

UK Review of the Balance of Competencies with the EU on Foreign Policy: Contribution of the Crown Dependencies

Legal and constitutional context

There are implications of EU competence on foreign policy for the UK's responsibilities towards its dependent territories, including for the Crown Dependencies of Jersey, Guernsey and the Isle of Man. The Crown Dependencies (CDs) are largely self-governing, with their own parliaments, tax and legal systems, but the UK retains ultimate responsibility for their international relations and defence.

Current state of EU competence regarding the Crown Dependencies

The CDs' relationship with the EU is enshrined (by virtue of what is now article 355(5)(c) TFEU) in Protocol 3 of the UK's accession treaty, the main provisions of which commit them to applying EU rules governing the customs union and the trade in goods and agricultural products. For other purposes they are treated as third countries, although they are closely integrated into the UK and EU policy and regulatory frameworks and have significant economic and cultural ties to the UK and other Member States.

The UK has ultimate responsibility for the international relations of the CDs, including in a number of areas where the EU exercises competence on behalf of, or jointly with, the UK but not on behalf of the CDs. For example in the area of investment policy, EU Free Trade Agreements are due to supersede the UK's own Bilateral Investment Treaties (BITs) with third countries, many of which have been extended to the territories of the CDs. The UK is currently in discussions with the European Commission about how it can continue to fulfil its obligations to represent the CDs and/or to facilitate the CDs' own negotiations of BITs with 3rd countries in their own right.

Crown Dependencies' interests related to EU action in the area of Foreign Policy

In broad terms, the CDs benefit from their ability, chiefly though not exclusively through the UK's membership of the EU, to contribute to and participate in the work of the EU as a global standard setter in a wide variety of fields, making an important contribution to their economic, welfare and security priorities in areas as diverse as data protection, food standards and mutual legal assistance.

More specifically on foreign policy, the CDs have voluntarily aligned themselves with EU rules in a number of areas of their domestic regulations and policies outside Protocol 3, including those with an international dimension such as the imposition of sanctions and asset freezes in support of EU foreign policy. The CDs also often mirror EU implementation of international standards via regulation, for example in the area of anti-money laundering and countering the financing of terrorism (AML-CFT).

In the area of international sanctions, the CDs recognise that an EU-level approach, both for the implementation of UN sanctions and for unilateral EU action, creates increased legal certainty and represents an important tool for effective international action. The CDs also highlight the benefits of EU-level recognition of third countries that match EU sanctions, as this improves the efficacy and predictability of the regime and sends a clear political signal to the targets of specific measures. The CDs also support greater EU-level co-ordination at a technical level in recognising third countries which meet EU standards on AML-CFT, where this can facilitate greater effectiveness in the prevention and detection of relevant criminality and enable a more robust, objective and risk-based approach to enforcement.