

# REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

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## INTRODUCTION

This submission sets out my views as a British analyst working on behalf of an independent, private foundation which promotes the values of the open society globally. This is a personal view, not an official position of the Open Society Foundations (OSF). The submission assesses the extent to which the European Union (EU) adds value to UK foreign policy, and/or enables the UK to achieve its interests. OSF invests in working towards and through the EU because of the EU's role as a norm-setter, human rights defender and promoter of values aligned with the open society and liberal democracy.

## PRELIMINARY REMARKS ON DEFINING UK INTERESTS - SCOPE AND AMBITION

### **Q7: ARE THERE GENERAL POINTS YOU WISH TO MAKE?**

In the Call for Evidence, the FCO defines its work as protecting the UK's *interests and values* expressed as three overarching priorities: Safeguarding Britain's national security (counter-terrorism; weapons proliferation and conflict prevention); building Britain's prosperity (increasing exports and investment; opening markets; ensuring access to resources; and promoting sustainable growth); and supporting British nationals around the world (consular). These interests are legitimate and pragmatic.

Nevertheless the definition fails explicitly to mention values among the priorities, which is a missed opportunity for a number of reasons. First, it restricts UK foreign policy ambition, bilaterally and through the EU, to a transactional approach – merely that of UK Plc. Can the UK exercise a transformative or agenda-setting role on the global stage if it does not have a mission beyond security and markets? Since values and therefore rules are set to be increasingly contested in a multi-polar world, Britain will have a *strategic interest* in ensuring that others think and behave like us. Put simply, the EU has a normative approach to operating on the global stage, but China and Russia are working to extend their norms too. It will be important to have an active strategy behind the norms and values Britain wishes to see promoted. The evidence below makes the case that the UK will have more success via cooperating closely with likeminded EU partners on foreign policy than going it alone.

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<sup>1</sup> The Open Society European Policy Institute, based in Brussels, is the EU policy arm of the Open Society Foundations, a global private foundation. OSF works in over 70 countries, where it seeks to promote vibrant tolerant democracies whose governments are accountable to their citizens.

Second, the success of the UK and the FCO in ensuring that its ideas are transmitted within a 27 member bloc and its embassy networks should not be underestimated. History shows that Britain is at its best as a transformative foreign policy actor and EU partner when it asks more than “*What do I get out of this relationship?*” Some of the EU’s most enduring policies testify to a British vision at the heart of EU decision-making: From Churchill’s European vision which led to the founding of the European movement, to the widening (as opposed to deepening) of the union via its enlargement and neighbourhood policies, to the EU Free Trade Agreements – the latest of which will likely see the hegemonic US submit to a number of EU standards whilst potentially uniting the two markets to form the world’s largest trading bloc. The EU is more Anglo-Saxon than it ever was in its interactions beyond its borders – and not just because the language of its business is English. The Review of the balance of competences in foreign policy – on CFSP, the External Action Service and External Relations of policies ranging from migration, energy and climate change – should also measure the extent to which the EU amplifies British values and soft power.

***Q1: IN WHAT AREAS OF GLOBAL AFFAIRS DOES THE EU ADD VALUE OR DELIVER IMPACT OR NOT ON BEHALF OF THE UK?***

**CASE STUDY – EUROPEAN NEIGHBOURHOOD POLICY:** My comments below address the EU’s policy and impact in its Eastern and Southern Neighbourhood, with slightly more examples drawn from the East.

The following is a list of policy areas in which the EU serves to protect and promote Britain’s interests and values in the European neighbourhood.

**Safeguarding Britain’s national security**

**Border control:** The EU border assistance mission in Odessa prevents trafficking of goods between Moldova and Ukraine via Transnistria.

**Conflict prevention/Civilian crisis management:** The EU is doing more on the ground than other conflict prevention formats in which the UK has a stake in the Eastern and Southern European neighbourhood: OSCE, NATO, UN or G20. EU civilian crisis management policy is able to do more in Moldova and Georgia than the OSCE (which is hobbled by Russia) or NATO for whom the region is too politically sensitive to enter. It is not clear that the UK has the geopolitical capital or financial resources to deploy a mission on the scale of the 200-strong EU Monitoring Mission (EUMM) in Georgia and would not consider doing so alone. The EUMM complements the FCO’s dedicated bilateral funding ‘niche’, supporting conflict-prevention NGOs in the South Caucasus region.<sup>2</sup> On Nagorno-Karabakh there is untapped potential for reaping EU added-value in the stalled OSCE Minsk group process. Whereas

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<sup>2</sup> DFID downgraded the Eastern European countries a few years ago.

France is perceived as partial, if the EU were to be given a seat it would be perceived simultaneously as a more honest broker by Baku, whilst increasing its leverage over Baku (as well as Yerevan), with regard the rest of its ENP agenda.

JHA and migration policy: The EU has delivered for Britain at limited material cost to Britain. For example, reforms on migration and asylum demanded by the EU, justice reforms or anti-corruption measures in procurement for the Schengen area will also benefit the UK down the line if the neighbouring countries adopt the reforms. Obligation on partners to cooperate with Eurojust and Europol cooperation will protect the UK.

Readmission agreements visa facilitation: Five out of six countries in the EU's Eastern neighbourhood which have signed or are negotiating visa facilitation agreements have been obliged to adopt readmission agreements.<sup>3</sup> Since the visa facilitation agreements apply only to Schengen the UK has valid readmission agreements without giving up anything materially. (Britain is a free-rider). Other EU member states have borne the cost of reduction from 60 Euros to 35 Euros for a single entry Schengen visa, or for the free visas offered to an extended list of categories, ranging from students to journalists etc. Bilateral readmission negotiations would have cost Britain more in concessions on visa. At the same time, it is not clear that Britain alone would have been able to negotiate the accompanying reforms (whose implementation is also supported through pooled EU funding).

Sanctions: Restrictive measures, export bans on arms/equipment as well as the ban on luxury goods etc. have more clout if the EU acts than if the UK acts - in which case it could be singled-out to face negative political and economic consequences. The current Syria case gives an example of this. The EU is also the only mechanism by which Britain can push its pro-sanctions position, since sanctions would not be possible under the UN due to Russian and Chinese veto at the UNSC. In the case of Libya the UK benefited from unanimous endorsement of EU sanctions, which went further than UNSCR1970 (e.g. 20 people on the EU visa ban list as opposed to 6 on the UN list) as well as asset freezing. These coordinated moves by EU states provided political space for more concerted action by the EU's military powers, UK and France – even taking into account Germany's abstention at the UNSC.

CSDP/burden sharing and complementarity: The EU mission in Libya on border security supports the UK intervention as well as UK national security concerns, just as by analogy the EU training mission in Mali supports France. The multinational pool of expertise for EU deployment supports wider knowledge sharing and transfer. EU civilian crisis management missions provide an outlet for UK policing ideas via their personnel, whereas high level advisory groups e.g. in Armenia and Moldova use experts from the CEE states who have more comparable expertise. It is not clear that similar experts from Britain would be the best fit for these countries.

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<sup>3</sup> These are: Ukraine, Moldova, Georgia, Armenia and Azerbaijan

## **Building Britain's prosperity**

Trade: The EU as a trading bloc with a single-market has more clout in a partner country than any single EU member state. Britain has long embraced this vision. In the neighbourhood, as elsewhere in the world, the EU facilitates market access and investment opportunities for British companies through its Common Commercial policy. In 2011 – EU trade with Ukraine was worth 44 billion USD whereas Britain's trade with Ukraine was 1.4 billion USD. The Deep and Comprehensive Free Trade Agreements (DCFTAs), currently negotiated with Eastern neighbours, and considered for the Southern neighbours, are modelled on the successful accession process and aim to increase exports and investment through opening new markets. Because standards are high they also protect the EU's member states including Britain against dumping. Through ensuring that neighbouring countries align their legislation with EU standards, the EU not only opens but transforms markets. DCFTAs aim at transforming societies on its periphery by demanding reforms in areas ranging from customs practices to taxation to product standards, with broad implications for the fight against corruption and good governance.

As well as the benefits for British companies, Britain can afford to be clear that regulation is both necessary and useful for its foreign policy, both in strengthening the internal market in key geo-strategic areas such as energy – see below – and raising standards among neighbours. Britain alone would be less likely to achieve this level of convergence with its legislation. This is more than a technical question in a country like Ukraine, where EU is largest trading partner and – together with Russia – accounts for 50% of Ukraine's trade.

Energy/Access to resources: The size of the EU energy market gives it real clout in the sector. The EU has taken the lead on negotiating MoUs to establish gas pipelines of strategic importance to the EU27, notably the Southern Energy Corridor. The transnational nature of the issue as well as the scale of collective EU demand means that the Commissioner for Energy or Commission President Barroso has more leverage than a single member state. At the same time, EU energy policy (its 2<sup>nd</sup> and 3<sup>rd</sup> Strategic Energy Reviews) links the liberalisation of the internal energy market to the achievement of reduced dependence on particular external actors in a way that national policy could not. By launching an anti-trust case against Gazprom in September 2012, the European Commission's DG Competition is fighting the corner for British business and British strategic interest through challenging Gazprom's monopoly. This is an example of where EU single market rules and regulations in competition policy act in the British interest. Further, the EU has established an Energy Community –which is expanding the EU acquis on security of supply, energy efficiency, oil, renewable energy and statistics to countries ranging from the Western Balkans to Ukraine, creating reliable markets for British companies.

## **Amplifying British values and soft power (additional heading!)**

Soft power: people in the neighbourhood generally, and in the Eastern neighbourhood specifically, will still want to travel to and around, work in and learn from Europe and will choose Europe over other alternatives. They would like to be on Erasmus, be at Bologna accredited institutions in their own countries and take budget airlines (in Ukraine and now in Georgia) to travel in Europe. The EU remains a global standards-setter and its foreign policy benefits greatly from its soft power. The EU collectively represents a gold standard – embodying a better quality of life upheld by democracy and rule of law. Transposing European standards of education, safety and security are opportunities for most citizens and have wide appeal. The EU should not overreact to competitor schemes (e.g. the Russia-centred Eurasian Custom’s Union), which seeks to emulate, but falls short of the European model of integration. If anything, the Russian emulation project prefigures the fact that the world is set to be governed by regional blocs. As an avant-garde bloc, the EU should not depart from its model of regulatory approximation, and norm-setting.

Civil society, networks and values transmission: The EU’s ‘partnership with societies’ in its revised offer to the Southern neighbourhood following the Arab Spring is also an important civil society, civic participation and civil liberties message that is a key British value. A number of civil society actors are interested in cooperating with the EU, but distrust individual EU member states, either because of colonial heritage or perceived national interest. The EU also has greater traction and can go further in civil society support where it is perceived as a more ‘honest broker’: Whereas Russia cut off USAID funding in summer 2012, EU funding for civil society continues under EIDHR and other programmes. Egyptian civil society actors have indicated they are keen to work with this and new EU funding vehicles such as EED (see below). At the same time the EU has been successful in setting up an Eastern Partnership Civil Society Forum for the 6 Eastern neighbours, which socialises NGO actors into EU processes on a parallel track to their governments. With networks mattering more than ever in foreign policy, EU delegations, together with member states embassies, create multiple nodes in-country for connecting with civil society groups and transmitting European values. British involvement in shaping the principles and norms transmitted by EU diplomatic networks will continue to ensure that British values are amplified. The recent European Endowment for Democracy, shaped by Poland, is an example of successful agenda-setting beyond a simple pragmatic give-and-take which could also be done by Britain. Britain’s network of allies through its distant Commonwealth should contribute to, rather than effectively undermine, its ideational positioning in its geographical neighbourhood. The loss of Britain’s outward-looking, expansionist vision within the EU would diminish Britain’s ability to shape the thinking of governmental and non-governmental allies *on its doorstep* and presents a risk for Britain’s strategic positioning if it feels its norms and values are under attack down the line.

## **Q2: WHAT ARE THE COMPARATIVE DISADVANTAGES RATHER THAN THE UK WORKING INDEPENDENTLY? (ADVANTAGES DEALT WITH ABOVE)**

The EU can be slow to achieve consensus and backing among its member states and within its institutions (the EAS has only marginally improved this). Consensus-based decision-making still means that EU foreign policy action can be stymied by a single member veto.

Clout in other regions/Stature: Whilst the EU's technocratic approach can deliver so many reforms through legal approximation and institutional reform (but without fanfare); the downside is that it is little understood. A perennial problem for the EU both within its borders and in its relations with partner countries is its inability to communicate its actions to people. It is easier for a member state with a historical legacy as a global player to communicate a policy than the EAS: The UK prime minister as representative of one of the major European foreign policy powers can deliver a message more clearly in a speech in the Middle East or Eastern Europe than can a European Commissioner or High Representative. But in doing so, Britain can undercut the leverage of the High Representative in speaking for a bloc of 27. The EU has considerable leverage via pooled money, as well as policy tools such as negotiating agreements in trade and energy which are designed to be *transformative* as well as *transactional* and which can be easily undercut when member states go it alone. To overcome the EU's poor record in communicating its actions, thought needs to be given as to how a shared communications strategy can be developed between EU institutions – particularly the EEAS – and its constituent members, the member states.

EU funding mechanisms: The EU needs to simplify its financial regulation in general. In particular, its EIDHR funding for civil society actors needs revisiting as its demanding procedures for application and accounting, as well as the quantitative nature of its evaluations, are at times counterproductive. NGOs report that UK funding mechanisms - via FCO are more flexible to work with. FCO funding could serve as a model to reshape different EU funding tools. The Westminster Foundation could provide a model to shape the new European Endowment for Democracy.

## **Q3: HOW EFFECTIVE IS THE EU AT COMBINING ITS FOREIGN, DEFENCE, ECONOMIC AND CIVIL PROTECTION POLICY INSTRUMENTS?**

The common commercial policy is fairly well integrated as part of the ENP package. The technical rigidity of DG Trade as opposed to the political vision of EEAS seems restrictive at first, but can serve the integrity of the ENP's standard-setting function from excessive politicisation and arbitrary decision-making.

Conflict prevention is not adequately a part of the ENP and could be better integrated. The EU does not specifically recognise conflict prevention/crisis management as an area which

increases its potential leverage. Yet it is providing a security guarantee in Georgia, for example, through the EUMM. This approach is clearly tactical, and due to member states' reluctance to have the EU tied into 'offers' on the hard security side in difficult neighbourhoods – a reluctance which also characterises the NATO accession debate in the East. At the same time it is important to recognise the strategic leverage the EU can gain through engaging in conflict prevention (both through diplomatic engagement and peacebuilding initiatives) in its Eastern and Southern neighbourhoods as a requisite to being a player, and not simply a payer.

#### **Q4: HOW EFFECTIVE ARE THE EU'S DELIVERY MECHANISMS? WOULD ANY CHANGES MAKE THEM MORE EFFECTIVE?**

**More for more/conditionality:** Where the EU sets up a framework, for example deep democracy and the 'more for more' policy, it should be more than a sound-bite. For EU policy to be meaningful, the EU should be granted the leeway to offer clearer incentives (rewards) as well as negative policy consequences (sanctions). Inconsistencies (Algeria; Azerbaijan) need to be ironed out if they are not to undermine the policy. The EU should concentrate on working with and rewarding willing countries and constituencies in the neighbourhood and not underestimate the extent to which the EU has purchase and normative power in countries and societies.

**Sanctions:** Where sanctions are imposed by the EU, clear benchmarks should be expressed and adhered to. A unanimous decision should be required to lift the sanctions, rather than maintaining unanimity to keep them. Under the current rules, the burden rests with the EU to review whether it sticks to its previous unanimous decision. This leads to tortuous decision-making on a six-monthly basis, leaving the way open for the target country to divide EU members and undermine a strong previous stance. Simply by lobbying one or two member states to change position, the country targeted by the sanctions can make the EU appear weak. (E.g. Uzbekistan 2006-2009).

**Money:** In the current era of budget cuts, the pooling of funding via the EU offers possibilities, particularly when funding is part of the policy incentive (e.g. under the Eastern Partnership, Moldova, Georgia and Armenia were awarded an additional Eur 23 mio, 21 mio and 15 mio respectively in 2012 for doing well on governance reforms). The EU should not be afraid to communicate negative policy and funding consequences of partners not achieving their side of the deal. The EU could consider linking the size of the overall geographical programming to performance. Involving civil society groups in monitoring funding would achieve twin objectives of ensuring accountability for EU tax payers' funding whilst making recipient governments more accountable to their own citizens.

**Communication:** In terms of communicating EU policies such as the ENP, the case needs to be made to the public that the DCFTA is not about abstract regulations and checkboxes, or

negotiations. It is about clean water, safe transport, travel opportunities through easier access to Europe (via budget airlines), potential to sell goods to a market of 500 million. This kind of outreach can be done at the delegation level. Use of citizenship consultations are something that could be held by delegations under joint communications and ENP budget lines as in the case of enlargement countries.

**Differentiation:** This is working in the Eastern neighbourhood but could be expanded. If a country lags behind on reforms, it should not hold others hostage in parallel negotiations on DCTA or visa. For example, on visa liberalisation Moldova performed well and was moved to the second phase before Ukraine even though Ukraine started the process earlier. A counter example is the case of Armenia and Azerbaijan, where insistence on equal treatment because of the Nagorno Karabakh conflict undermines the EU's democratisation and reform agenda through its the ENP/Eastern Partnership policy. This is not necessarily the EU's interest. Whilst the EU should promote conflict prevention, it should also be able to define the terms and conditions of its engagement. Both Azerbaijan and Armenia want to discuss the conflict with the EU but the EU's reluctance to get involved leaves them to set the agenda according to their terms, despite the fact they are effectively *demandeurs* on this issue.