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Britain's Future in Europe

Reform, renegotiation, repatriation or secession?

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6. External relations

6.1 *Foreign and security policy**

This Review examines the EU's foreign policy, or to use formal language its Common Foreign and Security Policy (CFSP), including Common Security and Defence Policy (CSDP). After giving an overview of Britain's foreign policy interests, the Review gives a richly documented account of the complex legal and institutional framework for the EU's foreign policy, its instruments and tools.

The Review does not go into the EU's external action under non-CFSP competences, which are covered in other, sector-specific Reviews (e.g. issues pertaining to trade and investment, EU enlargement, or the defence industry for that matter). The Review does cover civil protection, however, and the solidarity clause in the

* Section contributed by Steven Blockmans.

event of terrorist attacks or natural disasters, which fall outside of the scope of CFSP).

These editorial choices highlight important legal points. First, they underline the legal specificity of the CFSP. Indeed the CFSP is the only policy area covered explicitly in the Treaty on European Union (TEU) because it is “subject to specific rules and procedures” (Article 24(1), TEU), whereas all other competences are defined in the Treaty on the Functioning of the European Union (TFEU). The CFSP is an area characterised by the intergovernmental method of decision-making (largely by unanimity voting). The Review expresses this most vocally with respect to the CSDP: “each Member State has a power of veto, not least over the deployment of EU military operations and civilian missions. (...) The Member States can also act unilaterally, or via other international organisations, not least NATO, when they see fit (p.5)”. Moreover, the roles of the Commission, the European Parliament and the Court of Justice remain limited in CFSP. In other words, the member states retain a high degree of sovereignty and control over the CFSP and CSDP. There are no powers to be repatriated here.

Second, they expose problems related to competence delimitation between areas (CFSP and non-CFSP), which are governed by the different procedures and instruments. Whereas the EU’s specific competences in the defence field (CSDP) are more or less clearly defined (Articles 42–46 TEU), the open-ended notion of “all areas of foreign policy and all questions relating to the Union’s security” (Article 24(1) TEU) is rather unhelpful in determining the scope of CFSP. The sphere of the CFSP) does not extend to those external competences attributed to the Union under the TFEU (trade, financial and technical assistance, etc.). In the event of different interpretations among EU institutions and member states, it will eventually be up to the Court of Justice to settle the boundaries between CFSP/CSDP and the other EU external policy domains. Such disputes are currently pending judgment before the Court.

Third, the CFSP is a non-exclusive EU competence, since it runs concurrently with national competences in the same field. To make sure that the CFSP would not affect national competences, Declaration Nos. 13 and 14 to this effect were, upon the insistence

of the UK,²² attached to the Lisbon Treaty. In the same spirit the Review offers an *ex post* justification of the UK's controversial stance over 'representation creep' in the EU institutions' role in international organisations, which it is argued can lead to 'competence creep' (to use British political language). The criticism was made that High Representative Ashton was incrementally expanding her competence in external representation on behalf of the EU and its member states. For this reason, and much to the annoyance of the other 26 member states, in 2011 the UK held up the adoption of approximately 100 CFSP declarations, causing them to expire. The issue was supposedly resolved at the Council meeting of 22 October 2011 when there was endorsement of the "General Arrangements for EU Statements in multilateral organisations", although its content seems little more than a statement of the duty of sincere cooperation between EU institutions and member states (Articles 4(3) and 24(3) TEU).

Fourth, there is the need to reconcile such differences in order to enhance coherence in policy-making and the visibility and effectiveness of EU external action (*writ large*). This is illustrated with a set of case studies of prominent foreign policy issues in which the EU has been or is involved: the so-called strategic partnerships with China, Russia and the US; the Arab Spring; Iran's nuclear ambitions; human rights in Burma; restoring order in Mali; the stabilisation of Somalia; ensuring long-term stability in the Western Balkans; and rebuilding Afghanistan. These case studies show, in various ways, how the political, security and defence aspects of the EU's external action (led by the member states and External Action Service and decided by consensus in the Council) are increasingly interdependent with non-CFSP aspects of foreign policy, such as trade, energy, and transport relationships (which are largely led by the Commission and, in general, decided by qualified majority vote in the Council and majority vote in the EP).

Based on analysis of the evidence, the Review draws conclusions about the value added and the disadvantages for the UK of working through the EU in foreign policy. The key benefits

²² See House of Commons, Foreign Affairs Committee (2008) Foreign Affairs Policy Aspects of the Lisbon Treaty, Third Report of Session 2007-8, London, 16 January 2008.

include: “increased impact from acting in concert with 27 other countries; greater influence with non-EU powers, derived from [the UK’s] 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” (p.6).

The 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” (p.6).

Assessment

On foreign policy in general “the majority of correspondents argued that it is “strongly in the UK’s interests to work through the EU” (p.87), (with the detailed arguments cited above). The disadvantages of slow and complicated decision-making (as cited above) are largely the result of the multiple and differentiated sets of competences and decision-making rules. The unanimity rule for all ‘pure’ foreign policy is in itself a major constraint, but this is often compounded by the need to join up with other EU competences that have external impacts.

On the other hand, the complexity of bringing together the EU’s many external relations capabilities is also a reminder that the global governance challenges of the 21st century are profoundly changing the nature of foreign policy. The need for more effective global regulatory policies fits well with the broad development of the EU’s own regulatory competences in recent decades. By contrast, in the hypothesis of UK secession from the EU, its residual national capabilities would (in the view of the present author) be thin and carry little weight by comparison. The view that secession by the UK would see a downgrading of its standing internationally has already been openly stated by the United States at the highest

level, or as several commentators in the Review put it, the UK would be deprived of the EU serving as a 'force multiplier' for its foreign policy interests.

On defence, stakeholders were unanimous in the view that (CSDP) operations could be improved, and that "most commentators" considered that this "came down to Member States' political will, both to deploy their personnel and invest in capabilities" (p.76), rather than a matter of institutions and legal competences.

The Review presents no proposals for changing EU competences in this domain. Effectiveness and efficiency are paramount objectives for whoever holds the competences, but simply to advocate better coordination and more political will seems to reflect more of a political preference to retain the status quo rather than to try to engineer solutions.

In its summary the Review says that it "suggested ways in which the EU could reform its external action to be more effective in playing its part" (p.7). While all can agree that there is room for qualitative improvement the Review is not so clear about how to do this, beyond saying that it is not a matter of changing legal competences. By contrast, 11 foreign ministers of the EU, including all the founding member states, issued a declaration in September 2012 favouring more majority voting in the foreign and defence fields.²³

The evidence at a glance - foreign and security policy

Majority view, strongly in UK interest to work through the EU

EU as multiplier of UK interests

UK sovereignty guarded by unanimity rule and right to own national foreign policy; but disadvantage of slow decision-making

In global context, clear case to align EU international regulatory policies with foreign policy

Under secession hypothesis, the UK would carry little weight

²³ Eleven EU foreign ministers, "Future of Europe" communiqué, 18 September 2012.

6.2 *Development cooperation and humanitarian aid**

In both development cooperation and humanitarian aid the EU has 'parallel competences', meaning that it has competence to carry out activities and conduct a common policy, but that this does not prevent member states from exercising theirs (Article 4(4) TFEU). As a result there is nothing to repatriate in the sense of the member states regaining freedom of action for their own policies. The general view projected in the report is in support of this parallel competences regime. Critics make the case for improved implementation, not repatriation of competences.

Parallel policy-making at the EU level and at the national level, however, has the potential to result in conflicting policies. Member states have a tendency to 'upload' their development policies and objectives to the Union level, resulting in an EU development programme with an overloaded agenda, operating in almost every country in the world.

The EU and its member states account for about 60% of global Official Development Assistance (ODA). The Review acknowledges that the Commission's large aid budget provides economies of scale and strength in key areas such as infrastructure and regional projects. It leverages contributions from member states that might not otherwise commit equivalent funds to international development. Because EU aid is allocated over seven-year cycles, it provides a more predictable and longer-term source of finance than aid provided by donor countries (including the UK) or other organisations. The EU's global reach is much greater than that of any member state acting individually.

The EU is by far the UK's largest multilateral aid partner: £1.2 billion of UK aid was managed through the European Commission in 2011-12. Most of this aid (£812 million) is non-discretionary because it forms part of the UK's overall contribution to the EU general budget, which it is legally obliged to pay by virtue of being a member state. The rest is channelled through the European Development Fund (EDF), which is governed by the Cotonou Agreement. The UK spends the remainder of its aid budget bilaterally, working directly with 28 priority countries.

* Section contributed by Steven Blockmans.

The fact that the EU is a major contributor to global efforts to reduce poverty; that it is perceived to be politically neutral; that it provides a platform for collective action and seeks to coordinate the efforts of its member states is seen by many respondents to be a major advantage of working through the EU. These attributes add value and have a multiplier effect on the UK's efforts to achieve its own policy objectives, as exemplified by the UK's role in negotiating the EU's 'Agenda for Change' programme of reform proposals for a more strategic EU approach to reducing poverty, including a more targeted allocation of funding.

The EU's competences in development cooperation and humanitarian aid link or overlap with related areas of EU competence in trade, neighbourhood relations, democracy and human rights, agriculture, fisheries, energy, environment, climate change and migration. This illustrates the richness of the EU's toolbox compared to other multilateral organisations, but also the challenges of coordination that this poses.

Since the introduction of the European External Action Service (EEAS) in 2011, responsibility for managing and disbursing EU aid has been split between the EEAS and two Directorates-General of the European Commission: that for Development and Cooperation (DEVCO), and that for Humanitarian Aid and Civil Protection (ECHO). In this collaborative framework, the Commission retains responsibility for developing policy proposals and for the overall management of the external instruments, whereas the EEAS contributes to the programming and management of these instruments. In doing so, the EEAS works with the Commission throughout the process and submits proposals to the Commission for adoption. The High Representative (and therefore the EEAS) is also tasked with ensuring the overall political coordination, as well as the unity, consistency and effectiveness of the EU's external actions and instruments. The report paints a fair picture of the well-documented difficulties that exist in finding the right working relationship between DG DEVCO and the EEAS, in particular.

These issues are well known in the member states themselves, which have experience of various models for the integration of development policy and management under foreign offices, or their separation. In the new EU system the argument has been made for

DEVCO, and maybe also ECHO, to be integrated with the EEAS. Debate over these issues will doubtless continue. The division of roles between these two EU bodies is indeed far from simple.

The Review's biggest lament is that the EU development programme management and delivery is overly complex and inefficient. The checks built into the financial management systems (and the Financial Regulation in particular) have contributed to a common criticism of the Commission that it is overly bureaucratic. Commission rules are inflexible and cumbersome, hampering management's ability to achieve results; there is no clear overall system for demonstrating the results of EU-funded activities; and limited flexibility once funds have been committed to specific activities. This engenders the risk of steep falls in support once EU funding ends. The fact that the EU does not systematically measure the results that EU aid achieves is regarded as a major disadvantage.

Assessment

The 'parallel competence' regime or development cooperation is not challenged. Member states retain the freedom to run their own development policies, and there is no argument made that the EU should cease its activity in this field; on the contrary, the main argument is that the EU's programmes serve as a multiplier for UK (and other member states) policy objectives both in scale and range. The main criticism about efficiency leads into the well-known matter of cumbersome procedures at EU level, but here (in the opinion of the present author) the member states and European Parliament have to take their responsibilities for imposing on the Commission so many checks and constraints, which the Commission itself often considers to be excessive. The new institutional arrangements between the EEAS and the Commission (DEVCO and ECHO) remain the subject of uneasy concern, and may require revision in due course.

The evidence at a glance – development cooperation and humanitarian aid

Support for 'parallel competence', not limiting national competence

EU aid serves as multiplier of UK interests

Main criticism is over cumbersome procedures for EU aid

6.3 *Enlargement**

As a subject of the first enlargement of the original European Communities, the UK continues to be a supporter of EU enlargement and the conditionality-based process of adaptation by candidates to the *acquis* (organised in 35 chapters, similar to the 32 Balance of Competence Reviews). As EU enlargement is, by its very nature, an issue that cuts across multiple policy areas, the evidence here links in with many other Reviews, but most topically regards the free movement of persons, on which more below.

Enlargement policy cannot be categorised under the competence typology of Article 4 TFEU (exclusive, shared or supporting). Accession to the EU is achieved by way of a treaty between all member states and the applicant country, after following the procedure set out in the EU's membership clause of Article 49 TEU. This provision delineates the balance of competences between the member states and the EU institutions. It does not, however, spell out all eligibility conditions, nor does it codify the minutiae of the various stages in the pre-accession process. These details have been developed along the way.

In terms of the process, the member states in the (European) Council remain in control of every stage, from the definition of the membership criteria, to the direction of the enlargement strategy; whether to accept a membership application; to grant candidate country status; to open accession negotiations; to open individual negotiation chapters; to agree screening reports; to set opening/interim/closing benchmarks; or to conclude the negotiations, etc. The requirement of unanimity in decision-making means that, at each of these stages, individual member states may exercise a veto to block or hold up the progress of an aspirant country on its pre-accession track. Moreover, through their national ratification procedures for accession treaties, each national parliament also has a veto on new members joining the EU. There is therefore no 'repatriation' question here.

The report shows that there is hardly any support for a change in this balance of competences, even if unanimity has at times worked against UK interests, with some other member states

* Section contributed by Steven Blockmans.

blocking or upholding accession negotiations (such as Greece in the case of Macedonia and France in the case of Turkey). British stakeholders generally believe that member states and the EU institutions have been effective in managing the enlargement process, and in learning and implementing lessons from previous accession waves. They note how the UK has been at the forefront of driving these reforms. Moreover, the EU institutions have continued to function satisfactorily in the wake of successive enlargement rounds, in spite of earlier concerns about gridlock in decision-making.

Much of the evidence in the Review focuses on the use of pre-accession conditionality. Stakeholders generally support the increasing emphasis placed by the EU on overcoming bilateral disputes, improving regional cooperation, and ensuring the implementation of reforms. There is also support for the Commission's more recent move to 'front-load' requirements for the rule of law (including fighting organised crime and corruption), public administration reform, and economic governance and competitiveness, which is an approach advocated by the UK and like-minded member states.

Most contributors believe that the enlargement process has generally worked well in ensuring that candidate countries transpose the EU's *acquis* in full. There is, however, awareness that the EU's conditionality has been less effective in ensuring post-accession compliance with the political accession criteria and the EU's values (as in the cases of Hungary, Bulgaria and Romania). Some contributors made the point that the enlargement process has not yet been able to overcome more daunting political obstacles, such as in the cases of Bosnia and Herzegovina, Macedonia and Turkey.

With regard to the impact of enlargement on UK interests, the evidence suggests that, while there have been undesirable effects in some areas, the EU's widening has been and is likely to continue to be seen as generally beneficial to the UK. Contributors point out that the UK has enjoyed significant influence among new and aspirant member states as a result of promoting EU enlargement. The Review notes that many contributors believe that the enlarged EU has become a more comfortable environment for the UK, with the accession of many countries that share its liberal trading and

Atlanticist outlook, and have a preference for English as a working language. Many contributors feel that the UK has benefited from a larger EU, more able – as an ‘influence-multiplier’ – to deal on equal terms with other world powers, notably in negotiations on trade. A great majority of contributors agree that British business has benefited from access to an enlarged single market of more than 500 million consumers. However, some evidence suggests that British SMEs have not yet fully exploited opportunities in new member states.

Some contributors suggest that enlargement, by lowering barriers, may have made it easier for international crime to reach the UK. Others believe that widening the EU has in fact extended the reach of law enforcement and judicial cooperation across the continent, thus strengthening the UK's external defences against organised crime and terrorism.

The UK government points out that enlargement can have deleterious consequences in some areas, with growing cross-party agreement that the impact on migratory flows to the UK should be addressed. The UK was among the few member states willing to remove all restrictions on free movement from the moment of the ‘big bang’ accession of new member states in 2004, whereas many other member states insisted on transitional regimes. As a result, the UK experienced a particularly large spike in immigration, which has now pushed it into the more restrictive camp. Prime Minister Cameron has called for reform of the temporary post-accession controls on free movement, in order to ensure continued public confidence in and support for the process. He suggests that achievement of a certain level of GDP per capita in relation to the EU average should be used as a condition for removing all transitional restrictions on free movement.

Assessment

Enlargement has been dubbed the EU's most successful foreign policy, having contributed crucially to the democratic and economic transformation of Central and Eastern Europe.

Enlargement has also fitted with the UK's vision of a wider, looser, more flexible Europe. It is perceived as benefiting the UK because, inter alia, it increases the number of member states not (yet) in the eurozone, thus reducing the risk of Britain's isolation.

Given the leading role of the member states on EU enlargement, it comes as no surprise that the Review produces no case for changing the current balance of competences in this area. On the contrary, there seems to be evidence of some 'creeping nationalisation' in the process, with each member state able to use its veto power to protect its interests.²⁴ The Review even suggests that individual capitals may at times have abused the enlargement process to extract bilateral concessions from candidate countries. This has consequences for the EU's credibility and ability to exercise leverage to promote reforms. Moreover, such practices undermine the mandate given to the Commission to run the day-to-day process on behalf of the Council in the EU's collective interest.

A key theme emerging from the evidence is that, unless public confidence can be maintained, enlargement is at risk of grinding to a halt, with the issue of immigration from newly acceding EU member states having risen to the top of the agenda in the UK, and to a lesser degree in some other member states. This has cast a shadow over enlargement policy for the future. How to phase in free movement is certainly an issue for ongoing or new negotiations with candidate countries. It is difficult to predict when and where serious problems may arise in the future, however. The very recent Croatian accession saw no marked influx of migrants, for example, and the next most plausible accession candidates, Serbia and Montenegro, are unlikely to do so either. Bigger issues would no doubt arise with a populous country such as Turkey, whose GDP per capita has been rising in relation to the EU average, but whose accession is not yet on the political horizon. The unanimity rules governing the accession process leave all member states with full powers to control the process.

²⁴ Christophe Hillion, "The Creeping Nationalisation of the EU Enlargement Policy", SIEPS Report No. 6, November 2010.

The evidence at a glance – enlargement

No competence question, member states control accession process at every stage

Crucial achievements in democratic transformation of Central and Eastern Europe

UK traditionally a strong supporter of EU enlargement

Suits UK interests in a liberal Atlanticist Europe

More non-eurozone countries (for the time being) reduces risks of isolation

Recent stiffening of UK position on immigration from new member states: a matter for negotiation if a new accession candidate threatens large-scale migration