balfour, European Policy Centre

Katinka Barysch, Centre for European Reform

Sebastian Bloching

David Broucher

Frances G. Burwell

Eve Coles, University of Leeds

Robert Cooper

Michele Cornelli

Richard Dalton, Chatham House

Iain Dell

Anthony Dworkin, European Council on Foreign Relations

Hazaim Amirah Fernandez

Konstanty Gebert

Francesco Giumelli, Metropolitan University Prague

Benoit Gomis, Chatham House

Heather Grabbe, Open Society European Policy Institute

Przemysław Żurawski vel Grajewski, University of Lodz

Charles Grant, Centre for European Reform

Jacqueline Hale

Janet Hancock

Niklas Helwig

Prof. Christophe Hillion, Leiden University

Dr Rosemary Hollis, City University

Adam Hug

Paul Ivan

Kristina Kausch, FRIDE

Ronja Kempin, German Institute for International and Security Affairs

Daniel Keohane

Dr Theodore Konstadinides, University of Surrey

Rem Korteweg, Centre for European Reform

Hrant Kostanyan

Agatha Kratz

Stefan Lehne

James McAlister

Sir David Manning

Prof. Anand Menon, King's College, London

Roger Miles

Prof. Rana Mitter, University of Oxford

Sir Alan Munro

Lucia Najšlová

Clara Marina O'Donnell, Centre for European Reform

Jonas Parello-Plesner

John Peterson

Dr Clara Portela, Singapore Management University

Kristi Raik, Finnish Institute of International Affairs

Thomas Renard, Egmont Royal Institute for International Relations

Věra Řiháčková

Prof. Alan Riley, City Law School

Prof. Robert Schutze, Durham Law School

Prof. Duncan Shaw, Warwick Business School

Olga Shumylo-Tapiola

Prof. Karen Smith, London School of Economics

James Lynch Staunton

Jan Techau

Tomas Valasek

Richard G. Whitman, University of Birmingham

Dr Neil Winn, University of Leeds

Nick Witney, European Council on Foreign Relations

Mark Wolf

Stefan Wolff, University of Birmingham

Aiichiro Yamamoto

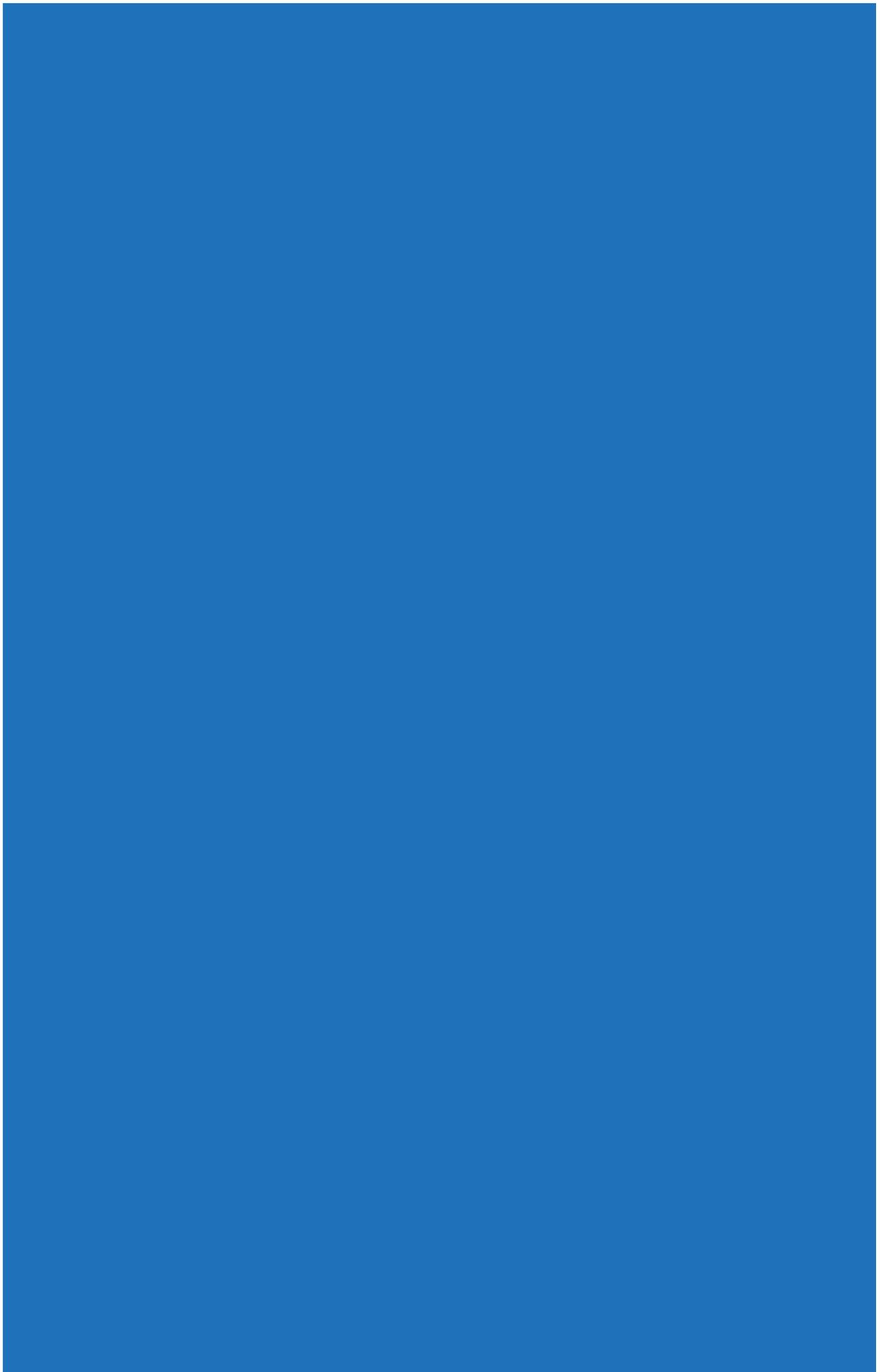
Engagement Events

A number of events were held during the call for evidence period:

- Civil Protection workshop with academics, 14 January
- Seminar with thinktanks, academics, NGOs, diplomatic community, 16 January
- Civil Protection workshop with practitioners, 23 January
- Wilton Park Future of Europe conference with key stakeholders, 4-6 February
- Horizontal Interest Groups event with business community, 11 February
- Legal seminar at Lancaster House with legal academics and practitioners, 14 February
- Roundtable with academics, at St Antony's College, Oxford, hosted by Prof. Garton Ash, 18 February
- Roundtable with defence and security policy specialists, led by Prof. Anand Menon, 19 February
- Senior European Experts Group seminar, 26 February
- Defence seminar with Lord Astor of Haver, Parliamentary Undersecretary of State for Defence, 27 February

Discussions were also held in British embassies, including:

- Thinktank event at UK Representation to the EU, Brussels, 12 February
- Thinktank event at British Embassy, Bucharest, 12 February
- Thinktank event at British Embassy, Paris, 19 February
- Thinktank event at British Embassy, Berlin, 26 February
- Thinktank event at British Embassy, Dublin, 27 February



Appendix A:

Current State of Competence in Foreign Affairs: Legal Analysis

Introduction

The EU's potential competence to act in foreign affairs is wide-ranging. This appendix provides a brief description of the Treaty framework applicable to the conduct of the EU's foreign relations, the instruments used and the role played by the different Institutional players.

Legal Personality of the European Union

Article 47 of the Treaty on European Union (TEU) confirms that the Union has legal personality. In terms of the conduct of foreign relations this is significant because it enables the EU to enter into international relations with third countries and international organisations in its own right subject to the limitation that it must act within the competences conferred upon it by the Treaties.

The Treaty Structure applicable to the conduct of EU foreign policy

The Treaties distinguish between EU action under the Common Foreign and Security Policy (CFSP) (which incorporates provisions on the Common Security and Defence Policy (CSDP)), which is set down in the TEU, and external action by the EU pursuant to the competences conferred upon it in the Treaty on the Functioning of the European Union (TFEU) (for example trade, development and the environment). This distinction is reflected in the different roles assigned to the EU under the CFSP, and the different instruments and voting rules applicable to action under the CFSP and action under the TFEU. On the other hand, the Treaties set down general provisions governing the Union's external action (Articles 21 and 22 TEU) which are common to both action under the CFSP and action under the TFEU. They also set out common procedures applicable to the negotiation of agreements between the EU and third countries/ international organisations (Articles 216-29 TFEU).

(a) Common Foreign and Security Policy

The specific Treaty provisions applicable to the conduct of the CFSP are located under Title V of the TEU (Articles 23-46 TEU; Articles 42-46 deal specifically with CSDP). The scope of EU action under the CFSP is set out in Article 24(1) TEU:

“The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence.²⁵⁷”

²⁵⁷ Article 24 TEU should be interpreted in light of Declarations 13 and 14 concerning the common foreign and security policy. For example Declaration 13 clarifies that the Treaty provisions on the CFSP do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.

The CSDP forms an integral part of the CFSP. The Union may use civilian and military assets on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. Member States are to make civilian and military capabilities available to the Union for implementation of the CSDP. The tasks to be performed include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks and tasks of combat forces in crisis management, including peacemaking and post-conflict stabilisation.

Article 222 TFEU contains the so-called Solidarity Clause according to which the Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union is to mobilise all the means at its disposal, including the military resources made available by the Member States. There is a separate obligation upon Member States to provide assistance, if so requested by the political authorities of the victim State, coordinating themselves for this purpose within the Council. Article 222 TFEU should be read in conjunction with Declaration 37 to the Treaties which clarifies that Article 222 is not intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards another Member State that is the subject of a terrorist attack or the victim of a natural or man-made disaster.

Arrangements for implementation of the solidarity clause are to be defined in a decision yet to be adopted by the Council by QMV based on a joint proposal from the High Representative and the Commission. If the decision has defense implications then unanimity will be required. The European Parliament is to be informed but will play no formal legislative role in the adoption of the decision. Where appropriate the PSC and the standing Committee set up within the Council in order to ensure the promotion of operational cooperation on internal security may be involved and may deliver joint opinions.

(b) Action under the TFEU

Article 216 TFEU provides that the EU may enter into agreements with third countries or international organisations where the Treaties specifically allow it to do so, or when conclusion of an agreement is necessary for the EU to achieve its objectives.

Articles 206-14 TFEU deal with specific action by the EU in areas such as trade, development economic, financial and technical cooperation with third countries and humanitarian aid. In these areas action by the EU may take the form of autonomous measures (such as the adoption by the EU of regulations establishing a development aid programme), or the negotiation and conclusion of international agreements.

In other areas of EU policy (such as transport, criminal cooperation or the environment), even though the Treaties only refer in terms to action that is internal to the EU, the EU has implicit power to enter into international agreements when such action is necessary to allow it to achieve its objectives.

(c) Restrictive Measures (sanctions) – Hybrid action

There are also some measures that require hybrid action under both the CFSP and the TFEU. The EU plays an increasingly active role both in the implementation of sanctions imposed by the UN Security Council and in the adoption of its own autonomous measures against third countries and/or individuals or entities. The adoption of sanctions measures by the EU follows a two stage process. First the EU will adopt a CFSP Decision by unanimity. This will set down the framework for the sanctions to be applied and may include measures which will require implementation by both the EU and the Member States. As regards the specific measures falling within the EU's competence which require

implementation, the Council, on a joint proposal from the Commission and the High Representative based on Article 215 TFEU, will adopt by QMV a Council Regulation.

International Agreements

Article 218 TFEU²⁵⁸ sets down the procedural framework to be followed for the conduct of negotiations on agreements on behalf of the EU including their signature and conclusion. This provision applies in all cases where an agreement will apply to the EU, irrespective of whether the agreement will be entered into by the EU alone or will be a so-called 'mixed' agreement to be entered into by both the EU and the Member States. It is noteworthy that these rules apply to both the negotiation of agreements under the CFSP and in respect of agreements relating to EU competence under the TFEU – the precise procedure will vary, however, depending on whether the agreement relates to the CFSP exclusively or covers matters falling within the scope of the TFEU. The text sets down who should negotiate agreements on behalf of the EU, the voting rules to apply in the Council for the decisions on their signature and conclusions and the role to be played by the European Parliament (consent or consultation). Article 218(11) TFEU also confers a specific jurisdiction on the Court of Justice relating to the provision of an Opinion on the compatibility of a proposed agreement with the Treaties.

EU relations with international organisations and third countries and Union Delegations

Articles 220-21 TFEU set down some general provisions on the Union's relations with international organisations and third countries and the role to be played by Union delegations. Article 220 TFEU provides for the Union to establish appropriate forms of cooperation with the organs of the UN and its specialised agencies, the Council of Europe, the Organisations for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development as well as other international organisations as appropriate. Article 221 TFEU notes that it is for Union delegations in third countries and international organisations to represent the Union. Note that as with the provisions on international agreements these provisions apply in respect of both matters falling under the TFEU and under the CFSP.

Institutional framework applicable to EU foreign policy

Under the Treaties, the primary responsibility for identifying the strategic interests and objectives of all aspects of the EU's foreign policy rests with the European Council. The European Council (made up of heads of state or government of the 28 Member States) acts by unanimity and on the basis of recommendations from the Council. The President of the European Council, a new role created by the Lisbon Treaty, chairs the European Council but is also responsible for ensuring the external representation of the Union on issues concerning the CFSP but without prejudice to the powers of the High Representative.

The Council (made up of ministers of the 28 Member States), together with the High Representative, are tasked with ensuring the unity, consistency and effectiveness of action by the Union in the external sphere. The Council plays a key role in framing the CFSP and taking the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council. Similarly, it is the Council that decides whether the EU should enter into negotiations on agreements with third countries and international bodies and that authorises signature and conclusion of such agreements. Furthermore, it is the Council that adopts other measures such as CFSP Decisions and TFEU

²⁵⁸ Note the procedures in Article 218 TFEU may also be varied by other specific provisions in the TFEU. For example, Article 207 TFEU provides for some specific rules to apply to the negotiation of trade agreements by the EU.

Regulations relating to external matters. Most action under the CFSP requires unanimity in the Council, although there are limited circumstances where action under the CFSP can be adopted by qualified majority voting (QMV). In relation to policies falling within the TFEU, decision-making in the Council will normally be by QMV.

The Lisbon Treaty created the role of the High Representative. This new office merges the roles formerly played by the High Representative for the CFSP/Secretary General of the Council, the Commissioner for External Affairs and the President of the External Relations Council. The High Representative conducts the Union's CFSP. As a Vice-President of the Commission, the office-holder also ensures the consistency of the EU's external action, and is responsible within the Commission for the latter's responsibilities in external relations and for coordinating other aspects of the EU's external action. Furthermore, as President of the Foreign Affairs Council (a new Council configuration envisaged by the Lisbon Treaty) the office-holder oversees the external relations dossiers in all sectors.

The High Representative's responsibility for the conduct of the CFSP includes, *inter alia*, exercising the right of initiative and making proposals in the field of the CFSP; negotiating international agreements relating principally or exclusively to CFSP matters; representing the Union on matters relating to the CFSP (which includes conducting political dialogue with third parties); and expressing the Union's position in international organisations and international conferences. The High Representative's role has replaced the role formerly played by the rotating Presidency of the Council in relation to the external representation of the EU under the CFSP.

A further innovation introduced by the Lisbon Treaty is the creation of the European External Action Service (EEAS). Its primary role is to assist the High Representative in the conduct of the CFSP working in close cooperation with the diplomatic services of the Member States. The organisation and functioning of the EEAS is established under Council Decision 2010/427/EU of 26 July 2010 ("the EEAS Decision"). The Brussels headquarters of the EEAS is organised in a series of geographical and thematic desks which have taken on the tasks previously carried out by relevant parts of the Commission and the Council Secretariat before the entry into force of the Lisbon Treaty. However, responsibility for some significant areas of external relations remains vested in the Commission and subject to the authority of the respective Commissioners – these are development, trade and enlargement.

A key function of the EEAS is to staff and operate EU delegations in third countries and to international organisations replacing the former Commission and Council delegations abroad. The Union delegations represent the EU and are placed under the authority of the High Representative. The delegations take instructions from and report to the High Representative and the EEAS as well as the relevant Commission Services, depending on whether the subject matter falls within the remit of the EEAS or the Commission. EU delegations also play a supporting role as regards diplomatic and consular protection of Union citizens in third countries. Under the EEAS Decision, the High Representative is tasked with providing a review of the organisation and functioning of the EEAS by mid-2013. It is foreseen that this review may include proposals for revision of the EEAS Decision.

The Political and Security Committee (PSC), made up of Ambassadors from the twenty seven Member States is accorded an important role under the CFSP. Its remit is to monitor the international situation in the areas covered by the CFSP, to contribute to the definition of policies and to monitor the implementation of the decisions taken under the responsibility of the High Representative. The PSC also plays a key role under the CSDP. It is responsible for the political control and strategic direction of crisis management operations and is authorised to take decisions on the practical management of a crisis. In carrying out its functions under the CSDP the PSC is assisted by a number of other bodies;

- EU Military Committee (“EUMC”) composed of the Chiefs of Defence of the Member States, who are regularly represented by their permanent military representatives. The EUMC provides the PSC with advice and recommendations on all military matters within the EU;
- EU Military Staff (“EUMS”) which works under the direction of the EUMC coordinates the military instruments with particular focus on operations/missions (both military and those requiring military support) and the creation of military capability;
- Committee for Civilian Aspects of Crisis Management (“CIVCOM”) provides information, drafts recommendations and gives its opinions to the PSC on civilian aspects of crisis management;
- Crisis Management and Planning Directorate (“CMPD”) contributes to political-strategic planning of CSDP civilian missions and military operations, ensuring coherence and effectiveness of those actions as part of the EU’s comprehensive approach to crisis management and developing CSDP partnerships, policies, concepts and capabilities; and
- Civilian Planning and Conduct Capability (“CPCC”) which is part of the EEAS is responsible for the autonomous conduct of civilian CSDP operations. The CPCC ensures the effective planning and conduct of civilian CSDP crisis management operations and the implementation of all mission-related tasks.

The Commission is a relatively marginal player in terms of the conduct of the CFSP but has a significant role in the conduct of the EU’s external relations in respect of matters falling under the TFEU. In particular, under Article 218 TFEU it is for the Commission to submit proposals for the opening of negotiation on agreements with third countries and international organisations and to make recommendations to the Council concerning the position that the EU should take in international negotiations relating to TFEU matters, and the Commission will often act as negotiator on behalf of the EU.

The European Parliament also plays a role in external matters. Under the CFSP the European Parliament is limited to asking questions and making recommendations to the Council and the High Representative and holding a debate on the CFSP twice a year. However, the Lisbon Treaty gave the European Parliament a co-legislative role in trade policy, an area where formerly it enjoyed only a right of consultation. The Lisbon Treaty also extended the requirement for it to consent to a wide range of international agreements to be entered into by the EU in respect of matters covered by the TFEU.

The role played by the Court of Justice in the development of EU competence externally has been significant. The Court has defined the EU’s competence externally through its rulings on for example the doctrine of implied EU competence²⁵⁹ (now codified in Article 216 TFEU). There have also been significant judgements about the circumstances in which the EU has exclusive competence to enter into international agreements, as a result of which the Member States are unable to enter into agreements in those areas on their own behalf (the case law is now codified in Article 3(2) TFEU).

²⁵⁹ The doctrine of implied competence has been developed by the European Court of Justice through its case-law on EU external competence. Under this doctrine the competence of the EU in the external field arises not only from express conferment under the Treaties but may flow by implication from other provisions of the Treaties and the practice of the EU. Implied powers arise in broadly three situations. The commonest is where measures have been adopted by the institutions on the basis of an internal power. External powers may also arise even where internal measures have not been adopted, either because external and internal competence must be exercised simultaneously, or because an external power is implicit in the scheme of the internal power.

The role played by the Court of Justice in the development of EU competence externally has been significant. In the past the Court has contributed to the expansion of the EU's competence externally through its rulings on for example the doctrine of implied EU competence. Similarly, the Court has in its rulings clearly demarcated the extent of the EU and Member States' competence in international bodies such as the WTO. In recent years the Court has also been highly influential in the development of EU sanctions policy.

Although the Court continues to have limited jurisdiction under the CFSP, the Lisbon Treaty has provided for the Court to have jurisdiction to review the legality of decisions providing for restrictive measures against natural or legal persons. This has for the first time brought measures such as travel bans adopted under the CFSP Decisions within the scope of its jurisprudence. In addition, the Court has jurisdiction to police the boundaries between action taken by the EU under the CFSP and other areas of EU policy. Recently, a number of inter-institutional disputes have arisen in relation to the conduct of EU external relations following the entry into force of the Lisbon Treaty which have resulted in cases being taken in the ECJ. It is anticipated that the Court's rulings in these cases may impact significantly on the future balance of competence between the EU and Member States in the conduct of EU external relations. Similarly, with the proliferation of EU sanctions measures, a number of cases have been referred to the EU Courts in relation to measures taken against natural or legal persons both under CFSP Decisions and EU Regulations. The Court's judgements in these cases will continue to influence the future development of EU sanctions measures in particular as regards the due process requirements to be followed when subjecting individuals to an asset freeze or a travel ban.

Civil Protection

The legal base for EU action in respect of civil protection is found in Article 196 TFEU. The EU competence in this area is confined to carrying out actions to support, coordinate or supplement the actions of the Member States. Accordingly, action by the EU does not supersede the competence of Member States to act in the area and EU acts do not entail harmonisation of the laws of the Member States. Legislation based on Article 196 TFEU will be subject to adoption by the Council and the European Parliament under the ordinary legislative procedure with the Council acting by QMV.

Article 196 TFEU envisages action at the EU level to:

- “a) support and complement Member States' action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union;
- b) promote swift, effective operational cooperation within the Union between national civil protection services; and
- c) promote consistency in international civil-protection work.”

The two main EU instruments currently covering prevention, preparedness and response pre-date the entry into force of the Lisbon Treaty and are:

- Council Decision 2007/162/EC, Euratom of 5 March 2007 establishing a Civil Protection Financial Instrument; and
- Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism.

Rules relating to implementation of the Mechanism and Financial Instruments are contained in two Commission Decisions – Commission Decisions 2004/277/EC (as amended) and 2007/606/EC.

There is currently a proposal for a Decision of the European Parliament and of the Council on a Union Civil Protection Mechanism which would replace the measures referred to above and builds on two Commission Communications: Towards a stronger European disaster response: the role of civil protection and humanitarian assistance; and A Community approach on the prevention of natural and man-made disasters. The purpose of the proposal is to increase the security of EU citizens and to build resilience to natural and man-made disasters, and in so doing reduce costs to the EU economy from disasters and minimise the adverse economic, social and environmental consequences of disasters. The proposal covers prevention, preparedness, response, the external dimension and the financial provisions. It is aimed at protecting people, the environment, property, including cultural heritage, against all natural and man-made disasters including acts of terrorism, technological, radiological or environmental accidents, marine pollution and acute health emergencies, occurring inside or outside the EU.

Appendix B: The EU and International Agreements

Over the years the European Union has become an increasingly significant international actor. This is reflected in the hundreds of agreements it has concluded with third countries and international organisations,²⁶⁰ either alone or together with its Member States (mixed agreements). The spectrum of agreements reflects the complexity of relations between the EU, its Member States and third countries and international organisations. Especially close ties bind the EU with direct and more distant neighbours as well as with the former colonies of the Member States.

Legal relations with some external partners are organised on the basis of “horizontal” agreements pursuing a wide range of economic, social and political objectives, which may be supplemented by sectoral agreements. Among the horizontal agreements a particular role is played by association and partnership agreements. In other cases, the legal framework is limited to sector specific agreements.

Agreements concluded by the EU escape straightforward classification. What follows is an attempt to identify the common agreement-types and the widely varying purposes for which agreements having the same technical character may be used

Horizontal agreements

Association agreements²⁶¹

By definition, all association agreements have Article 217 TFEU for their substantive legal basis. However, this gives no clue as to their respective objectives, range or content.

²⁶⁰ Prior to entry into force of TL, a majority of agreements had been concluded by the European Community. In accordance with Article 1 TEU (as amended by TL) the European Union is a formal successor of the European Community and therefore it is considered to be a party to all those agreements.

²⁶¹ Association in the sense of Article 217 TFEU should be distinguished from association with the Overseas Countries and Territories (OCT), which is governed by Articles 198 to 204 TFEU (Part IV of the TFEU). These provisions apply to Greenland, New Caledonia and Dependencies, French Polynesia, French Southern and Antarctic Territories, Wallis and Futuna Islands, Mayotte, Saint Pierre and Miquelon, Aruba, former Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius), Sint Maarten, Anguilla, Cayman Islands, Falkland Islands, South Georgia and the South Sandwich Islands, Montserrat, Pitcairn, Saint Helena and Dependencies, British Antarctic Territory, British Indian Ocean Territory, Turks and Caicos Islands, British Virgin Islands, Bermuda and Saint Barthelemy (St. Barth). These countries and territories face a number of challenges due to their location, climate and energy resources. Their relations with the EU are further regulated by Council Decision 2001/822/EC on the association of the overseas countries and territories with the European Community which was approved in 2001, OJ 2001, L 314, p. 1 (as amended).

(i) Pre-accession association

Differences can be observed even within the category of association agreements conceived as a mechanism to help prepare the third country concerned for eventual accession to the Union. This is illustrated by the contrast between the early Association Agreement with Turkey, and the much more recent Europe Agreements with the central and eastern European countries and Stabilisation and Association Agreements with the countries of the Western Balkans.

– The Association Agreement with Turkey

The Agreement establishing an Association between the European Economic Community and Turkey (the Ankara Agreement),²⁶² which was signed in 1963, remains in force.²⁶³ The Agreement was concluded by the then EEC, acting alone. It differs from more contemporary association agreements in that it serves as a framework agreement only; its provisions are very general and need to be supplemented by Association Council Decisions.²⁶⁴ The objective of the Ankara Agreement is to promote the continuous and balanced strengthening of trade and economic relations.²⁶⁵ Although the establishment of a customs union was envisaged in the Agreement, its final implementation was achieved only by Decision 1/95 of the EC-Turkey Association Council.²⁶⁶ Judgements of the CJEU have played a vital role in the interpretation of the Agreement and the Association Council Decisions.²⁶⁷ The Ankara Agreement envisages Turkey's ultimate accession to the EU and the country has had the status of a candidate for membership since 1999.²⁶⁸ The EU-Turkey legal framework is further supplemented by sectoral agreements.

– Europe Agreements

The Europe Agreements (EAs) were bilateral association agreements concluded by the European Communities and their Member States with Bulgaria,²⁶⁹ the Czech Republic,²⁷⁰

²⁶² Agreement establishing an Association between the European Economic Community and Turkey, OJ 1977, L 361, p. 1.

²⁶³ The first association agreement was concluded with Greece in 1961 (Agreement establishing an association between the European Economic Community and Greece, OJ 1963, 26, p. 294). This was followed *inter alia* by Agreement establishing an association between the European Economic Community and the Republic of Cyprus, (OJ 1973 L 133, p. 2) and Agreement establishing an association between the European Economic Community and Malta (OJ 1971 L 61, p. 2).

²⁶⁴ Examples include: Decision of the Association Council 2/76 on the implementation of Article 12 of the Ankara Agreement adopted on 20 December 1976; Decision 1/80 of the Association Council of 19 September 1980 on the development of the association.

²⁶⁵ Article 2(2) Ankara Agreement.

²⁶⁶ Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union, OJ 1996, L 35, p. 1.

²⁶⁷ CJEU has adjudicated in over 40 cases in relation to the Ankara Agreement and Association Council Decisions.

²⁶⁸ Article 28 Ankara Agreement.

²⁶⁹ Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, OJ 1994, L 358, p. 3.

²⁷⁰ Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, OJ 1994, L 360, p. 2.

Estonia,²⁷¹ Hungary,²⁷² Latvia,²⁷³ Lithuania,²⁷⁴ Poland,²⁷⁵ Romania,²⁷⁶ Slovak Republic²⁷⁷ and Slovenia.²⁷⁸ They were mixed agreements. The EAs were at the centre of the EC's response to the geopolitical changes of the late 1980s. They were designed to address emerging issues of economic and political transition in the newly revived democracies of central and eastern Europe, as well as in the Baltic States, which had recently regained independence from the former Soviet Union. The core of each agreement was the same, though the particularity of individual countries was duly taken into account. The use of 'Europe' in the title of the agreements differentiated them from other association agreements, to emphasize that the Union's partners had 'European' roots and were therefore potential candidates for EC/EU membership. The political objectives were far-reaching. Commercial objectives included the expansion of mutual trade, including the gradual establishment of free trade areas, but also the fostering of economic development and prosperity in the associated countries and completion of their transition to market economies. Every agreement contained a clause on the approximation of legislation to that of the EU. EAs served as vehicles to prepare the candidate countries for relatively rapid accession to the EU and were terminated when the central and eastern European countries joined the EU (2004 and 2007).

– Stabilisation and Association Agreements

The Stabilisation and Association Agreements (SAAs) are tailor-made association agreements for the countries of the Western Balkans. They represent a separate category of agreements, reflecting the specificity and needs of that region. The name given to this category refers to the twofold aim of the agreements: stabilisation of this volatile region and association, foreseen as leading (though at very different speeds) to membership of the EU. The SAAs with Albania,²⁷⁹ Macedonia,²⁸⁰ and Montenegro²⁸¹ have entered into force, while the SAA with Serbia is expected to enter into force shortly. The SAA with Bosnia and Herzegovina has not yet entered

²⁷¹ Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part, OJ 1998, L 68, p. 3.

²⁷² Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, OJ 1993, L 347, p. 2.

²⁷³ Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Latvia, of the other part, OJ 1998, L 26, p. 3.

²⁷⁴ Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Lithuania, of the other part, OJ 1998, L 51, p. 3.

²⁷⁵ Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, OJ 1993, L 348, p. 2.

²⁷⁶ Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part, OJ 1994, L 357, p. 2.

²⁷⁷ Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, OJ 1994, L 359, p. 2.

²⁷⁸ Europe Agreement establishing an association between the European Communities and their Member States, acting within the framework of the European Union, of the one part, and the Republic of Slovenia, of the other part, OJ 1999 L 51, p. 3.

²⁷⁹ Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, OJ 2009, L 107, p. 166.

²⁸⁰ Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, OJ 2004, L 84, p. 13.

²⁸¹ Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Montenegro, of the other part, OJ 2010, L 108, p. 3.

into force.²⁸² In June 2013 the EU agreed to launch SAA negotiations with Kosovo.²⁸³ Like the former EAs, the SAAs are generally mixed agreements, although the Kosovo SAA is expected to be EU-only, given that five EU Member States do not recognise Kosovo's independence. Their objectives include strengthening democracy and the rule of law, and the achievement of political, economic and institutional stability in each of the countries concerned, as well as the stability of the Western Balkans region as a whole. They provide for the creation of free trade areas and contain provisions on the approximation of legislation. Though they are wide-ranging horizontal agreements, the SAAs are supplemented by a variety of sectoral agreements (e.g. on readmission of illegal immigrants and on visa facilitation).

(ii) Association as a basis for a particularly close economic and political relationship

In a number of cases, the conclusion of an association agreement indicates the desire of the Union to mark the closeness of the relationship it wishes to establish with the third country concerned; which, however, either by its own choice or because it does not meet the geographical criteria for membership, is not considered even a potential candidate for accession. There is, once again, considerable variety within this category of association agreements.

– The European Economic Area Agreement

The European Economic Area (EEA) Agreement²⁸⁴ provides the main example of a close economic and legal framework which, to adapt the words of the Court of Justice enables the third countries in question “at least to a certain extent [to] take part in the [EU] system”.²⁸⁵ Those countries are the European Free Trade Association (EFTA) members, Iceland,²⁸⁶ Liechtenstein and Norway.²⁸⁷ The Agreement, which is mixed, has been in force since 1 January 1994. Pursuant to the Agreement, rules corresponding to those of the Union's internal market, as well as numerous legislative acts (on competition, social policy, consumer protection, environment, research and development) apply to the three EFTA countries. None of them, however, plays a part in EU decision-making; their only opportunity to influence the shape of future legislation comes at an early stage in the adoption procedure.²⁸⁸ The enforcement of EEA rules is guaranteed by the EFTA Surveillance Authority and the EFTA Court for the EEA EFTA countries and by the European Commission and the CJEU for the EU Member States. According to the EFTA Court the EEA Agreement is ‘an international treaty *sui generis* which contains a distinct legal order of its own.’²⁸⁹

²⁸² For now the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and Bosnia and Herzegovina, of the other part (OJ 2008, L 169, p. 13) is the cornerstone of legal relations with Bosnia and Herzegovina.

²⁸³ On 10 October 2012 the European Commission published a feasibility study: Communication from the Commission to the European Parliament and Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo, COM (2012) 602 final.

²⁸⁴ Agreement on the European Economic Area, OJ 1994, L 1, p. 3.

²⁸⁵ In Case 12/86, *Demirel* [1987] ECR 3719. The Court was referring to the Association Agreement with Turkey.

²⁸⁶ Iceland applied for EU membership in 2009 and in 2010 was given a candidate status.

²⁸⁷ A negative result of a referendum ruled out Switzerland's participation in the EEA.

²⁸⁸ The Agreement does not cover the Common Agricultural Policy, the Common Fisheries Policy or the CFSP. Cooperation in matters of free movement governed by Schengen instruments is the subject of a separate Agreement concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway on the association of these two states to the implementation, to application and to the development of the *acquis de Schengen*, OJ 1999, L 176, p. 36; Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, OJ 2011, L 160, p. 3.

²⁸⁹ *Erla María Sveinbjörnsdóttir v Government of Iceland* (E-9/97) [1998] EFTA Court Rep. 95.

– Agreements with Switzerland

There is no horizontal association agreement between the EU, its Member States and Switzerland, but a complex web of approximately 100 sectoral agreements concluded over the past fifty years. These include a number of association agreements, which are more specific in their subject-matter than is normal. Trade relations are generally regulated by the Free Trade Agreement signed by the European Community and Switzerland in 1972.²⁹⁰ This was followed by a variety of mixed and exclusive competence agreements, notably the two groups of agreements known as “Bilateral I”²⁹¹ from 1999 and “Bilateral II”²⁹² from 2004. The cumulative effect of this large and diverse bundle of agreements is to put Switzerland in a position, as regards limited participation in the EU system, similar to that of the members of the EEA.

– The Euro-Mediterranean Agreements

The Euro-Mediterranean Agreements were concluded by the EC and its Member States between 1998 and 2005 with the following Mediterranean countries: Algeria,²⁹³ Egypt,²⁹⁴

²⁹⁰ Agreement between the European Economic Community and the Swiss Confederation, the European Economic Community, of the one part, and the Swiss confederation, of the other part, OJ 1972, L 300, p. 189. The legal basis was the then Article 113 EEC (now Article 207 TFEU).

²⁹¹ Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons OJ 2002, L 114, p. 6 ; Agreement between the European Community and the Swiss Confederation on Air Transport OJ 2002, L 114, p. 73 ; Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road OJ 2002, L 114, p. 91; Agreement between the European Community and the Swiss Confederation on trade in agricultural products OJ 2002, L 114, p. 132; Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment OJ 2002, L 114, p. 369; Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement OJ 2002, L 114, p. 430 ; Agreement on scientific and technological cooperation between the European Community and the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part OJ 2007, L 189, p. 26.

²⁹² Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation’s association with the implementation, application and development of the Schengen acquis OJ 2008, L 53, p. 52 ; Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland OJ 2008, L 53, p. 5 ; Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48 on taxation of savings income in the form of interest payments OJ 2004, L 385, p. 30 ; Cooperation Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to counter fraud and all other illegal activities to the detriment of their financial interests OJ 2009, L 46, p. 8; Agreement between the European Community and the Swiss Confederation amending the Agreement between the European Economic Community and the Swiss Confederation of July 22, 1972 as regards the provisions applicable to processed agricultural products OJ 2005, L 23, p. 19; Agreement between the European Community and the Swiss Confederation concerning the participation of Switzerland in the European Environment Agency and the European Environment Information and Observation Network OJ 2006, L 90, p. 37; Agreement between the European Community and the Swiss Confederation on cooperation in the field of statistics OJ 2006, L 90, p. 2 ; Agreement between the European Community and the Swiss Confederation in the audiovisual field, establishing the terms and conditions for the participation of the Swiss Confederation in the Community Programmes Media Plus and Media Training OJ 2006, L 90, p. 23 ; Agreement between the Swiss Federal Council and the Commission of the European Communities with a view to avoiding the double taxation of retired officials of the institutions and agencies of the European Communities resident in Switzerland, not published.

²⁹³ Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People’s Democratic Republic of Algeria, of the other part, OJ 2005, L 265, p. 2.

²⁹⁴ Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, OJ 2004, L 304, p. 39.

Israel,²⁹⁵ Jordan,²⁹⁶ Lebanon,²⁹⁷ Morocco²⁹⁸ and Tunisia.²⁹⁹ They are mixed agreements, for the purposes of economic and political association only, not with a view to eventual accession, though concluded for an indefinite period.³⁰⁰ The Agreements are horizontal in nature; their objectives are to provide a framework for political dialogue and for the facilitation of conditions for the progressive liberalization of trade in goods, capital and services, improvement of economic and social relations, and they also contain clauses on the approximation of legislation. In addition, the Agreements encourage regional cooperation and peaceful coexistence, while providing bases for the gradual establishment of free trade areas. The EU's legal relations with the Mediterranean countries are further supplemented by sectoral agreements. In political terms, the countries in question are covered by the European Neighbourhood Policy and the Union for the Mediterranean.

(iii) Association as an instrument of development cooperation

The Cotonou Agreement between the EU and its Member States and 79 African, Caribbean and Pacific (ACP) countries³⁰¹ is a horizontal mixed agreement. It focuses on the economic, social and cultural development of the ACP countries, including the reduction and eventual eradication of poverty, in line with the objectives of sustainable development, as well as contributing to peace and security. Among other features, the Agreement covers: support in case of short-term fluctuations in export earnings; support for sectoral policies, micro projects and decentralised cooperation; humanitarian and emergency assistance; investment and private sector development support; and technical cooperation.

(iv) Agreements with Latin American countries

An example is the Agreement with Chile.³⁰² This is a mixed agreement, concluded for an indefinite period. The Agreement establishes a Political and Economic Association between the parties and provides a framework for political dialogue, economic cooperation and trade. It also envisages the progressive establishment of a free trade area.

²⁹⁵ Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, OJ 2000, L 147, p. 3.

²⁹⁶ Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, OJ 2002, L 129, p.3.

²⁹⁷ Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part, OJ 2006, L 143, p. 2.

²⁹⁸ Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, OJ 2000, L 70, p. 2.

²⁹⁹ Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, OJ 1998, L 97, p.2.

³⁰⁰ In the past an application for EU membership submitted by Morocco was rejected on geographical grounds.

³⁰¹ ACP countries are: Angola, Antigua and Barbuda, Belize, Cape Verde, Comoros, Bahamas, Barbados, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Kinshasa), Cook Islands, Côte d'Ivoire, Cuba, Djibouti, Dominica, Dominican Republic, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Republic of Guinea, Guinea-Bissau, Equatorial Guinea, Guyana, Haiti, Jamaica, Kenya, Kiribati, Lesotho, Liberia, Madagascar, Malawi, Mali, Marshall Islands, Mauritania, Mauritius, Micronesia, Mozambique, Namibia, Nauru, Niger, Nigeria, Niue, Palau, Papua New Guinea, Rwanda, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Solomon Islands, Samoa, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Suriname, Swaziland, Tanzania, Timor Leste, Togo, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu, Zambia, Zimbabwe. Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, OJ 2000, L 317, p. 3.

³⁰² Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, OJ L 2002, L 352, p.3.

A similar agreement was concluded in June 2012 between the EU, its Member States and the following central American states: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.³⁰³ The Agreement, concluded for an indefinite period, aims at strengthening political dialogue and trade relations between the parties, as well as contributing to the economic development of the region. It is envisaged that a free trade area will be established.

Partnership and Cooperation Agreements

(i) Agreements with the countries of the former Soviet Union

Partnership and Cooperation Agreements (PCAs) were concluded by the European Communities/EU and their Member States with Armenia,³⁰⁴ Azerbaijan,³⁰⁵ Georgia,³⁰⁶ Kazakhstan,³⁰⁷ Kyrgyz Republic,³⁰⁸ Moldova,³⁰⁹ Russia,³¹⁰ Ukraine,³¹¹ and Uzbekistan.³¹²

These are not association agreements and were, therefore founded on a raft of substantive legal bases, corresponding to the different elements of their content. A PCA with Belarus was negotiated but its ratification was suspended for political reasons. The PCAs are mixed agreements, which were concluded for initial periods of ten years and are renewed automatically on an annual basis. They are horizontal agreements. Their aims include: setting up a framework for political dialogue between the parties; the promotion of trade and investment and economic relations based on a market economy; strengthening political and economic freedoms; and the creation of conditions for the establishment in the future of free trade areas between the EU and the partner countries. However, the PCAs do not look forward to the eventual accession of the countries concerned to the EU. They are supplemented by a variety of sectoral agreements (e.g. on readmission and visa facilitation). In political terms Armenia, Azerbaijan, Georgia, Moldova and Ukraine are covered by the European Neighbourhood Policy and Eastern Partnership Initiative.

Russia remains a strategic partner of the EU; however negotiations of a follow up to its PCA are in limbo and the same applies to the negotiations with Ukraine of the next generation agreement with that country.³¹³

³⁰³ The Agreement was signed on 26 June 2012 and it is pending ratification. It constitutes an upgrade for relations with this group of central American countries which so far were governed by the framework Cooperation Agreement between the European Economic Community and the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, OJ 1999, L 63, p. 39.

³⁰⁴ Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, OJ 1999, L 239, p. 3.

³⁰⁵ Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part, OJ 1999, L 246, p. 3.

³⁰⁶ Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Georgia, of the other part, OJ 1999, L 205, p. 3.

³⁰⁷ Partnership and Cooperation Agreement between the European Communities and their Member States and the Republic of Kazakhstan, OJ 1999, L 196, p. 3.

³⁰⁸ Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Kyrgyz Republic, of the other part, OJ 1999, L 196, p. 48.

³⁰⁹ Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Moldova, of the other part, OJ 1998, L 181, p. 3.

³¹⁰ Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part, OJ 1997, L 327, p. 3.

³¹¹ Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine, OJ 1998, L 49, p. 3.

³¹² Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part, OJ 1999, L 229, p. 3.

³¹³ A new generation of comprehensive free trade agreements, known as "FT+".

(ii) Other PCAs

Over the years the European Union has concluded other partnership and/or cooperation agreements with several countries. There is no clear-cut geographical key that could apply to these agreements. The group includes, e.g., agreements with Brazil,³¹⁴ India,³¹⁵ Iraq³¹⁶, and Pakistan.³¹⁷ These agreements have a horizontal nature and deal with a wide range of matters. Some of them have been concluded as mixed agreements, others by the Union alone. The agreement with Brazil is an example of the latter. It covers, among other things, economic and trade cooperation, social matters, environmental protection, transport, mining and science and technology. The legal bases for its conclusion were the then Articles 113, 130 and 280 EC (Articles 207, 173 and 218 TFEU). This agreement was concluded for an initial period of five years and has been tacitly renewed on an annual basis.

The agreement with Iraq is an example of a mixed agreement, having Articles 79, 91, 100, 192, 194, 207, 209 TFEU as its legal bases. The agreement is concluded for a period of ten years and can automatically be renewed on an annual basis. It aims to provide an appropriate framework for political dialogue between the parties, allowing for the development of political relations, the promotion of trade and investment and providing a basis for legislative, economic, social, financial and cultural cooperation.

Trade Agreements

One of the oldest free trade agreements (FTAs) still remaining in force is the EEC/Switzerland Agreement (see above). Over the years, the EC/EU developed a wide range of trade relations with partners from different regions. With the growing competence of the EC/EU the character of legal relations with third countries has evolved and free trade provisions have become a common feature of horizontal association agreements (see above); trade, development and cooperation agreements (e.g. the Agreement with South Africa³¹⁸); and economic partnership and political cooperation agreements (e.g. Agreement with Mexico³¹⁹). The most recent example of the new generation FTAs is an agreement with the Republic of Korea.³²⁰ It is one of the most comprehensive FTAs negotiated by the EU to date, and was concluded as a mixed agreement. The legal bases of the Agreement are Articles 91, 100, 167, 207 and 218 TFEU. The Agreement provisionally entered into force in June 2011 and was concluded for an indefinite period. The main objective of the Agreement is to liberalise on a reciprocal basis all trade in goods and services and to tackle existing and future non-tariff barriers to trade, especially in the sector of automobiles, pharmaceuticals and electronics. The Agreement aims at significant strengthening of market access. It also includes provisions on investment, government procurement and protection of intellectual property rights. There is also a chapter dedicated to competition. Sustainable development is also addressed in the Agreement.

³¹⁴ Framework Agreement for Cooperation between the European Economic Community and the Federative Republic of Brazil, OJ L 1995, L 262, p. 54.

³¹⁵ Cooperation Agreement between the European Community and the Republic of India on partnership and development, OJ L 1994, L 223, p. 24.

³¹⁶ Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part, OJ 2012, L 204, p. 20 (ratification is pending).

³¹⁷ Cooperation agreement between the European Community and the Islamic Republic of Pakistan, relating to the partnership and to development, OJ L 2004, L 378, p. 23.

³¹⁸ Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part, OJ 1999, L 311, p. 3.

³¹⁹ Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, OJ 2000, L 276, p. 45.

³²⁰ Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, OJ L 2011, L 127, p. 6.

Currently, the EU is negotiating free trade agreements with ASEAN countries (Burma – Myanmar, Brunei, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Vietnam), Canada, the Gulf Cooperation countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates), India and the Mercosur countries (Argentina, Brazil, Paraguay, Uruguay and Venezuela).

General trade agreements with third countries are not limited to free trade agreements only. In some cases the conclusion of FTAs is neither possible nor desired. In such cases agreements on trade cooperation may be preferred. For example, an Agreement on Trade and Economic Cooperation³²¹ was signed by the EEC with China in 1985 and this remains in force. Its legal bases were the then Articles 113 and 235 EEC (now Articles 207 and 352 TFEU). The aims of the Agreement are to create favourable conditions for trade between the parties and to improve the structure of their trade with the view of further diversification. The Agreement also provides for most favoured nation treatment in trade relations between the Union and China.

Sectoral Agreements

The European Union has concluded a plethora of sectoral agreements with third countries. These include agreements on trade in specific categories of goods (e.g. steel products,³²² wine,³²³ textiles³²⁴) on air transport³²⁵ and on matters such as passenger name records (PNR),³²⁶ visa facilitation³²⁷ and readmission.³²⁸ Moreover, the European Atomic Energy Community (Euratom), which retains a separate legal personality, concludes, among other things sectoral agreements on nuclear safety.³²⁹

Accession to multilateral treaties

As the European Union has a separate legal personality from its Member States it may accede to international conventions provided it meets certain conditions. Firstly, the EU may only participate in an international convention where it enjoys competence for the subject matter covered by that convention/agreement. Furthermore, in order for the EU to be able to accede to an international convention/agreement the instrument in question must make provision

³²¹ Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China, OJ 1985, L 250, p. 2.

³²² For example: Agreement between the European Community and the Russian Federation on trade in certain steel products, OJ 2007, L 300, p. 52.

³²³ For example: Agreement between the European Community and Australia on trade in wine, OJ 2009, L 28, p. 3.

³²⁴ For example: Agreement in the form of an Exchange of Letters between the European Community and the Republic of Belarus amending the Agreement between the European Community and the Republic of Belarus on trade in textile products, OJ 2006, L 384, p. 100.

³²⁵ For example: Agreement on Air Transport between Canada and the European Community and its Member States, OJ 2010, L 207, p. 32.

³²⁶ Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) (2007 PNR Agreement), OJ 2007, L 204, p. 18.

³²⁷ For example: Agreement between the European Community and the Republic of Albania on the facilitation of the issuance of visas, OJ 2007, L 334, p. 85.

³²⁸ For example: Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorization, OJ 2010, L 287, p. 52.

³²⁹ For example: Agreement for Cooperation between the European Atomic Energy Community and the Cabinet of Ministers of Ukraine in the field of nuclear safety, OJ 2002 L 322, p. 33.

for membership by an international regional body such as the EU³³⁰. Provided that both these conditions are satisfied then ultimately whether the EU will accede to an international convention/agreement depends on the EU's participation being acceptable to the other parties to the convention/agreement and the Council determining that the EU's participation in such agreement/convention is desirable. The European Union, within the limits of the powers conferred upon it, has acceded to a number of multilateral conventions, e.g. the United Nations Convention on the Law of the Sea.³³¹ At present the EU is negotiating the terms of accession to the European Convention for Human Rights and Fundamental Freedoms³³².

Agreements with international organisations

The EU has also concluded a number of agreements with international organisations. These may relate to the EU's membership of the organisation or to cooperation with it; while sectoral agreements with international organisations may also be concluded.

The first group is small but of great significance to the EU's international role, including notably the WTO Agreement,³³³ which was concluded as a mixed agreement.

However, in most international organisations, the EU does not have member status. In the case of the United Nations, the EU is an observer, with the exception of the Food and Agriculture Organisation (FAO), where it is a full member. It has observer status within the International Labour Organisation (ILO).

The EC/EU is one of founding parties of the Energy Community covering the Western Balkans and Ukraine.³³⁴

The EU concludes agreements with international organisations regarding the exchange and protection of classified information, with Article 37 TUE as their legal basis. Examples are the Agreements with the Organisation for Joint Armament Cooperation³³⁵ and North Atlantic Treaty Organisation³³⁶.

The EU has also concluded cooperation and assistance agreements with the International Criminal Court³³⁷ and with the ILO.³³⁸

³³⁰ The international agreement/convention will normally contain a regional economic integration clause (REIO) which envisages membership by an international regional entity such as the EU and will normally set down conditions governing the conditions applicable to the participation of such a body in the agreement.

³³¹ Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof, OJ 1998, L 179, p. 1.

³³² Specific provision for EU accession to the ECHR is made in Article 6(2) TEU. Article 218(6)(a)(ii) TFEU provides that the accession agreement will require the European Parliament's consent and Article 218(8) TFEU sets down that the Council will act by unanimity. Protocol No.8 to the Treaties also sets down a number of conditions that must be satisfied.

³³³ Agreement establishing the World Trade Organisation (WTO), OJ 1994, L 336, p. 3.

³³⁴ The Energy Community Treaty, OJ 2006, L 198, p. 3.

³³⁵ Agreement between the Organisation for Joint Armament Cooperation and the European Union on the protection of classified information, OJ 2012, L 229, p. 2.

³³⁶ Agreement between the European Union and the North Atlantic Treaty Organisation on the Security of Information, OJ 2003, L 80, p. 36.

³³⁷ Agreement between the International Criminal Court and the European Union on cooperation and assistance, OJ 2006, L 115, p. 50.

³³⁸ Agreement on cooperation between the International Labour Organization and the European Atomic Energy Community, OJ 1961, 18, p. 473.

Mixed agreements

The term “mixed agreements” is used to describe international agreements jointly concluded by the Union and the Member States under their respective powers. The “mixity” approach is adopted in two situations: where it is unavoidable, because some of the matters it is envisaged to include in an agreement fall outside the competence of the EU; or as a matter of political choice, in areas of shared or parallel competence. The Court of Justice was very clear in Opinion 1/94 that the Member States were only prevented from concluding the parts of the GATS and the TRIPS for which Community competence was exclusive.³³⁹ It is normal practice for the Member States to insist on concluding agreements that are not confined to matters falling within exclusive Union competence on a mixed basis.

A Declaration of Competence may sometimes be attached to a mixed agreement, indicating to what extent it has been concluded, respectively, by the Union and by the Member States. For example, that is the case with the United Nations Convention on the Law of the Sea.³⁴⁰ More usually, however, mixed agreements fail to specify which parts of them have been concluded by the Union and which by the Member States. An important example is the WTO Agreement, as the Court of Justice has observed.³⁴¹ The silence may be deliberate, to avoid having to delay the conclusion of the agreement until disputes about competence can be resolved. Where an indication is lacking as to which of the parties on the Union side of an agreement is accepting responsibility for its different elements, the issue, so far as concerns third country parties, will be a matter for public international law.³⁴²

At the stage of negotiating agreements, the practice is for the Council to grant the Commission/ High Representative a mandate to negotiate the elements of the agreement falling within the EU's competence and for the Member States to give the Commission and/or the Presidency a separate mandate to negotiate on their behalf in respect of the matters falling within their competence. A mixed agreement must be concluded both by the Union, as well as by all 28 Member States acting in accordance with their respective constitutional requirements. National ratifications may take a long time to accomplish, but advantage can be taken of the power under Article 218 (5) TFEU to give the parts of the agreement falling within the competence of the Union provisional application. To establish the position to be adopted on behalf of the Union and its Member States in a body set up under a mixed agreement that has decision-making powers, both a Council act and an act of the Representatives of the Governments of the Member States meeting within the Council will often be needed.³⁴³

The scope for adopting the mixity approach under the Treaties as amended by the TL will be affected by the extension of the Union's exclusive competence in the area of the Common Commercial Policy.³⁴⁴ However, there are no provisions of the TL that can be read as limiting the freedom of Member States, if they so choose, to exercise their sovereign competences collectively, rather than acting through the Union, in respect of any of the elements of an international agreement falling within non-exclusive EU competences. The amendment to the Treaties agreed at Lisbon assumes that agreements may in future be based partly on TFEU and partly on CFSP competences, as an alternative to traditional EU/Member State mixity.

³³⁹ [1994] ECR I-5267.

³⁴⁰ See Case C-459/03, *Commission v Ireland (Mox Plant)* [2006] ECR I-4635.

³⁴¹ Case C-53/96, *Hermes* ECR I-3603.

³⁴² In Case C-316/91, *Parliament v Council* [1994] ECR I-625, A G Jacobs suggested that the Community and the Member States should be regarded as jointly liable, in the absence of an indication to the contrary.

³⁴³ These may be adopted as separate Decisions or as a single Decision having a dual character. There may be a dispute as to whether the subject-matter of a given position extends to elements of the agreement concluded by the Member States. See, e.g., Opinion 1/08 [2009] ECR I-11129 on the accession of Vietnam to the WTO.

³⁴⁴ Though it is thought that, owing to the uncertain scope of the notion of “foreign direct investment”, it may be justifiable for many future investment treaties to be concluded as mixed agreements.

Appendix C:

List of Abbreviations

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| AETR | Accord Européen sur les Transports Routiers |
| ASEAN | Association of Southeast Asian Nations |
| ATT | Arms Trade Treaty |
| CCS | Civil Contingencies Secretariat, Cabinet Office |
| CER | Centre for European Reform |
| CFSP | Common Foreign and Security Policy |
| CMPD | Crisis Management and Planning Directorate |
| CPCC | Civilian Planning and Conduct Capability |
| CSDP | Common Security and Defence Policy |
| CSIS | Center for Strategic and International Studies |
| DCFTA | Deep and Comprehensive Free Trade Agreement |
| DfID | Department for International Development |
| DG | Directorate General |
| ECFR | European Council on Foreign Relations |
| ECHO | European Community Humanitarian Office |
| ECHR | European Convention on Human Rights |
| ECJ | European Court of Justice |
| EDA | European Defence Agency |
| EEAS | European External Action Service |
| ENP | European Neighbourhood Policy |
| EU | European Union |
| EUBAM | European Union Border Assistance Mission |
| EUCAP | European Union Capacity Building Mission |

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|---------|---|
| EULEX | European Union Rule of Law Mission |
| EUMM | European Union Monitoring Mission |
| EUPOL | European Union Police Mission |
| Euratom | European Atomic Energy Community |
| EUSEC | European Union Security Sector Reform Mission |
| EUSR | European Union Special Representative |
| FAC | Foreign Affairs Council |
| FCO | Foreign and Commonwealth Office |
| FRIDE | Fundación para las Relaciones Internacionales y el Diálogo Exterior |
| GDP | Gross Domestic Product |
| HR | High Representative for Foreign Affairs and Security Policy |
| HR/VP | High Representative/European Commission Vice-President |
| LSE | London School of Economics and Political Science |
| MEP | Member of the European Parliament |
| MoD | Ministry of Defence |
| MP | Member of Parliament |
| NATO | North Atlantic Treaty Organisation |
| NGO | Non-Governmental Organisation |
| OSCE | Organisation for Security and Cooperation in Europe |
| PSC | Political and Security Committee |
| QMV | Qualified Majority Voting |
| SEEG | Senior European Experts Group |
| TEU | Treaty on European Union |
| TFEU | Treaty on the Functioning of the European Union |
| TTIP | Transatlantic Trade and Investment Partnership |
| UK | United Kingdom of Great Britain and Northern Ireland |
| UN | United Nations |
| UNGA | United Nations General Assembly |
| UNSC | United Nations Security Council |
| UNSCR | United Nations Security Council Resolution |
| US | United States of America |
| WTO | World Trade Organisation |