



HMG EU Balance of Competences:

Development Cooperation and Humanitarian Aid Report

Submission by researchers from the Overseas Development Institute¹

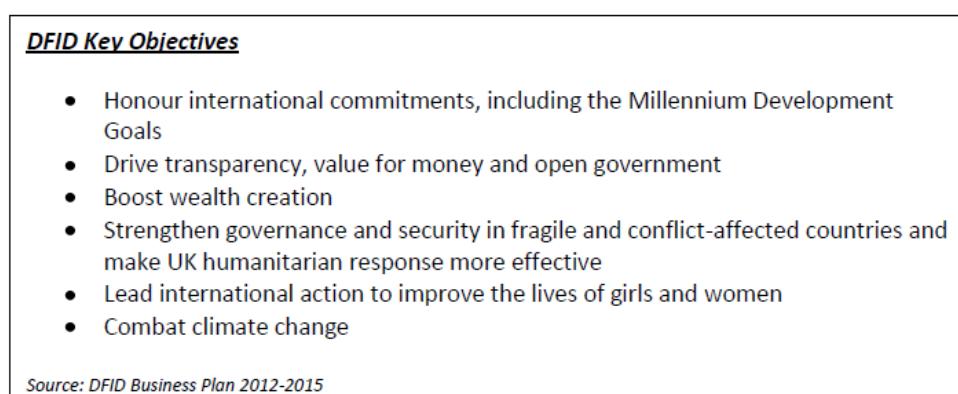
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1. The UK Government has launched a review of the Balance of Competences of the European Union (EU). In the first 'semester', autumn 2012 – summer 2013, the review will cover development and foreign policy. DFID has published a call for evidence on development cooperation and humanitarian aid, with a closing date of 1 March 2013. The review is not intended to cover performance, except insofar as it is relevant to competence.
2. The DFID call for evidence notes that the EU is the largest aid donor, and that 'through its policies on aid, trade, climate change and conflict the EU sets the global development agenda and provides a powerful platform from which to tackle global challenges and take collective action'. It also notes that many of the wider topics will be taken up in other parts of the overall review and sets boundaries on the scope of consultation.
3. The key points in this submission are:
 - i. The focus of a discussion about competences should be on the period after 2020. This is because treaty obligations and financial commitments extend to then;
 - ii. By 2020, the development agenda and HMG objectives are likely to have changed significantly, in ways that can be predicted, but without being definitive;
 - iii. On this timescale, the correct question to ask about the EU is not 'comparative advantage' but 'competitive advantage';
 - iv. The EU has some significant assets and advantages in development cooperation that suggest that the UK should continue to invest in the EU;
 - v. EU development cooperation has links to many other policy fields that invoke different parts of the Lisbon Treaty and different degrees of competence. Thus, any change in competence to these other policy areas will have an impact on development cooperation;

¹ The views presented in this paper are those of the authors and do not necessarily represent the views of ODI.

- vi. The current system of 'shared/parallel competence' in development cooperation, by which there are 27 Member State aid actors working independently of the EU as a separate development/humanitarian aid actor, has advantages, but a process of reflection is needed to find ways to optimise these strengths and minimise some of the disadvantages.
4. At the heart of the review is a straightforward question about the competences of the EU with regard to development cooperation and humanitarian aid. Should they be exclusive, shared or supporting – or none of the above? These questions are to be answered with respect to HMG's overarching objectives for development cooperation. The call for evidence does not specify HMG objectives, but states that DFID 'leads the Government's fight against global poverty' and gives DFID objectives for the period to 2015 reproduced in Box 1.

Figure 1: DFID's key objectives – 2012-2014



5. This immediately raises two questions for the review. First, the objectives cited run only to 2015. Will they change after 2015, for example if new global goals are agreed? Second, what is the timescale for the outcome of the review? The review itself is not expected to be completed until the end of 2014. There are existing agreements in place, with end dates that may shape the timing of any outcomes of the review. For example, the Cotonou Agreement between the EU and African, Caribbean and Pacific countries runs to 2020. The Multi-Annual Financial Framework and the replenishment of the EDF will both commit resources until 2020.

HMG's/DFID's objectives post-2020

6. DFID's objectives run only to 2015. Will they change after 2015, for example if new global goals are agreed? A discussion about the competences of the EU with regard to development cooperation and humanitarian aid needs to take into account what HMG's objectives might be in the period after 2020. This is inevitably speculative. However, there is an active debate about the future of development cooperation, which offers propositions that are likely to be shared across countries and governments. In brief, development cooperation after 2020 is likely to continue to focus on poverty reduction in the poorest countries, but with increasing prominence also to a new agenda of global public goods (including climate, security), international governance (for example, finance, trade), and new partnerships with emerging economies - on 'cross-Government support for shared human development objectives and the delivery of global public goods'. This shift has been described as 'same mission statement, new job description'.² Furthermore, the growth in the variety of providers of

² See Norton, A., and Rogerson, R. (2012) "Inclusive and sustainable development: challenges, opportunities, policies and partnerships" - <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7809.pdf> - and Kharas, H., and Rogerson, A. (2012) "Horizon 2025: creative destruction in the aid industry" - <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7723.pdf>

development assistance will help strengthen the negotiating power of recipients, making it more difficult for traditional bilateral donors to influence policy.³

The role of the EU in delivering HMG objectives

7. The second step in the argument is then to ask what role the EU might play in delivering new HMG objectives for development cooperation and humanitarian aid. It is not difficult to make the argument that multilateral action is required on a range of future development challenges. However, HMG has open to it a number of different multilateral channels for policy as well as aid disbursement, notably the UN and the multilateral development banks. The question then is about the advantages of the EU in relation to alternatives.
8. If resources have already been allocated, as is the case up to 2020, then an appropriate question is to ask about the optimal division of labour between DFID and the European Commission (EC). For example, DFID might specialise in some sectors or geographical destinations, the EC in others, in both cases within given resource envelopes. On the other hand, if resources have not been allocated, then the comparative advantage approach is not appropriate, and 'competitive advantage' may be a more appropriate paradigm – conceived of as less of a partnership and more of a sub-contracting arrangement. The EU's attractiveness to DFID then depends strongly on the assets it can bring to bear.
9. Practically speaking, the EU does indeed have some assets that come into play in managing development cooperation. These can be summarised as: a values-based approach and a commitment to poverty reduction enshrined in the Treaty; shared approaches in development policy through the European Consensus on Development and the EU Agenda for Change, as well as a promoter of development best-practice; wide geographic spread; joined-up engagement in multiple policies and through a full range of instruments; a variety of international political and economic partnerships, for example the Cotonou Partnership Agreement; economies of scale as the world's second largest provider of ODA; and ability to address global challenges and provide global public goods as a result of its size. In an increasingly multi-polar world it is reasonable to anticipate that the geopolitical advantages of the EU in terms of ability to influence global debates through political-economic mass will get more significant by 2020. Already there are developing countries (e.g. India) that wish to choose a small number of partners to work with (either in total or by sector). The advantages of being a member of a big club (with the option of acting separately) are likely to grow from a UK perspective.
10. Furthermore, the EU has exclusive competence for trade policy and is developing countries' largest trading partner⁴; and it has been at the forefront of regional integration and cooperation, with a focus on institution and capacity-building, infrastructure in terms of cross-border transport systems;
11. The EU is considered in some countries to be a more neutral development and humanitarian player than bilateral donors, some of which have particular interests or a particular history with a country or a region. This perception of neutrality may be particularly important for the UK when it wants to provide assistance in conflict-affected countries – or in parts of the world where the UK's historical engagement raises difficulty
12. Development cooperation has links to many other policy fields that invoke different parts of the Treaty and different degrees of EU competence. The EU has conceptualised development cooperation as involving or touching on policies such as: foreign and security policy; defence; trade; agriculture; environment; migration; fisheries; and many others. The formal Treaty-based competence of the EU is different across these policies, with some (for example, trade and fisheries) being exclusive and others being shared. Any change in competence in any of these policy areas will inevitably have an impact on development cooperation. Engagement with the EU on development aid thus offers the potential for the UK to achieve development cooperation goals through policy changes in other areas in policy areas where the EU has competence.

³ See Greenhill et. al. (2013) "The age of choice: developing countries in the new aid landscape" - <http://www.odi.org.uk/publications/7163-age-choice-developing-countries-new-aid-landscape>

⁴ Cali, M., and te Velde, D. W. (2009) "Does Aid for Trade Really Improve Trade Performance?" http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1430492.

13. One advantage of DFID funding the EU is said to be that it helps create a mechanism that encourages other Member States to provide funds through the EU, and that this raises both the quantity and the average quality of EU aid. For example, new Member States are bound by the 'acquis communautaire' of the EU, which states that:

*"In the area of humanitarian aid and development policy, Member States need to comply with EU legislation and international commitments and ensure the capacity to participate in the EU's development and humanitarian policies. Applicant countries are required to progressively align its policies towards third countries and its positions within international organisations with the policies and positions adopted by the Union and its Member States."*⁵

14. The EU also provides a potential vehicle for improving the effectiveness of aid provided by other Member States. It could provide a neutral leadership in creating platforms for establishing increased coordination, shared analysis and for developing joint strategies, and this leadership is perceived as non-threatening to the interests or autonomy of Member States because the principle of parallel competencies only permits the voluntary acceptance of each Member State of any common analysis or strategy. This potential has not always been fully exploited.
15. The UN, the multilateral development banks and the EU have very different mandates and roles. The UN has the political role, but not the capacity to disburse on the scale or with the variety of instruments available to the EU. The World Bank and the other multilateral development banks have the financial resources, but not the voice on trade, nor the role in foreign and security policy. The banks have not engaged in humanitarian crises. The EU potentially has greater flexibility than other multilateral agencies, including the UN, to provide aid directly to non-state institutions. This is particularly important in conflict-affected countries where the government is perceived to be an active player in the conflict.
16. Where DFID can work with other Member States through the EU as a common aid partner, the coordination burden for recipient countries is reduced. This is particularly important in the context of emergency relief where coordination has proved most difficult.

EU competences in development cooperation

17. At present, EU competence governing development cooperation and humanitarian aid is characterised as a special form of 'shared competence' called 'parallel competence'. The Treaty states: *"In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs."*⁶ Specifically, the EU may undertake activities and conduct common policy, but not prevent Member States from exercising competence of their own in these areas.
18. Figure 2 illustrates the different governance models across issue areas. EU positions are decided on within the Council of Ministers, comprised of representatives of the Member States. Since the Lisbon Treaty entered into force, the Foreign Affairs Council has been presided over by the EU's High Representative, who represents the EU on foreign and security policy externally, while the President of the European Council takes over when discussions take place at the highest political level. For other issues, the EC is usually in the lead when legislative competences are fully transferred to the EU level (for example, on trade). For issues of shared competence, the Presidency usually represents the EU on the basis of a position coordinated within a committee composed of the Member States and the EC. However, there is a difference of opinion: the EC believes that it should be in the lead, following the entry into force of the Lisbon Treaty, but the Member States contest this view, insisting on having their own representatives as their leads.

⁵ http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the-acquis/index_en.htm

⁶ Consolidated version of the Treaty on the Functioning of the European Union, Part One: Principles, Article 4 (4).

Figure 2: EU models of governance

	Development policy	Trade policy	Foreign policy	Climate Change Policy
Competence	Shared ⁷	Exclusive ⁸	Supporting ⁹	Shared
Governance model	Mix of supervised delegation to the EU Presidency or EC and coordination	Supervised delegation to the EC	Coordination	Mix of supervised delegation to the EU Presidency or EC and coordination
External representation	Commissioner, rotating Presidency and Member States	Commissioner (based on Council authorisation)	Member States (with the High Representative and the President of the European Council)	Commissioner, rotating Presidency and Member States

19. From a legal perspective, development cooperation is governed by a mix of supervised delegation to the EC and coordination. Externally, EU development cooperation is represented both by the EC and the Member States.
20. As a result of the commitments required of EU Member States in order to adhere to the development provisions in the 'acquis communautaire', each new Member State now has a bilateral development cooperation programme. There are thus at least 27, soon to be 28, different donors plus the EC who are formulating 'European policies'. There are a number of advantages of this, including: the involvement of all Member States in aid; the potential of joint working which eases the burden on recipient countries; and a 'safety valve' for Member States to ensure that they are still able to act independently on issues they feel strongly about. On the other hand, the multiplication of actors increases the likelihood of variations in the interpretation of norms and principles and introduces the potential for an increase in the geographical and thematic dispersion of aid resources.
21. The Member States shape EU development policy by 'uploading' their policies and objectives to the European level. Thus, EU policy tends to be a composite of many Member States' policies and it has so far not established working relationships and systems that lead to effective coherence and strategic coordination. The result is an EU development programme with an overloaded and broad agenda, operating in almost every country in the world.
22. Thus, the current system of 'shared/parallel competence' in development cooperation has advantages, but a process of reflection is needed to find ways to optimise these strengths and minimise some of the disadvantages through an agreement on the optimal division of labour between donors based on the principles of complementarity and subsidiarity, and comparative advantage.

⁷ Article 4 of the Treaty on the Functioning of the EU: the EU and Member States are authorised to adopt binding acts in these fields. However, Member States may exercise their competence only in so far as the EU has not exercised, or has decided not to exercise, its own competence.

⁸ Article 3 of the Treaty on the Functioning of the EU: the EU alone is able to legislate and adopt binding acts in these fields. The Member States' role is therefore limited to applying these acts, unless the Union authorises them to adopt certain acts themselves.

⁹ Article 6 of the Treaty on the Functioning of the EU: the EU can only intervene to support, coordinate or complement the action of Member States. Consequently, it has no legislative power in these fields and may not interfere in the exercise of these competences reserved for Member States.