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Plugging in the British EU defence policy

By Sophia Besch



Plugging in the British: EU defence policy

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- ★ Both the EU and the UK have an interest in agreeing a post-Brexit defence relationship as soon as possible, to prevent Britain falling out of European defence co-operation.
- ★ But this does not mean that doing so will be easy. The EU is keen to protect its decision-making autonomy on defence operations and missions. It is developing new defence initiatives and has yet to determine the conditions for third party involvement. And defence-industrial co-operation post-Brexit will depend in part on the broader trade and economic relationship between Britain and the EU.
- ★ The UK and the EU should take a number of steps to avoid disruption in defence co-operation after Brexit, and to ensure that Britain is not excluded from new multilateral capability development projects that benefit from extra EU funding.
- ★ First, Britain and the EU will have to negotiate an agreement to specify how the UK can participate in EU military operations after Brexit. Britain could commit to supplying a substantial number of troops or assets, subject to close UK involvement in information sharing, force generation and planning.
- ★ The UK could also offer to continue to pay into Athena, the EU's common financing scheme for military operations. And it should strike a third country agreement to participate in EU battlegroups, though not as a lead nation. The UK and the EU should also arrange personnel exchanges, so that EU diplomats and military officials spend time in UK ministries and vice versa.
- ★ Second, to protect its participation in defence-industrial co-operation, a top priority for Britain will have to be negotiating an agreement on information sharing. The UK should also seek an administrative agreement with the European Defence Agency (EDA), similar to Norway's. And it should agree arrangements with the EU to allow UK organisations to tender for EU projects within the defence fund and the next framework programme for research and innovation. Britain will also have to guarantee a degree of regulatory alignment with the EU's defence directives.
- ★ On space security, Britain will have to sign an agreement on satellite navigation co-operation and on access to Galileo's Public Regulated Service, as well as a bilateral agreement with the EU's Satellite Centre.
- ★ In the medium-term, it is likely that Brexit will encourage the EU to rethink its relations with third states: first, to ensure that the UK continues to play a full part in EU missions and operations; and second, because the discussion with Britain will reveal shortcomings in existing agreements.
- ★ While negotiations continue, Britain should signal its goodwill and its desire to remain involved in European defence architecture. While the UK is still a member-state, it is technically free to veto EU defence initiatives, but it should refrain from doing so.
- ★ Some in the EU fear that Britain will try to use its NATO membership against the EU. Within NATO, Britain should instead make it a priority to champion a close partnership between the alliance and the EU.

- ★ If the EU excludes the UK from the Union's defence infrastructure, it would not only lose British expertise and assets, but it would also potentially undermine the EU's own efforts. France's European Intervention Initiative already risks relegating the EU's flagship initiative, permanent structured co-operation (PESCO), to a sideshow.
- ★ If inter-governmental non-EU structures end up being the only way for the EU to co-operate with UK defence firms on capability projects, the usefulness of the defence fund too will be called into question. EU defence structures need UK involvement to be credible.
- ★ The EU should not base its offer of a future defence relationship on Britain's history of obstructing EU defence initiatives. Theresa May and her government have, since Brexit, repeatedly stated their commitment to European defence. The EU should take them at their word.

As Britain and the EU have wrangled over Britain's departure from the EU and its future relations with the Union, the main focus has been on trade and economic relations. That makes sense: the EU is by far the UK's largest trading partner; and after Brexit, the UK is likely to be the EU's second largest trading partner. But there has been far less discussion of the other areas in which EU member-states work together, and how the UK might be able to co-operate with them in the future.

In the trade and economic area, the UK will be both an important market for some member-states and a competitor with them for business in third countries. In non-economic areas, however, there are likely to be many areas in which both sides will want to preserve as much as possible of the existing patterns of co-operation. If law enforcement co-operation breaks down, the only people to benefit will be criminals. If defence co-operation fails, the EU will lose access to the resources of Europe's strongest military power. If UK and EU foreign policies diverge, both parties will find they have less influence over events.

The European Council's April 2017 negotiating guidelines for the withdrawal process implicitly show that co-operation will be easier on issues other than trade: of 28 paragraphs, only one makes brief reference to possible partnerships in "the fight against terrorism and international crime, as well as security, defence and foreign policy".

Despite their common interests, however, in practice the EU and UK will not find it easy to maintain the current level of integration and co-operation after Brexit. The EU is a rules-based institution, and the rules are designed with the interests of member-states in mind, not those of third countries. For the UK, the most important Brexit slogan was 'Take back control!'. Even if UK foreign policy objectives almost always correspond with those of the rest of the EU, and will still do so after Brexit, the UK will not want to simply accept policies decided by the EU-27. At the same time, in its negotiating guidelines the EU listed "autonomy as regards its decision-making" as a core

principle: the UK will not get a veto over decisions relating to foreign policy, defence or security issues, any more than it will over internal market decisions.

With this in mind, the Centre for European Reform and the Konrad Adenauer Stiftung began work in 2017 on a series of workshops and publications to explore existing models of co-operation between the EU and like-minded non-members, such as Canada, Norway and the United States. These cover three areas: foreign and development policy, defence, and police and judicial co-operation. The aim was to see what the advantages and disadvantages of each model were for each side, and what lessons the UK might learn from the experience of others.

The first policy brief, which looks at co-operation on foreign policy and on development policy, has already been published.¹ This second policy brief examines co-operation on defence policy and on research, development and procurement of defence capabilities. It starts by assessing the legal framework of the EU's Common Security and Defence Policy and defence industrial policy. Then it examines what the British government has said about its future relations with the EU in defence, as well as what the EU is saying, publicly and privately, about the sort of defence policy relationship it wants with the UK. The brief considers the legal and political frameworks of relations between the EU and third countries in the area of defence. It points out the overlap between defence arrangements and the future economic relationship. And it tries to draw some conclusions about realistic aims for the UK, including during any transition period.

1: Ian Bond, 'Plugging in the British: Foreign policy', CER policy brief, March 2018.

If all goes according to plan, the EU and UK will finalise the withdrawal agreement by around October 2018; in parallel with this process they will agree on the framework for their future relationship. Once the UK formally leaves the EU on March 29th 2019, there will be a transition period of 21 months (unless the parties agree to extend it), during which the details of the long-term EU-UK relationship are supposed to be negotiated

and ideally ratified. The defence industrial relationship is closely interlinked with whatever arrangements the EU and UK reach on their future trade and economic relationship – whether a customs union, a free trade agreement or something else. It should be possible, however, for at least some of the defence policy aspects of the future relationship to be pinned down more quickly, in a range of separate EU-UK agreements.

Common Security and Defence Policy: The treaty provisions

The EU's Common Security and Defence policy (CSDP) provides the framework for military operations and civilian missions conducted in support of the overarching EU Common Foreign and Security Policy (CFSP). Title V of the Treaty on European Union covers both CFSP and CSDP. The 2009 Lisbon Treaty confirmed the EU's commitment to progressively build a common defence policy, while respecting member-states' military competences as well as their commitments to NATO.

Common defence policy is conducted on a largely inter-governmental basis. The European Council and the Council of Ministers take decisions relating to the CSDP by unanimity. The EU's High Representative for Foreign Affairs and Security Policy, Federica Mogherini, represents the EU institutions in CSDP discussions, chairing the Foreign Affairs Council and acting as the head of the European Defence Agency (EDA), which supports member-states that want to develop capabilities together.

“Over the last two years, the European Commission and the EEAS have taken a greater interest in EU defence.”

From its inception CSDP has been a paper tiger. The UK and other pro-NATO EU member-states viewed it with suspicion, fearing that France and others might use it to undermine or supplant NATO's role in the defence of Europe. Because of mistrust and protectionism, defence procurement has remained a bastion of national sovereignty, largely immune to the disciplines of the EU's internal market. Over the last two years, however, the European Commission and the European External Action Service (EEAS, the EU's diplomatic arm) have taken more interest in EU defence. The EEAS wants to create effective structures to plan and execute military operations and give the EU 'strategic autonomy' – the ability to deploy troops without the help of the United States. And the Commission is keen to build a strong European defence industrial base able to supply EU militaries.

What military structures does the EU have access to? The Union maintains 'battlegroups', rotating troop contingents from member-states, in theory ready to deploy at ten days' notice. On a rotational basis, two battlegroups are always on standby for a period of 6 months. Their deployment is subject to a unanimous decision by the Council. Though they have been fully operational since 2007, they have yet to be used. This is partly due the 'Athena' system of financing, which places the bulk of an operation's cost on the deploying countries.²

As part of the effort to strengthen its defence and crisis management capacity, in 2017 the EU set up its own permanent operational headquarters, or 'Military Planning and Conduct Capability' (MPCC). The MPCC is limited to actions in support of a host nation, like the EU training missions in the Central African Republic, Mali and Somalia. It is currently limited to a staff of 25, but is up for review and possible enlargement in 2018. For 'executive' EU operations (where EU forces operate independently of any host state, including on the high seas) the Union relies on national military headquarters (offered in advance by the UK, France, Germany, Greece and Italy) that can be made available on a case-by-case basis. Italy, for example, provides the headquarters for Operation Sophia, which tries to stop people-smuggling in the central Mediterranean. Alternatively the EU can resort to NATO structures through the so-called Berlin Plus agreements, which allow it to have access to the assets and capabilities of NATO members for an EU-led operation. This includes using NATO's Deputy Supreme Allied Commander Europe (DSACEUR) – a position traditionally held by the UK – as an operational commander.

The EU also launched permanent structured co-operation (PESCO) in 2017. PESCO is a political framework that aims to help high-performing EU countries develop military capabilities together and improve their ability to deploy them; it therefore has an operational and an industrial aspect to it. The EU launched PESCO at a Foreign Affairs Council meeting in December 2017, with a total of 25 member-states participating. The defence ministers of PESCO members are responsible for overall policy direction and decision-making within the framework:

²: The rules on contributions to Athena are set out in article 41.2 of the Treaty on the European Union. Member-states contribute an annual share based on their Gross National Income.

only PESCO members may vote, and decisions are taken by unanimity, except decisions regarding the suspension

of membership and entry of new members, which are taken by qualified majority.

European Defence Industrial Policy: Legal framework

EU member-states cannot take part in CSDP missions and operations without the necessary military equipment. The European Commission's defence industrial policy, which began in 2009, is intended to promote competition and innovation, support small and medium-sized enterprises, and provide a strong industrial base for CSDP. In 2009, the Commission issued two directives known as the EU's 'defence package'. One, on intra-EU transfers of defence-related products, aims to make it easier to move defence goods between states. The other, on defence and security procurement, aims to counter protectionism by requiring member-states to open procurement to foreign companies.

“The Commission's defence industrial policy is intended to provide a strong industrial base for CSDP.”

Until now, governments have not consistently complied with the defence package. Most major military equipment contracts are still awarded without an EU-wide tender. Governments have only applied the procurement directive's provisions to contracts that deal with maintenance and repair or facilities management. In 2018, however, the Commission has for the first time opened infringement procedures against Denmark, Italy, the Netherlands, Poland and Portugal, for breaches of the procurement directive. If these member-states repeatedly fail to comply, the Commission may decide to refer the matter to the European Court of Justice (ECJ).

In June 2017, the Commission launched a proposal for a new 'European Defence Fund' to be included in the EU's multiannual financial framework for the first time. Through the Defence Fund the Commission wants to incentivise member-states both to spend more money on defence capability research and development, and to spend more wisely, by working together. From 2020

the Commission wants to spend €500 million a year on defence research. To test the waters, before the fully-fledged fund is launched, the Commission plans to spend a total of €90 million over the next three years in a 'preparatory action'.

In addition to providing money for research, the Commission also wants to support joint capability development. If the member-states agree to the Commission's proposal, the Defence Fund will co-finance new military prototypes, paying 20 per cent of the member-states' costs in the development phase. The Commission wants to provide €500 million from 2019 for such co-financing, rising to €1 billion annually from 2020. Finally, in an effort to link the fund with other recent EU defence initiatives, the Commission is also offering countries that want to take part in PESCO an additional 10 per cent bonus on EU co-financing of joint capabilities.

The EDA helps the Commission to manage the European Defence Fund, and is in charge of the Capability Development Plan (CDP), which outlines priority capabilities that member-states have agreed to jointly invest in. The agency is governed by a steering board made up of national representatives. Defence ministers decide on the annual budget, the three year work programme, and the annual work plan, as well as new initiatives. Member-states, most prominently the UK, have long been reluctant to delegate real responsibility or funds to the EDA: its budget stayed frozen at €30.5 million from 2010-2015, and was only increased to €31 million in 2016 and 2017.

Lastly, in 2017 the EU launched the Co-ordinated Annual Review on Defence (CARD), designed to analyse member-states' implementation of the priorities identified in the CDP. The EDA, acting as the 'CARD secretariat', analyses member-states' planned defence budgets and procurement plans, in order to identify shortfalls and opportunities for collaboration.

EU space policy: Security implications

The Treaty of Lisbon made the EU responsible for some aspects of space policy, with the objective of promoting scientific and technical progress and industrial competitiveness. To achieve this, the EU co-operates with the European Space Agency (ESA). The ESA is an inter-governmental organisation with 22 members, including some non-EU countries. Its main mission is to advance Europe's space capability, through exploratory

programmes; to develop satellite-based technologies and services; and to promote European industries. Membership of the ESA is independent of the EU, but ESA projects are partly financed with EU funds.

The EU's space programmes have long been explicitly civilian, but the Commission's 2016 Space Strategy called for stronger alignment between civil and security space

activities, and the EU's Defence Action Plan includes a commitment to develop security and defence space programmes. Two satellite programmes, Copernicus, which provides Europe with earth observation data, and Galileo, Europe's global navigation system, can make especially important contributions to CSDP.

Copernicus contributes to the EU's defence by sending data to the European Union Satellite Centre (SatCen). The SatCen can then use the satellite imagery to analyse critical infrastructure or military capabilities, and can provide decision-makers with early warning of potential crises.

What does Britain want?

The UK government paper on the future defence partnership stresses shared values and shared threats, and sets out an ambition for close co-operation with the EU after Brexit.³ While the paper does not go into much detail, the few specifics that it does provide clearly indicate that the UK wants a closer defence relationship than the EU has with any other third country. Prime Minister Theresa May, in her speech at the Munich Security Conference in February 2018, confirmed the ambitions set out in the partnership paper, and alluded to some of the challenges Britain will face in negotiating its future partnership.⁴

“After Brexit, the UK can deploy with partners through NATO or new formats like France's European Intervention Initiative.”

In her speech, May said that the UK was open to making continued contributions to EU operations or missions. But the future partnership paper made clear that the UK would want to be involved in the detailed operational planning and the development of mandates as a precondition to contributing troops. It is worth noting that participation in CSDP missions and operations is not Britain's most urgent priority. The UK government is confident that it will be able to deploy with its European partners if a crisis develops, either through NATO, through a flexible 'coalition of the willing' or through a new format: France has recently proposed a European Intervention Initiative, a common intervention force which would enable European countries to better integrate their armed

Conceived as a competitor to the United States' GPS, Russia's GLONASS, and China's Beidou, Galileo was declared operational in 2016 and should be completed by 2020. While Galileo's basic services of positioning and timing information will be open to all, the EU is also developing the so-called Public Regulated Service (PRS), which is encrypted, and reserved for EU member-states' militaries and governments. PRS will use a range of different radio frequencies to broadcast encrypted signals, ensuring that service remains functional even if an adversary jams all other GPS and Galileo transmissions.

forces and act independently of NATO. While few details have been revealed so far, Paris has made clear that it intends to set up the force outside the EU's institutional structures, in part to increase its flexibility and speed, in part as a means of involving the UK in European military operations after Brexit.

More urgently, therefore, the UK government wants to find a way to participate in the EU Defence Fund, both in the research programme and in the capability development programme. It hopes the EU-27 will take an open and inclusive approach to British participation in European capability development.

Similarly, the UK wants to continue its role in the development of the Galileo and Copernicus programmes – Britain has been a main manufacturer of Galileo satellites. It also wants to have a continuing right to bid for contracts managed by the European Space Agency, as well as participate in Galileo's PRS programme.

In her speech in Munich, May signalled the UK's interest in agreeing distinct arrangements for defence policy co-operation that could be implemented during the transition period, so that some aspects of the UK-EU future defence partnership would already be effective from 2019. Though for most aspects of the UK's relationship with the EU, the transition period after formal withdrawal is scheduled to last until December 2020, in defence Britain wants to keep the period as short as possible, because in a crisis the UK would be bound by the EU defence policy *acquis* but would have no voting rights.

3: 'Foreign policy, defence and development - a future partnership paper', Department for Exiting the European Union, September 2017.

4: 'PM speech at Munich Security Conference: February 17th 2018', Prime Minister's Office, February 2018.

What will the EU offer?

The Commission's objectives in negotiating the future defence relationship with the UK are fairly clear.⁵ They are to ensure that there will be no security vacuum in Europe after Britain's withdrawal; to make sure that bilateral defence and security co-operation between the UK and EU member-states is not put at risk; to prevent Brexit from having any impact on the EU-NATO strategic partnership; and to achieve an unconditional UK commitment to maintaining European security, even after Brexit.

“The Commission's objectives in negotiating the future defence relationship with the UK are fairly clear.”

At the same time, the EU wants to safeguard some core principles: protecting the autonomy of its decision-making process; making sure that a non-member of the Union cannot have the same benefits as a member; and following on from that, ensuring that the settlement with the UK does not disturb defence relationships with other third countries. That means that the Union has to take into account existing frameworks for co-operation with third countries, and make sure that there are no obvious losers. (Norway and other third countries are already fretting about the possibility that Britain might be given more rights than they have, or that fall-out from the highly political Brexit negotiation process might negatively affect the rights they have secured for themselves over the years.) From these objectives one can deduce the EU's interests in relation to British participation in CSDP missions and operations, capability development, and space security.

On CSDP, the EU wants to be able to plan and conduct missions and operations autonomously. After Brexit,

Britain will not be able to participate in the decision-making or governance of any EU “bodies, offices and agencies”, participate in any expert groups, or take a lead role in any EU-funded organisation. Britain cannot therefore be given a vote or a veto over the decision to launch a mission or operation; that means that there can be no question of the UK retaining its seat on the PSC in some way. The EU's insistence on its own decision-making autonomy also means that, as a third country, the UK will no longer be able to take command of EU-led operations or lead an EU battlegroup. The Commission wants the UK to give up command of the EU's counter-piracy operation Atalanta, currently headquartered in Northwood, outside London. And it has asked the UK to give up its lead nation status for the EU battlegroups in the second half of 2019. The Commission also wants the UK to transfer responsibility for the command of Operation Althea – a joint NATO-EU operation that protects the Bosnian peace agreements and provides capacity-building and training to the armed forces of Bosnia and Herzegovina – which is led by NATO's DSACEUR.

On capability development, the EU has acknowledged its desire to benefit from the UK's expertise. But it has also made clear that the UK will not be able to access EU funds in the same way as member-states. Thus Britain cannot be a fully-fledged member of the Defence Fund, nor a full member of the European Defence Agency. The UK can also no longer host sensitive facilities on British territory.⁶ This has effects on collaboration in space security. The EU has already initiated the move of a Galileo back-up centre from Southampton to Spain. The Commission has also made clear that Brexit will have an impact on the UK's ability to participate in Galileo's PRS programme, because of concerns over third country access to classified information.

Current third country agreements: CSDP missions and operations

To understand how third countries currently plug into CSDP it is useful to unpack the process of planning and launching EU missions and operations. First, member-states' foreign ministers, meeting in the Foreign Affairs Council, take the unanimous decision to launch a mission, and agree on its aims and objectives. Either a framework nation then provides an operational headquarters for operations with an executive mandate, like Operation Sophia in the Central Mediterranean; or the MPCC acts as the headquarters for training missions, like those in Mali, Somalia and Central African Republic. Once a headquarters has been found, its staff draw up more detailed plans for the operation. Then the formal

'force generation process' begins, in which member-states volunteer the assets and personnel required for the operation.

Once planning and force generation are completed, the Council formally 'launches' the operation, and places it under the political control and strategic direction of the member-states' EU ambassadors in the Political and Security Committee (PSC). Alternatively, the Council can hand over the planning and command of an operation to a group of willing and able member-states in the PESCO framework, in the hope of creating greater flexibility and speeding up reaction time.

5: They were first set out in a November 2017 speech by the Commission's Brexit negotiator, Michel Barnier. The January 2018 'Slides on security, defence and foreign policy' of Barnier's Task Force 50 negotiation team on the future defence policy relationship went into further detail.

6: Transitional Arrangements in the Withdrawal Agreement', European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU, February 2018.

Non-EU member-states have taken part in almost all CSDP operations and missions. They contribute to EU crisis management operations on the basis of so-called Framework Participation Agreements (FPAs), which can be signed for a specific mission or operation, or cover all of them. EU battlegroups may also include non-EU countries, as is the case in the Nordic Battlegroup, which comprises six member-states plus Norway. Troop-contributing countries have the same rights and obligations in terms of day-to-day management of the operation as EU member-states.

But one principle of FPAs is that the contribution of third countries to CSDP operations should be without prejudice to the decision-making autonomy of the Union. This means that third countries are not involved in the drafting of detailed plans for the operation, and they do not participate in force generation meetings. Only once the operational planning has been completed does the Council decide whether it will invite particular third countries to join a mission or operation, and they are only given full access to EU information once their participation has been accepted by the PSC. Third countries do not have representatives at the PSC. Meetings between the PSC and third countries sometimes take place, but the latter do not get to influence the agenda, and the discussions are often more cordial than substantial.

If a third country is invited to participate, and decides to join an operation, the EU military staff committee can

set up force generation meetings, where countries offer up troops to be deployed. Third countries exercise some oversight over how operations are conducted through the so-called committee of contributors, but they hardly play any role in the planning that happens before the operation begins. In exchange, third countries only assume the costs associated with their participation, not contributing to the commonly funded costs. Third countries do not provide operation headquarters, and they cannot be a lead nation, or take on the post of the operation commander, or any of the other high positions. Once a third country has joined a mission, however, it can send officers to work in the mission's operational headquarters and thus gain some insights into the conduct of the operation.

As laid out above, non-EU NATO member-states can participate in CSDP missions through the so-called Berlin Plus agreements. For example, Turkey provided troops to the EUFOR Althea operation. Because the operation was commanded at a strategic level from NATO's headquarters, Turkey had access to operational planning processes. Berlin Plus, however, has only been used for two EU operations – Operation Concordia in the Former Yugoslav Republic of Macedonia, which took place in 2003, and EUFOR Althea, which replaced NATO's operation in Bosnia in 2004. Political disagreements, and in particular the conflict between Cyprus and Turkey, have prevented the EU from making full use of NATO's resources.

Current third country agreements: Capability development

Despite its limited budget and powers, the EDA has been in charge of EU co-operation in research, development and procurement, and thus matters to third countries wanting to participate. The EDA has signed 'Administrative Arrangements' with Norway, Switzerland, Serbia and Ukraine. These agreements establish procedures for the exchange of information, and give third countries the opportunity to present their views on the EDA's activities. They also allow for participation in the EDA's projects and programmes, albeit without strategic decision-making power – third countries can participate in discussions but not decisions.

“Things will get more complicated with the Defence Fund, no arrangements currently exist for third countries to participate.”

In the future, PESCO members may decide to invite third countries to participate in operations and projects if they

provide “substantial added value”, with the understanding that they have no decision-making powers in the governance of PESCO. Third countries will also be able to strike agreements to participate in the CARD mechanism through a deal with the EDA.

Things will get more complicated for third countries with the Defence Fund, however. No arrangements currently exist for third countries to participate in the Defence Fund's programme to support capability development. The EU has proposed a regulation to clarify who may be eligible to benefit from the 20 per cent co-funding of military prototypes; the principle is that a capability project should involve the co-operation of at least three businesses, which are established in at least two member-states. The regulation specifies that only defence firms that are established on EU territory and controlled by member-states or their nationals should be eligible for support.⁷ That does not necessarily exclude co-operation with third-country firms, as long as they do not benefit from the fund's resources, and as long as their involvement does not put at risk the EU's essential security interests.

7: 'Proposal for a regulation: European Defence Fund and EU Defence Industrial Development', Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs Programme, June 2017.

8: 'Annual report on the implementation of the Common Security and Defence Policy', European Parliament, December 2017.

Third countries can negotiate associate country status with the EU's (civilian) research programmes. They pay a contribution based on their GDP in exchange for having the opportunity to participate in the EU's research projects; 16 third countries have signed associated country agreements with Horizon 2020, the EU's current framework programme for research and innovation. For now, Norway is the only third country that participates in the EU's preparatory action on defence research (Norway contributed €585,000 for 2017).⁸ It matters in this context that Norway has implemented the EU's defence directives. As a member of the European Economic Area, Norway is integrated into the European market, and accepts the authority of the EFTA court, which monitors compliance with the directives. That means that an EU company could take the Norwegian government to court if it sought to protect its defence sector illegally.

Third countries participate in Galileo and Copernicus through bilateral agreements. Non-EU NATO states can receive intelligence from the SatCen and be involved in the centre's activities (they can send national image analysts to SatCen, for example). However, currently no non-EU country has concluded an agreement to access the PRS service. Both the Norwegian government and the United States Defence Department have said that they would like access to the encrypted PRS programme, and have entered negotiations with the EU. In order to get access to PRS, third states would have to conclude a security of information agreement. Each nation using PRS, whether a EU or a third country, would also have to create a specialised agency responsible for its use, and allow the Commission access to inspect agencies and companies working with PRS, in order to guarantee compliance with security safeguards.

Assessment of the existing third country agreements and relationships

Almost all CSDP missions and operations are supported by non-EU members. But the process of plugging in third countries is not perfect – institutional red lines and political pitfalls mean that the EU often fails to make good use of third country co-operation.

The family of third countries that have signed Framework Participation Agreements with the EU is very diverse. It ranges from traditional Western allies and members of NATO, like Norway, the US or Canada; to third countries where CSDP missions or operations have been deployed, such as Georgia, Ukraine or the former Yugoslav Republic of Macedonia; to 'like-minded' partner countries around the globe, like New Zealand, Australia or South Korea.

“A concern for third countries is that European ambitions for industrial autonomy could turn into European protectionism.”

As a consequence, the Council invitation for third countries to join missions and operations is not automatic, and is sometimes controversial. On the one hand, the EU benefits from the capabilities third countries can provide, and from the political symbolism of a non-EU power supporting and contributing to a CSDP mission, as was the case when the US contributed to the EU's Kosovo missions. But on the other hand, EU member-states sometimes want to avoid political association with a third country, however willing it may be to help. At the 1999 Helsinki European Council, Norway asked for a closer relationship with CSDP, with guaranteed participation

in meetings, access to all relevant information and the right to speak and make proposals. But Greece and other member-states were unwilling to offer similar rights to Turkey – because of the Cyprus conflict, and rule of law issues – and rejected the Norwegian demands for more access as a consequence.

Because of their very limited influence over the planning of CSDP missions and operations, third countries sometimes decide that they do not want to participate even when they are invited.⁹ Some have drawn different conclusions: the US has an FPA with the EU stipulating that it will only contribute to civilian CSDP missions, because it insists on its troops operating under US command and control. Others who do contribute rely on their EU partners acting outside official channels. Norway's participation in the EU's Nordic battlegroup is in reality only possible because Sweden, as the battlegroup's framework nation, makes sure that Norway gets the information necessary to decide whether or not to participate in an operation in time.

The Defence Fund in particular holds a new set of challenges for third countries, because so many uncertainties currently exist. If they were to negotiate an access agreement now, third states would have to trust that the fund would be a part of the next MFF. And that EU member-states would use the Commission's incentives to invest in significant capability projects that would at the same time be attractive to the defence industries of third countries. They would also have to trust the EU to award these contracts purely on competitive bidding between EU member-states and third countries, which is not necessarily a given.

8: 'Annual report on the implementation of the Common Security and Defence Policy', European Parliament, December 2017.

9: 'Brexit: Common Security and Defence Policy (CSDP) missions inquiry', House of Lords EU External Affairs Sub-Committee, January 2018.

The Defence Fund was conceived by the EU as one of the tools to implement the EU Global Strategy, which outlined the ambition of 'strategic autonomy' for the Union. The industrial dimension of strategic autonomy entails establishing a European defence industrial base that can produce all the equipment that the EU requires to deploy autonomously in operations. The concern for third countries is that European ambitions for industrial autonomy could turn into European protectionism, shutting out third countries that want to contribute, even if that means missing out on their industrial expertise.

Norway for example paid to participate in the EU's preparatory action for defence research, bid for contracts, and was awarded none. The government in Oslo is now looking at whether this was due to discrimination, or because Norwegian firms were not the most qualified contenders. Despite the fact that

it will not leave the single market until the end of 2020, Britain is already concerned that the EU may be prioritising the industrial interests of other member-states. A British company has been the contractor for Galileo's electronics in previous years; but ahead of the next round of contracts the EU has introduced a break clause. This will give it the right to cancel existing Galileo deals without penalty once a supplier is no longer based in an EU member-state. In effect, this will prevent UK companies from bidding even while the UK is still an EU member. The EU argues that the UK as a third country cannot be granted access to sensitive EU-only information; the UK suspects that other member-states want to grab the business. This particular conflict can over time be solved through an information-sharing agreement, and UK security guarantees to protect sensitive EU information. But it also shows that fall-out from post-Brexit industrial competition can impact broader security discussions.

What sort of relationship should the UK try to get?

The EU's increased efforts on defence are not primarily motivated by the Brexit vote. But Britain's decision to leave the EU has contributed to them in two ways: it has opened up areas of institutional co-operation that Britain would previously have vetoed, and it has boosted member-states' political will to prove the EU's credibility as a defence actor.

“The UK should negotiate tailored agreements in the defence sphere, and an overarching security of information agreement.”

This development puts Britain in a difficult position: the more institutionalised EU defence becomes, the less flexible it will be, and the more difficult for a third country to plug into after Brexit. In addition, it is challenging for the UK to negotiate a deal right now, when the EU has yet to determine the conditions for third party involvement in the new initiatives that the Union is developing – even if these later turn out to offer Britain opportunities. And while Britain will undeniably occupy a 'special' role in EU defence as a third country – because of its considerable military abilities and defence industrial expertise, and because of the close links already established with its European partners – it has also had a complicated relationship with CSDP ever since it was initiated, and has previously undermined some of the Union's efforts in this area.

For its part, the EU struggles with the idea that it should discriminate between different third countries. Granting a 'special' partnership to the UK on defence and security could set a precedent that other third countries might want to follow. This could put the EU in a difficult position,

in particular with regard to Turkey, which has contributed large numbers of troops to CSDP operations in the past. The idea of 'differentiation', which entails making sure that a non-EU member-state does not have more rights and fewer obligations than a member ('no better out than in'), also poses a challenge for the EU in the field of CSDP. EU defence policy comes with very few obligations, even for member-states. Even PESCO, which the EU initially designed to be more binding, in its current form has few mechanisms to hold members to account if they do not fulfil their obligations. What then can be the obligations for third countries? How can the EU make sure that the UK and others do not just pick and choose from the menu of EU defence options?

These problems mean that the EU is uncomfortable with the idea of a 'pay-for-play' opt-in for the UK, whereby Britain provides cash, troops, or kit and in return can choose which operations and capability projects it participates in. And some in Brussels are reluctant to do the UK any special favours – they remember that in previous years Britain blocked EU defence initiatives that London perceived might duplicate NATO's role.

How can the tension between the UK's demand for a 'special' relationship and the EU's reluctance to change the rules for Britain be solved? The first priority should be to negotiate a range of different tailored agreements in the defence sphere, together with an overarching security of information agreement. In the medium-to-long term Brexit may boost the EU's political will to reform some of the mechanisms of third country co-operation – or so, at least, some EU defence insiders hope. The following sections outline the deals that the EU and the UK should strike, as well as some of the reforms the EU should pursue.

CSDP missions and operations

In its partnership paper, the UK government aims for an “ambitious” partnership with the EU that would allow the UK to “work with the EU during mandate development and detailed operational planning.” This request goes beyond any of the current arrangements the EU has with third countries that want to participate in EU missions and operations.

“Brexit will encourage reform, but the EEAS wants to maintain its ability to discriminate against whomever, whenever.”

The EU has an interest in keeping the UK involved in missions and operations. Despite the fact that in previous years the UK has contributed limited numbers of personnel to CSDP missions and operations, Britain remains one of few EU member-states capable of providing military assets that can fulfil specialist functions, such as strategic airlift, intelligence, surveillance and reconnaissance. And the UK’s permanent seat on the UN Security Council is of value to the EU, since many member-states will not engage in a CSDP operation without a UN mandate, and Britain can help shepherd EU requests through the Security Council.

The UK and the EU will have to negotiate a framework participation agreement to specify the arrangements under which the UK can supply troops to CSDP missions and operations. While Britain will not be given any formal voting rights, the specifics of the agreement should account for the UK’s special status as an outgoing member-state. Britain could negotiate an agreement whereby a substantial commitment of troops or assets would guarantee close consultation as well as information sharing in the early stages of CSDP operational planning. It could ask for a right to informal meetings with EU ambassadors on the same day as PSC meetings, and regular meetings between the UK and the Committee of Permanent Representatives (Coreper). As the Council’s main preparatory body, Coreper examines all defence-related items to be included on the Council’s agenda, and the chance to feed into its discussions would be valuable to the UK.

To sweeten the deal for the EU, and to formalise its own special status, the UK could also offer to continue to pay into Athena’s common cost distribution mechanism, even as a third country. And the UK should strike a third country agreement to participate in the EU’s battlegroups, while accepting that it will be required to withdraw from its lead nation status.

¹⁰ Angus Lapsley, ‘Brexit: Common Security and Defence Policy (CSDP) missions’, House of Lords Select Committee on the European Union External Affairs Sub-Committee, corrected oral evidence, January 2018.

The UK and the EU should also arrange personnel exchanges, so that EEAS officials spend time in UK ministries and vice versa. Investment in a regular and institutionalised staff-to-staff exchange would automatically lead to more intimacy of contact and more intense consultation and discussions.

In the medium term, it is likely that Brexit will encourage the EU to rethink its relations with third countries: first, to ensure that the UK continues to play a full part in EU missions and operations; and second, because the discussion with Britain will show up anomalies and shortcomings in existing agreements. The EEAS has already set in motion a process to review how it engages with third countries in the defence field.

A clear challenge for the EU will be to differentiate between the diverse family of third countries without overtly discriminating against any of them. While the EEAS could design a formal method of grouping partner countries – similar to NATO’s special partnerships with countries across the globe – that raises the difficult question of the criteria for distinguishing between partners. Should third countries be granted access to the EU’s planning processes according to their level of commitment to CSDP missions? Should it be according to their proximity to the EU’s interests and values? While logically the innermost circle of third countries would be non-EU NATO countries, that would immediately raise the political problem of relations with Turkey, which has long bedevilled EU-NATO co-operation. The EEAS may prefer not to formalise any distinction between potential CSDP partners, and instead maintain its ability to discriminate against whomever, whenever.

Even if the EU does not change its approach radically, that does not rule out less dramatic but still useful reforms of existing ways of dealing with third countries. For example, member-states tend not to send senior officials to meetings with third countries that contribute troops. However, when the committee of contributors was first set up, the intention was to give these countries the opportunity to provide guidance on how operations should be conducted.¹⁰ The committee could and should be given this role once more. The EEAS and the High Representative might also look at increasing the frequency of bilateral meetings with the defence ministers of third countries. Bilateral meetings would increase the value of discussion for both sides, and at the same time make it easier for the EU to differentiate between partners. Britain can encourage these reform efforts, but not force them – in fact, too much British involvement, and any sense that the EEAS is ‘tailoring’ its new arrangements to the UK, might be counterproductive.

Research, development and procurement of defence capabilities

Two issues matter to Britain's defence industry. First, UK defence firms that rely on international supply chains would like barrier-free market access and easy migration for skilled workers. Second, they would like the continued ability to take part in big European defence contracts: the UK has worked with European defence partners on existing multinational programmes, such as the Eurofighter Typhoon or the A400M transport aircraft. While participation in many of these multinational programmes has in the past not been dependent on EU membership, that could change with the money made available by the Defence Fund. Britain is concerned about the possibility that it might be excluded from new multilateral capability development projects that benefit from extra funding from EU institutions.

Around 40 per cent of Europe's total defence R&D expenditure comes from Britain, and the EU should be interested in keeping the UK's highly sophisticated defence industry involved in future projects. However, some European governments also see an economic opportunity in Britain leaving.

“The UK will have to guarantee a degree of regulatory alignment with the EU's defence directives.”

To enable Britain to participate in the European defence market in the future, the EU and the UK will need to strike several agreements.

The UK should seek an administrative agreement with the EDA, similar to the one Norway has. It would not have voting or veto rights, but could contribute to EDA projects and attend some committee meetings. Britain could also continue to participate in ongoing projects to which it is already an important contributor, such as the agency's efforts to improve governmental satellite communication. The UK already participates in a trial-run of CARD, and should strike an agreement with the EDA

that will allow it to continue to be a part of it once the mechanism is fully operational.

Britain should negotiate a third-country co-operation agreement for the Defence Fund. Some in the Commission question whether the EDA has the resources to handle the influx of new money from the fund; or they do not want the Commission's role restricted to supporting defence capability projects identified in the agency-led Capability Development Plan. So while the EDA will manage the projects supported by the Defence Fund, the UK also needs to make a deal with the Commission. The Commission will probably ask for a substantial financial contribution for access to the fund, instead of allowing a 'pay-for-play' arrangement, where third countries pay to participate in certain projects. In order to access money from EU-funded research programmes after Brexit, the UK should apply for 'associated country status'. This would allow British organisations to tender for EU funding, in exchange for regular payments of a small share of GDP.

For this arrangement to work, the UK will have to guarantee a degree of regulatory alignment with the EU's defence directives. Though the UK has in the past made more use than other member-states of the EU defence directives' procedures, the Commission is concerned that future British governments would want to implement a more flexible regime to benefit domestic industries.¹¹ The EU will require some arbitration mechanism to ensure British compliance, as a precondition for UK firms to continue to be involved in EU capability development projects.

In order to continue to be able to access Galileo's PRS, in addition to an agreement on information sharing Britain will also have to sign an agreement on satellite navigation co-operation. It will also have to prove to the EU that it fulfils a number of minimum security standards. Similarly, on space security, Britain should sign a bilateral agreement with the EU's Satellite Centre, as well as sending its own national image analysts to the centre, in order to have continued access to its analysis in the future.

Transition

Security and defence policy is part of the EU acquis, and during the transition, the acquis, including all existing Union regulations, will apply to Britain. That means that Britain can no longer participate in the EU institutions, nor in the decision-making of Union bodies. Britain can, however, be invited to committee meetings on an

exceptional and case-by-case basis, though it will have no voting rights.

The UK can continue to contribute personnel and assets to CSDP missions and operations, if it chooses to. It will still contribute to the financing of CSDP common costs through

¹¹: European Parliament, 'Study on the impact of the 'defence package' directives on European defence', 2015.

the Athena mechanism. And it will in principle be bound by EU Council decisions, though the draft withdrawal treaty states that the UK “may make a formal declaration to the High Representative of the Union for Foreign Affairs and Security Policy, indicating that, for vital and stated reasons of national policy” it will not apply a decision. It would therefore be reasonable to design a specific consultation mechanism between the UK and the EU that would allow the UK to follow the EU’s decision-making processes closely, ideally minimising the likelihood that the UK will decide not to implement a CFSP or CSDP decision. UK defence firms will still be eligible to bid for EU-supported projects unless there is a need to exclude them for security-related reasons, for example if a project involves dealing with sensitive information and Britain and the EU have not yet struck an information-sharing agreement.

“Many aspects of the future defence relationship are heavily dependent on British access to the internal market.”

Both the EU and the UK have expressed an interest in agreeing on a post-Brexit defence relationship as soon as possible, so as to avoid Britain falling out of European defence co-operation during the transition. But because many aspects of the future defence relationship are heavily dependent on subsequent decisions on British access to the internal market, an early deal on defence industrial co-operation is unlikely.

Conclusion

Even though the UK initially set up EU defence policy, CSDP has not been a priority for British governments for years. Other member-states, meanwhile, have often been happy to support EU defence rhetorically, while cutting defence budgets and concentrating their spending on national priorities. The irony of current EU debates on defence is twofold: first, the EU is starting to get more serious about financing defence industrial co-operation, and thus be potentially more interesting to London, just as the UK is on its way out. Second, Britain cannot afford to lose the EU’s goodwill in other areas of Brexit negotiations over defence and so finds itself giving at least a tacit blessing to new initiatives, some of which it would have previously blocked.

Being plugged into CSDP operations matters to Britain less because of their operational value, and more because the UK has a clear interest in influencing the EU’s strategic direction, regional orientation and level of ambition, and in preventing EU-NATO duplication. In order to be able to remain part of the EU’s CSDP debate, however, Britain will have to demonstrate its commitment to CSDP missions and operations. Any Brussels-London deal providing

The Draft Withdrawal Agreement allows for a CSDP agreement to be implemented during the transition period, without waiting for finalisation of the post-2020 relationship. But that is limited to activities covered by Title V of the Treaty on European Union. Agreements on UK participation in the EU’s satellite programmes, or on access to the defence fund, would fall outside any CSDP deal. Therefore, the more the British government wants to include in an agreement on defence, the less likely it is that there will be an early agreement.

While negotiations are ongoing, Britain signals its goodwill and its desire to remain involved in European defence architecture. The main issue is the use of the UK veto. While Britain is still a member-state, it is technically free to veto EU defence initiatives, but it should refrain from doing so. A forthcoming review of the EU’s new operational headquarters will be a critical test case. Britain has traditionally vetoed EU efforts to develop its own command structures. Should the EU now seek to improve and extend the new structure, many will pay close attention to whether the UK delays EU efforts on its way out. Some in the EU also fear that the UK will try to use its position in NATO to undermine the EU’s efforts in defence operations and capability development. The two organisations have in recent years developed an exceptionally good working relationship, with NATO supporting the EU’s attempts to raise its defence profile. Within NATO, Britain should make it a priority to champion close partnership between the alliance and the EU, and it should participate actively in joint EU-NATO initiatives.

for the UK to contribute troops will be judged by EU member-states and institutions according to the real benefit to EU defence in terms of quality and quantity.

Defence-industrial co-operation post-Brexit will depend on the economic relationship that the EU and the UK agree on, which renders the negotiations more complex. Two additional difficulties arise. First, how to future-proof arrangements? EU initiatives like the Defence Fund are currently being developed, and it is still unclear what third country arrangements will be, or who in the EU will be negotiating these agreements. Second, there is still uncertainty over how successful the EU initiatives will be, and how much political and financial capital the UK should spend to be a part of them from the beginning.

Even if the UK and EU negotiating teams succeed in designing privileged arrangements with the EDA, with PESCO and the Defence Fund, the question will be how to sell these arrangements to a UK domestic audience. A common theme in all likely post-Brexit defence deals is that the UK will have to pay for access. At a time when defence budget cuts are highly likely, will the UK’s

defence secretary spend political capital to support investment in EU defence initiatives, when these are traditionally viewed with scepticism in the UK, and are as yet untested?

On the other side, if Brussels excludes the UK from the Union's defence infrastructure, it would not only lose British expertise and assets, but it would also potentially undermine the EU's own efforts. If France's European Intervention Initiative allowed the UK to take part in non-NATO European operations, but without having to accept any obligations to the EU, then that would risk leaving PESCO as a sideshow, without any significant operational capability. And if the only way to co-operate with UK defence firms on capability projects in the future would be through inter-governmental non-EU structures, the usefulness of the Defence Fund would be called into question. EU defence structures need UK involvement to be credible.

The EU should not base its offer of a future defence relationship on Britain's limited past contributions and frequent naysayer status. Rather, it should look ahead to the important difference a closely aligned UK defence partner could make to the effectiveness of EU defence efforts. Theresa May and her government have, since the referendum, repeatedly stated their commitment to European defence. The EU should take them at their word.

Sophia Besch

Research fellow, Centre for European Reform

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