



## BRIEFING PAPER

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# End of Brexit transition: implications for defence and foreign policy cooperation

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During the Brexit transition period, provisions related to the EU's Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) continued to apply to the UK.<sup>1</sup> As a third country, however, the UK was no longer represented in EU institutions and could not participate in EU decision making on external action, except where discussions were directly relevant to the UK. Even then the UK did not have voting rights, thereby effectively losing its veto. Although the UK could continue to contribute military personnel and assets, it could not assume command responsibility for any EU led military operations.

## 1. EU-UK Trade and Cooperation Agreement (TCA)

Despite their inclusion in the October 2019 [Political Declaration](#) on the future UK-EU relationship, at the request of the British Government foreign policy and defence cooperation were not part of the subsequent future relationship negotiations. Instead of a treaty-based or institutional framework, the Government indicated its preference for a flexible, ad-hoc approach to foreign policy and defence cooperation, "[within a framework of broader friendly dialogue and cooperation between the UK and the EU](#)".

Formal foreign and defence policy cooperation does not, therefore, form part of the EU-UK Trade and Cooperation Agreement reached at the end of December 2020. As of 1 January 2021, therefore, CFSP and CSDP provisions no longer apply to the UK.

The preamble of the TCA referred, however, to the two parties' recognition of "the importance of global co-operation to address issues of shared interest". The Common Provisions of the TCA also refer to a number of common principles with an international dimension, including:

- The principles of democracy, the rule and law and respect for human rights (including respects for various international human rights' instruments including the Universal Declaration of Human Rights);
- The fight against climate change, and commitment to the Paris Agreement on climate change in particular;

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<sup>1</sup> Article 127(2) of the [Withdrawal Agreement](#)

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- Countering proliferation of weapons of mass destruction;
- Implementing obligations to counter the illicit trade in conventional weapons;
- Co-operation to combat acts of terrorism in accordance with international law;
- Global co-operation on issues of shared economic, environmental and social interest, including the two parties endeavouring to co-operate on global issues and to co-ordinate positions in multilateral organisations including the United Nations, the G7, G20, OECD, IMF, World Bank and WTO.

The TCA defines the first three points as “essential elements of the partnership”<sup>2</sup> and includes a fast-track procedure to terminate or suspend the Agreement or parts of it, where one party feels that there has been a serious failure by the other to uphold these principles.<sup>3</sup>

Part 4, Title II of the TCA also establishes a framework for cooperation on cybersecurity, including the exchange of information and cooperation in relevant international fora and the UK’s voluntary participation in the EU Agency for Cybersecurity.

The UK has also concluded a [Security of Information Agreement](#) with the EU which will facilitate the voluntary exchange of classified information between both parties. The agreement is a standard security agreement that is concluded by the EU with third countries and governs how such information is shared and protected.

## 2. Beyond transition

Given the shared values and interests of the UK and the EU, the need to continue close cooperation in external action has long been recognised by both sides and is evident in the preamble to the TCA (see above).

### 2.1 Foreign policy coordination

As of 1 January 2021, the UK no longer has to support agreed EU foreign policy (CFSP) positions.

There is now no official framework in place through which the UK and EU can develop and coordinate joint responses to emerging foreign policy challenges.

Instead the UK envisages an ad hoc approach that makes use of channels of “broader dialogue” with the EU. In a Lords debate on EU-UK cooperation on 14 January 2021, the Government said:

we have agreed with the European Union that we shall co-operate on current and emerging global issues of common interest, including co-ordinating positions and maintaining dialogue in multilateral organisations. We do not need overly institutionalised formal arrangements or a treaty framework within the EU to continue to co-operate closely with allies on foreign policy matters, including EU member states. We shall continue to discuss shared foreign policy challenges and threats and we look forward to a future relationship based on constructive co-operation between sovereign and independent allies.<sup>4</sup>

How this will actually work in practice is not yet clear. It also raises the question of whether UK-EU foreign policy cooperation will become much more reactive, precipitated

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<sup>2</sup> Article COMPROV.12

<sup>3</sup> Article INST.35

<sup>4</sup> HL Deb 14 January 2021, c867

by the need to respond to a specific threat or challenge, as opposed to a more strategic, long-term and proactive approach.

Outside of the EU framework, the UK is likely to make use of its bilateral and multilateral diplomatic networks and its membership of, and participation in, international fora such as the UN, G7, G20, OECD and WTO, among others, to pursue its foreign policy objectives. The UK has also been an advocate of establishing a [new "D10" alliance](#) of the world's ten largest democracies.

The Government's forthcoming Integrated Review is expected to provide more detail on the UK's approach to foreign policy cooperation going forward.

## Sanctions policy

As a member of the EU, almost all of the UK's sanctions were decided jointly with other member states and imposed using the powers contained in the [European Communities Act 1972](#). With Brexit, the UK no longer has a voice in discussions with the EU on sanctions, and the European Communities Act has been repealed. The UK now has an [autonomous legal framework](#) for the creation of sanctions, based on the [Sanctions and Anti-Money Laundering Act 2018](#).<sup>5</sup> That provided for existing EU sanctions regimes to be transferred onto a UK legal basis, and gives the UK Government powers to create autonomous sanctions regimes.

The question of co-ordinating sanctions with EU allies remains, however. The [Future Relationship document of 2018](#) envisaged: "mechanisms to discuss and coordinate the implementation of existing and new sanctions".

No such mechanisms were agreed. Informal co-operation between the UK and the EU will probably continue, similar to the way in which the EU and the US have co-ordinated sanctions regimes. That may leave UK/EU sanctions policies more loosely co-ordinated than some hoped, which could undermine their effectiveness, as argued by the House of Lords European Union Committee in its [2017 report](#).

Greater distance between the EU and UK sanctions-making policy could also have a political effect on EU sanctions. As an EU member state, the UK used to advocate strong EU sanctions against Russia, for example, for perceived transgressions like the annexation of Crimea. The EU imposed significant sanctions on Russian individuals and trade, often based on UK-supplied intelligence.

Without UK participation, EU sanctions may be made on a thinner evidence base. As importantly, there may be a political effect on EU sanctions: for example, the absence of the UK could shift the balance in favour of those in the EU who want better relations with Russia.

## 2.2 Defence Cooperation<sup>6</sup>

Successive British Governments have stated that NATO is the cornerstone of European defence and security, supported by a network of strong multilateral and bilateral alliances and partnerships of which the UK is a participant. From the UK's perspective the EU has been a notable "soft power" actor, focusing on crisis prevention, crisis management and post-conflict stabilisation. Greater defence cooperation within the EU has always been

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<sup>5</sup> For more information on the UK sanctions legislation see the Commons Briefing Papers [The Sanctions and Anti-Money Laundering Bill 2017-19](#), February 2018, and [Magnitsky legislation](#), 20 July 2020

<sup>6</sup> This briefing does not examine the [Defence and Security Public Contracts Regulations 2011](#) (DSPCR), which are retained EU law, and therefore continue to apply to UK defence contracts from 1 January 2021.

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viewed as complementary to NATO and a means of strengthening the European pillar of that Alliance.

Post-Brexit the UK is likely to continue this approach. “Hard” power will continue to be the purview of NATO or “coalitions of the willing”; while any shortfalls in soft power projection previously achieved through EU initiatives could be compensated for through other multilateral or bilateral frameworks. Defence cooperation could be pursued through I arrangements such as the Anglo-French [Lancaster House Treaties](#), the [UK-led Joint Expeditionary Force](#), and President Macron’s [European Intervention Initiative](#).

Adopting this approach is also considered more likely given that any cooperation with the EU on defence matters will now be subject to strict rules on third country participation.

### EU-led military operations

The immediate implication of no framework agreement is that UK military and civilian personnel contributing to [CSDP missions](#) throughout the transition period no longer have a legal basis for participation, and must return to the UK. This also applies to those military staff seconded to EU military institutions.<sup>7</sup> The UK will also no longer fund CSDP operations or other CSDP initiatives such as the European Peace Facility.<sup>8</sup>

In the longer term the UK could negotiate its participation in EU military operations on a case by case basis and should it be considered in the UK’s national interest. There will be no standing invitation to participate in CSDP operations. The only exception is the EU’s Operation Althea in Bosnia, under which the UK could theoretically participate in the future as a NATO state.<sup>9</sup>

Participation in any CSDP operation would require a third-party framework agreement, such as those which already exist between the EU and the United States, Canada, Norway and [Australia](#).<sup>10</sup>

Any framework agreement with the UK would mirror these existing third-party participation agreements and would be unlikely to include any provisions that are unique

“Although we are leaving the EU defence structures, we remain committed to the security of Europe and will continue to co-operate with the EU and European nations on a bilateral or multinational basis on shared threats and challenges. We do not need an institutionalised relationship with the EU to do so”.

Ben Wallace, Secretary of State for Defence, HC Deb 7 December 2020, c545

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<sup>7</sup> The UK contributed to 7 out of 16 EU-led military operations during the transition period. However, in terms of military capability, the UK could be considered a net contributor to the EU. Historically It has provided around 2.3% of total personnel contributions, but an estimated 20% of the EU’s force catalogue, including strategic enablers such as airlift, refuelling and intelligence surveillance and reconnaissance. The UK’s principal contribution to EU-led operations has been at the strategic command level.

<sup>8</sup> The common costs of EU military operations (which amount to approximately 5-10% of the total costs) are met out of the EU budget, while the remaining costs fall to participating Member States on a “costs lie where they fall” basis.

<sup>9</sup> The UK withdrew from the EUFOR mission in Bosnia on 18 December 2020 (<https://twitter.com/euforbih/status/1339954371413635072>). Operation Althea is conducted under the [Berlin-Plus Agreement](#) between the EU and NATO which allows the EU recourse to NATO assets. In theory, therefore, the UK could contribute assets to the operation as a NATO state. This was discussed in the [Government response to Lords Select Committee report Brexit: CSDP missions and operations](#), July 2018.

<sup>10</sup> As a result, Canada and Norway have both contributed forces to Operation Althea in Bosnia, Canada has provided personnel for EU police Missions in Bosnia and the Democratic Republic of Congo, while Norway has contributed assets to Operation Atalanta (EUNAVFOR) and has provided forces to the EU Nordic Battlegroup.

to the UK.<sup>11</sup> The UK has long argued for any agreement to be unprecedented and include access to operational planning documents, which would go far beyond the parameters of current third-party arrangements. It is a UK request that the EU has long resisted. The EU's longstanding position is that the UK cannot have the same rights and benefits as a member state and as such, cooperation, including the exchange of information, would be proportionate to the level of the UK's contribution and respect the EU's decision-making autonomy.

It also remains the case that, as a third country, the UK would have no decision-making rights with respect to the direction of the EU-led operation, regardless of its contribution. Strategic oversight would remain within the purview of the EU Member States.

Any commitment of forces to a CSDP operation, even as a third country, would continue to be a sovereign decision taken by the UK Government. However, for many commentators, the commitment of UK military capabilities to an EU-led operation over which the UK Government would have no formal say, is unacceptable.

## Defence Capability Cooperation

During transition period the UK continued to fund several defence-related agencies, including the [European Defence Agency](#). The UK also continued its involvement in the capability projects launched as part of the Preparatory Action on Defence Research, a pilot strand of the European Defence Fund (EDF) which will launch in 2021.<sup>12</sup> The UK remained outside of the [PESCO](#) initiative.

Beyond transition, any involvement by the UK in EU defence structures will be as a third country. The UK will no longer fund, or contribute to, the European Defence Agency, unless an Administrative Agreement on third party participation is concluded.<sup>13</sup>

Collaboration within the EDF and PESCO, will be subject to strict conditions on third party participation, as set down in EU law.

## PESCO

In November 2020 the EU agreed the rules on third state participation in PESCO, which now apply to the UK. The Library briefing paper, [EU Permanent Structured Cooperation: a future role for UK defence?](#) examines these rules in greater detail.

In December 2020 the Secretary of State for Defence stated, however, that the UK has no plans to participate in PESCO "because we have serious concerns about the intellectual property rights and export controls that it would seek to impose". He went on to state that the UK "will always be open to working with European industries... on a case-by-case basis".<sup>14</sup> However, as the European Scrutiny Committee has pointed out, future administrations may take a different approach.<sup>15</sup>

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<sup>11</sup> In March 2020, the EU published a Protocol on participation in CSDP operations as part of its [draft text on the foreign policy, security and defence provisions](#) of any future relationship agreement. That Protocol set out arrangements for decision making on participation, the status of British forces, the command and control of forces, the financing of operations, and the exchange of classified information. It mirrored existing third-party agreements.

<sup>12</sup> The European Parliament and Council of Ministers agreed proposed budgets for the European Defence Fund on 14 December 2020, which will mirror the EU's multiannual financial framework for 2021-27.

<sup>13</sup> Norway (2006), Switzerland (2012), Serbia (2013) and Ukraine (2015) have all concluded Administrative Arrangements that [enable them to participate in EDA projects and programmes](#).

<sup>14</sup> [HC Deb 7 December 2020](#), c546

<sup>15</sup> European Scrutiny Committee, Thirty Second Report of Session 2019-2021, HC229-xxviii, p.24

### European Defence Fund

The [legal framework](#) establishing the EDF largely excludes the possibility of participation by third countries, including the UK. Under article 5 of the agreement, full third-party involvement in the EDF is only open to “associated” non-EU Members of the European Economic Area (EEA), which the UK has not sought to join.<sup>16</sup>

The framework does allow for the EU-based subsidiaries of UK companies to potentially participate in projects financed by the fund. However, such participation would be subject to defined conditions relating to the retention of intellectual property within the EU, security of supply and access to classified information. Such entities would also not receive any direct funding.

The possibilities for participation on this basis are considered to be limited.

The Government has previously estimated that 90 per cent of the UK’s defence industrial collaboration with other European countries takes place on a bilateral or multilateral basis.<sup>17</sup> As such, the impact of remaining outside of EU’s defence capability frameworks is debatable.

## 2.3 The future of the EU’s Common Security and Defence Policy (CSDP)

Historically the UK has been one of the main driving forces behind the development of CSDP. It has the largest defence budget among EU Member States and has contributed, in the past, approximately 20 per cent of the EU’s force catalogue. As such, it has been suggested that, without the UK’s support, the strategic ambition of a “common European defence” could ultimately falter and the EU’s strategic autonomy will remain at the “soft power” end of the military spectrum.

However, as the main source of opposition to integrationist proposals, the absence of the UK from CSDP decision making has equally been regarded as the opportunity that Member States, such as France and Germany, have been looking for to further the EU defence project, and potentially realise the Maastricht Treaty’s ultimate goal of a “common European defence”.

Even if the UK chooses, and is able, to participate in CSDP operations or capability development projects as a third country, it will have no negotiating, or decision-making powers and it will have no veto if EU defence ambitions threaten to diverge from British interests. Historically, for example, the UK has opposed the creation of a fully independent, permanent operational planning HQ for EU military operations, citing its potential competition to NATO.

Yet, the evolution of CSDP, particularly in the area of operational planning and capability development, is considered likely. At present there is political appetite for progress among the EU27, supported by a European Commission President who is a long-standing advocate of greater European defence integration.

In order to shape the agenda, or influence policy, and ensure there is no duplication with NATO, the UK will now have to rely heavily on its diplomatic networks and other bilateral and multilateral channels of diplomacy going forward.

“A European army is a vision that might become a reality in generations to come. What we see today and what we already achieved is the first concrete steps on this way”.

Ursula von der Leyen,  
March 2019

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<sup>16</sup> Norway, Iceland and Lichtenstein

<sup>17</sup> HC Deb 14 January 2019, Leaving the EU: Defence Co-operation

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