

CALL FOR EVIDENCE ON THE GOVERNMENT'S REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

Foreign Policy Report

(Includes Defence and Civil Protection Issues.

Consular Issues will be covered in the Citizenship Report in 4th semester)

Closing date: 28 February 2013

Introduction

1. Globalisation and competition in the world marketplace mean that despite the huge new opportunities on offer developed nations cannot be complacent. With economic power and influence shifting towards the countries of the South and East, we are seeing many more centres of decision-making emerging and a proliferation of connections between governments, economies and individuals fuelled by internet and mobile technology. These changes are affecting the nature of the prosperity and security challenges we face. The challenge for every nation is how to remain competitive, promote its national interests and make its voice count in this increasingly multipolar world. This is the challenge of foreign policy today. For the Foreign and Commonwealth Office (FCO), like all other government departments, it means constantly re-evaluating what we are doing and how effective it is.
2. The Foreign and Commonwealth Office leads the Government's efforts to protect and promote the UK's interests and values overseas. Our work is focused around three overarching priorities:
 - **Safeguarding Britain's national security** by countering terrorism and weapons proliferation and working to reduce conflict;
 - **Building Britain's prosperity** by increasing exports and investment, opening markets, ensuring access to resources, and promoting sustainable growth; and
 - **Supporting British nationals around the world** through modern and efficient consular services.
3. We deliver by developing first class foreign policy and translating it into effective action through the use of diplomacy – negotiating and influencing – using our global network of posts and a range of alliances to do so. Often it will be in the UK's interest to act directly with other countries. At times the UK will achieve maximum impact as part of alliances, networks and international organisations. Sometimes the right solution will be to create a tailor-made alliance to tackle a particular issue.
4. One of our most important alliances is the European Union. Our ties with Europe are deep. More than forty per cent of our trade is with our EU partners. We are bound by vital interests and common values. When the 27 Member States of the European Union agree on foreign policy issues, a great deal can be achieved. In the last two years the EU has put pressure on the Iranian nuclear program, supported democracy in Burma, offered help to emerging democracies in the Arab world, led the way on climate change and tackled piracy off the Horn of Africa. In all of these areas, the UK has played a leading role in forging EU policy.
5. But the global context challenges us to look afresh at the boundaries between what the EU does and what the UK does and whether current arrangements are in the UK's national interest. The Foreign Secretary launched the Balance of Competence Review in Parliament on 12 July 2012, taking forward a Coalition commitment. The review aims to

deepen public and Parliamentary understanding of the nature of our EU membership and provide a constructive contribution to the national and wider European debate about reforming the EU in the face of collective challenges. It will not produce policy recommendations or propose alternative models for Britain's relationship with the EU.

6. The review is broken down into a series of reports on specific areas of EU competence spread over four semesters between autumn 2012 and autumn 2014. It will be led by Government but based on evidence provided by non-governmental experts, organisations and other individuals who wish to feed in their views. Foreign governments, including our EU partners and the EU institutions are also being invited to contribute. The process will be comprehensive, evidence-based and analytical.
7. This Call for Evidence concerns the Foreign Policy Report led by the Foreign and Commonwealth Office.

What is competence?

8. For the purposes of this review, we are using a broad definition of competence. In this context competence is about everything deriving from EU law that affects the UK. The EU's competences (i.e. its powers) are set out in the EU Treaties. These provide the basis for any actions the EU takes. Where the Treaties do not confer competences on the EU the power to act remains with member states.
9. Under the Treaty on the Functioning of the European Union (TFEU), there are different types of EU competence: exclusive, shared and supporting. Only the EU can act in areas where it has exclusive competence, such as the customs union and common commercial policy, and member states can only act through the EU. In areas of shared competence, either the EU or the member states may act, but once the EU has acted it "occupies the field" and Member States cannot act independently in those areas. In areas of supporting competence, such as culture, tourism, education or civil protection, both the EU and the member states may act, but action by the EU does not prevent the member states from taking action of their own. Competence under the Common Foreign and Security Policy is addressed under the Treaty on European Union (TEU) and is separate from the competences defined under the TFEU.
10. The EU must act in accordance with fundamental rights as set out in the Charter of Fundamental Rights (such as freedom of expression and non-discrimination) and the principles of subsidiarity and proportionality. Under the principle of subsidiarity, where the EU does not have exclusive competence, it can only act if it is better placed than the member states to do so because of the scale or effects of the proposed action. Under the principle of proportionality, the content and form of EU action must not exceed what is necessary to achieve the objectives of the EU treaties.

Scope and Objectives of this Review

11. The competence arrangements governing EU action in foreign affairs are set out in two main treaties – the Treaty for the European Union and the Treaty on the Functioning of the European Union (for a brief history, see below).

A brief history of the EU treaties

The Treaty on the European Economic Community (EEC) was signed in Rome on 25 March 1957 – along with the Treaty establishing the European Atomic Energy Community (Euratom) – and entered into force on 1 January 1958. The EEC Treaty had a number of economic objectives, including establishing a European common market. Since 1957 there have been a series of treaties extending the objectives of what is now the European Union beyond the economic sphere. The amending treaties (with the dates on which they came into force) are: the Single European Act (1 July 1987), which provided for the completion of the single market by 1992; the Treaty on European Union – the Maastricht Treaty (1 November 1993), which covered matters such as justice and home affairs, foreign and security policy, and economic and monetary union; and the Treaty of Amsterdam (1 May 1999), the Treaty of Nice (1 February 2003) and the Treaty of Lisbon (1 December 2009), which made a number of changes to the institutional structure of the EU.

Following these changes, there are now two main treaties which together set out the competences of the European Union:

- The Treaty on European Union (TEU); and
- The Treaty on the Functioning of the European Union (TFEU).

12. Annex 2 provides a legal overview of the EU's current competence in foreign affairs, but broadly speaking the EU can act either:

- Under the “Common Foreign and Security Policy (CFSP)” which includes the “Common Security and Defence Policy” (CSDP) and has its basis in the Treaty on European Union (TEU) – for details see paragraph 14; or
- In policy areas which fall under the Treaty on the Functioning of the European Union (TFEU) such as trade, development and the environment through, for example, agreements with non-EU countries or organisations.

EU decision-making procedures flow from the Treaty basis which governs action (see Annex 2).

13. The EU's foreign affairs structures have been adapted since the adoption of the Treaty of Lisbon in 2009 with the creation of the role of the High Representative of the Union for Foreign Affairs and Security Policy and a service to support her – the European External Action Service (EEAS). The High Representative has a so-called “double hat” – High Representative and Vice-President of the Commission. As High Representative she has oversight of all activity under CFSP. As Vice-President of the Commission she has oversight of the Commission's activity in external relations. The decision to make one person responsible for these two roles was designed to ensure greater unity, consistency and effectiveness of EU action in the external sphere. The Treaty of Lisbon also strengthened the role of the European Parliament, for example by giving it a co-legislative role in trade policy and extending the requirement for it to be consulted on a wide range of international agreements (see Annex 2).

14. EU action in foreign affairs covers a broad range of policy activity. Common Foreign and Security Policy (CFSP) was established in 1993 with the Maastricht Treaty. It aims to: preserve peace and strengthen international security in accordance with the principles of the UN Charter; promote international cooperation; and develop democracy, the rule of law and respect for human rights and fundamental freedoms. The Common Security and

Defence Policy (CSDP) forms an integral part of the CFSP. Under CSDP the Union can use civilian and military assets on missions outside the Union for peace-keeping, conflict prevention and strengthening international security. In practice CFSP/CSDP action consists of: coordinated diplomacy; crisis management; development and humanitarian assistance. Action under TFEU consists of agreements between the EU and non-EU countries covering the external dimensions of internal EU policies, for example in trade, energy or justice (see Annex 2). To maximise the effectiveness of EU policy, the EU often uses a mix of CFSP/CSDP and TFEU tools to tackle any one issue. Consequently, when judging EU action it is often difficult to separate out these different policy strands. The four case studies in the final section illustrate this. Annex 2 provides a more detailed legal analysis.

15. This review will therefore provide the overarching analysis of EU action in CFSP/CSDP as well as action in foreign affairs pursuant to TFEU. The detail of agreements under the TFEU will be covered in the relevant sectoral reports e.g Development, Trade and Energy as announced by the Foreign Secretary on 23 October 2012.¹ To give an example of how this will work in practice: the Foreign Policy Report will provide an analysis of the effectiveness of European Neighbourhood Policy as a whole (Europe's policy for creating stability and prosperity in its Eastern and Southern neighbourhood). The detail of the energy or trade agreements within the European Neighbourhood Policy, however, will be considered as part of the Trade and Energy Reviews in semesters two (Spring – Winter 2013) and three (Autumn 2013 - Summer 2014) respectively. Similarly, development issues will be covered in the Development report that is also being carried out in the first semester.
16. Because defence is an instrument of Foreign Policy and there is no separate defence report, strategic level defence issues will also be considered in the Foreign Policy Report. Other defence issues such as the defence industry will be covered by the relevant sectoral reports. An annex in the Foreign Policy Report will set out how defence issues will be handled across the Balance of Competence Review.
17. Military assets can also be made available inside the EU under the “Solidarity Clause” (Article 222 TFEU) and the Civil Protection Mechanism. Therefore, the “Solidarity Clause” and Civil Protection will be considered as part of the Foreign Policy Report.
18. Consular issues will be covered in the Citizenship Report in the 4th semester.
19. For an indicative list of the areas covered by the Foreign Policy Report see Annex 1.

The Objectives of this review are:

- To explore the current state of competence between the EU and Member States in foreign policy (Common Foreign and Security Policy, Common Security and Defence Policy, and *broad issues* arising from EU external action pursuant to TFEU in areas such as trade, development and the environment).
- To explore the current state of competence in Civil Protection.

¹ The full schedule of balance of competences reviews can be found at www.fco.gov.uk/en/global-issues/european-union/balance-of-competences-review/

Call for evidence: what are we asking for?

20. We request input from anyone with relevant knowledge, expertise or experience. This is your opportunity to express your views.
21. Your evidence should include information and fact-based judgements about the current distribution of competence in your area of expertise and the impact this has on UK interests.
22. Please base your answers on the questions below if possible. You may wish to comment on a range of issues covered by the report, or limit your response to a particular subject area, such as Civil Protection, or strategic defence issues.
23. In responding, it would be helpful if you could indicate in what capacity you are responding e.g. as an individual, a business, a civil society organisation, a representative of an international organisation or a research institution.
24. We will expect to publish your response and (where relevant) the name of your organisation at the same time as we publish the Foreign Policy Report unless you ask us not to (but please note that even if you ask us to keep your contribution confidential we might have to release it in response to a request under the Freedom of Information Act (FOIA). Each FOIA request is judged on a case-by case basis, and whilst exemptions can be brought to bear, we cannot guarantee that the information will never be disclosed. We will not publish your own name unless you wish it included. During the Call for Evidence period, we will be proactively engaging with a number of experts and expert groups to better understand their views.

Questions

(NB: This list is indicative. Please feel free to provide evidence on areas not covered below if you judge appropriate).

1. In what areas of global affairs does the EU add value or deliver impact or not on behalf of the UK?
2. What are the comparative advantages/disadvantages of working through the EU in the area you wish to comment on, rather than the UK working independently?
3. How effective is the EU at combining its foreign, defence, economic and civil protection policy instruments to deliver best effect in foreign policy? What, if anything, should it do differently?
4. How effective are the EU's delivery mechanisms? Would any changes make them more effective, and if so, which ones and why?
5. Would a different division of EU and Member State competence in a particular area produce more effective policies? If so, how and why?
6. How might the national interest be served by action being taken in this field at a different level e.g. regional, national, UN, NATO, OECD, G20 – either in addition or as an alternative to action at EU level?
7. Are there any general points you wish to make, which are not captured above?

Please send your evidence to balanceofcompetencesforeignpolicy@fco.gov.uk by **28 February 2013**. You can also submit your evidence online at: <http://www.surveymonkey.com/s/foreignpolicyreport>

Case Study 1: EU action in the Horn of Africa: how the EU combines policy instruments to take a comprehensive approach to tackling instability

European Union action in the Horn of Africa seeks to further stability, security, peace, prosperity and accountable government.

Since 2008 the EU has contributed over €400 million in **humanitarian assistance** to help victims of drought and conflict in the Horn of Africa, including refugees and the internally displaced. Broader political and **development activity** has included support to the constitutional process in South Central Somalia, work to strengthen the democratic process in Somaliland and assistance to bolster agriculture and food security. **Trade** links are being developed with the Intergovernmental Authority on Development (IGAD), a regional organisation that includes the Horn of Africa.

The EU has established three **Crisis Response Missions** under its Common Security and Defence Policy (CSDP). The aim is to deliver a comprehensive approach to crisis management, through the use of both military and civilian action to address security, humanitarian and socio-economic challenges. Launched in 2008, EU NAVFOR - ATALANTA was the first EU operation in the Horn of Africa. The UK provides its headquarters. Working closely with NATO and other countries such as Russia and China, it aims to counter piracy, protect vulnerable shipping and monitor fishing in the area. Results are promising: piracy decreased by 65% in 2012 compared to 2011. A second EU military mission was launched in 2010. EUTM Somalia aims to train Somali soldiers to help stabilise the country. Approved in December 2011, civilian mission **EUCAP NESTOR** will help strengthen regional coast guards and police. The EU is also active in helping shape a **counter-terrorism** strategy for the region.

Case Study 2: The Ukraine: A country case-study/EU action in its Neighbourhood

The framework for EU-Ukraine relations is the **European Neighbourhood Policy (ENP)**, the EU's policy for fostering prosperity, security and stability on the EU's southern and eastern borders.

In December 2011, the EU and Ukraine concluded negotiations on an Association Agreement including a Deep and Comprehensive Free Trade Agreement which will bring close integration with the EU single market. Signature and ratification are dependent upon the Ukraine meeting EU standards with regards to reform in a range of areas, including political processes, individual rights and the rule of law. An Association Agenda has been agreed setting out key priorities. The EU is providing support for these in the form of financial and technical assistance for good governance, regulatory reform, infrastructure development and nuclear safety. The EU also has a Border Assistance Mission based in Odessa to help prevent trafficking across the border between Ukraine and the breakaway region of Transnistria.

Case Study 3: Iran Counter Proliferation: How the EU tackles a Horizontal Issue/Security Challenge

The **Iran nuclear issue** is an area where the UK works closely with the EU to secure a peaceful, negotiated solution through the so-called dual-track approach: **engagement** on the basis of a generous package of beneficial proposals from the E3+3 (UK, France, Germany, US, Russia and China); and **pressure**, including through sanctions, to persuade Iran to negotiate seriously.

On **engagement**, the High Representative of the European Union for Foreign Affairs and Security Policy is mandated by the UN Security Council to support diplomatic efforts of the E3+3. Recently, this has included the High Representative's support for - and coordination of - E3+3 negotiations with Iran in Istanbul, Baghdad and Moscow. The High Representative chairs E3+3 discussions, and works to create and maintain unity amongst the six countries negotiating with Iran.

On **pressure**, the EU has taken a global lead in increasing the pressure on Iran. The EU/Iran sanctions regime has been expanded several times, and is currently the most far reaching autonomous sanctions regime adopted by the EU. The wide range of measures includes: a ban on the EU import of oil from Iran; an asset ban against the Central Bank of Iran, the imposition of strict financial restrictions against Iran; and asset bans and travel freezes on entities and individuals involved in the nuclear programme. The External Action Service and UK both take forward lobbying efforts to encourage other countries outside the EU to adopt similar measures.

Case Study 4: Cyprus: How the EU acts in the field of Civil Protection

In 2009 a ship carrying weapons from Iran in contravention to UNSC Resolution 1747 was intercepted and redirected to Cyprus. Two years later a fire ignited the gunpowder on board. This led to an explosion which killed 13 people and destroyed a nearby power station depriving the island of half its power supplies. The Government of Cyprus appealed for assistance from EU partners through **the Civil Protection mechanism** to help tackle the problem. Thirteen Member States responded (including the UK) providing mobile generators, fire pumps and various technical experts.

ANNEX 1: SUBJECTS COVERED BY THE FOREIGN POLICY REPORT

This annex does not list every area of the EU's action in foreign affairs, but is an indicative list. For more information on the scope of the EU's action in foreign affairs you may wish to consult the following websites. Other European Commission websites will also be relevant.

http://eeas.europa.eu/cfsp/index_en.htm

http://eeas.europa.eu/cfsp/docs/2009_annualreport_en.pdf

<http://ec.europa.eu/trade/wider-agenda/development/economic-partnerships>

If the country you wish to provide evidence on is not listed it is likely to be covered in one of the thematic sections e.g. Iran will be covered under non-proliferation, the Middle East Peace Process will be covered under conflict etc. If in doubt about whether your evidence relates to the Foreign Policy Review or one of the related Government reviews, please contact balanceofcompetencesforeignpolicy@fco.gov.uk. If your evidence does not relate to the Foreign Policy Report but to a related report, the FCO will forward it on to the relevant government department and notify you.

1. INSTITUTIONAL FRAMEWORK FOR EU ACTION IN FOREIGN AFFAIRS

- The European Council
- The Council of Ministers (Foreign Affairs Council in particular)
- The High Representative, External Action Service and European Union Special Representatives (EUSRs)
- The European Commission
- The European Parliament
- The Court of Justice of the European Union

2. GLOBAL ISSUES

- Proliferation and Weapons of Mass Destruction
- Conventional Weapons
- Terrorism
- Drugs
- Energy Security
- Climate Change

3. SECURITY AND DEFENCE

- CSDP Military Capability
- CSDP Civilian Capability
- Conflict Prevention and Peace-keeping

4. MULTILATERAL ORDER

- EU relations with international organisations and bodies
- EU participation in international organisations and bodies
- EU relations with regional bodies
- EU participation in regional bodies.

5. DEMOCRACY AND HUMAN RIGHTS

- Democracy and the Rule of Law

NB: The Foreign Policy Report will consider the human rights aspects of the EU's relationship with pre-accession countries which fall under CFSP. The Enlargement Report will address democracy/human rights/issues relating to the enlargement process and conditionality including the Stabilisation and Association Process and Agreements.

- Human Rights and Fundamental Freedoms

NB: The European Instrument for Human Rights and Democracy (EIDHR) will be covered by the Foreign Policy report. Evidence will be analysed in close consultation with DFID.

6. SANCTIONS

- Implementation of UN Security Council Sanctions
- EU autonomous measures

7. EUROPEAN NEIGHBOURHOOD POLICY (ENP) AND REGIONAL AGREEMENTS

- European Neighbourhood Policy (*NB: The European Neighbourhood Policy Instrument (ENPI) will be covered by the Foreign Policy Report. Evidence will be analysed in close consultation with DFID.*)
- The Eastern Partnership
- The Partnership for Democracy and Shared Prosperity with the Southern Mediterranean
- The Union for the Mediterranean
- Algeria
- Armenia
- Azerbaijan
- Belarus
- Egypt
- Georgia
- Iraq
- Israel
- Jordan
- Lebanon
- Libya
- Moldova
- Morocco
- Occupied Palestinian Territories
- Ukraine
- Syria
- Tunisia
- Ukraine
- EU – Central Asia
- Black Sea Synergy
- EU – Latin America/Caribbean
- EU - Africa
- EU - Arctic
- The Northern Dimension

8. STRATEGIC PARTNERSHIPS

- Brazil
- Canada
- China
- India
- Japan
- Mexico
- Russia
- South Africa
- United States

9. CIVIL PROTECTION

ANNEX 2: CURRENT STATE OF COMPETENCE IN FOREIGN AFFAIRS: LEGAL ANALYSIS

Introduction

The EU's potential competence to act in foreign affairs is wide-ranging. This annex provides a brief description of the Treaty framework applicable to the conduct of the EU's foreign relations, the instruments used and the role played by the different Institutional players.

Legal Personality of the European Union

Article 47 of the Treaty on European Union (TEU) confirms that the Union has legal personality. In terms of the conduct of foreign relations this is significant because it enables the EU to enter into international relations with third countries and international organisations in its own right subject to the limitation that it must act within the competences conferred upon it by the Treaties.

The Treaty Structure applicable to the conduct of EU foreign policy

The Treaties distinguish between EU action under the Common Foreign and Security Policy (CFSP) (which incorporates provisions on the Common Security and Defence Policy (CSDP)), which is set down in the TEU, and external action by the EU pursuant to the competences conferred upon it in the Treaty on the Functioning of the European Union (TFEU) (for example trade, development and the environment). This distinction is reflected in the different roles assigned to the EU under the CFSP, and the different instruments and voting rules applicable to action under the CFSP and action under the TFEU. On the other hand, the Treaties set down general provisions governing the Union's external action (Articles 21 and 22 TEU) which are common to both action under the CFSP and action under the TFEU. They also set out common procedures applicable to the negotiation of agreements between the EU and third countries/international organisations (Articles 216-219 TFEU).

(a) Common Foreign and Security Policy

The specific Treaty provisions applicable to the conduct of the CFSP are located under Title V of the TEU (Articles 23-46 TEU – Articles 42-46 deal specifically with CSDP). The scope of EU action under the CFSP is set out in Article 24(1) TEU:

“The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence.²”

The CSDP forms an integral part of the CFSP. The Union may use civilian and military assets on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. Member States are to make civilian and military capabilities available to the Union for implementation of the CSDP. The tasks to be performed include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict

² Article 24 TEU should be interpreted in light of Declarations 13 and 14 concerning the common foreign and security policy. For example Declaration 13 clarifies that the Treaty provisions on the CFSP do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.

prevention and peace-keeping tasks and tasks of combat forces in crisis management, including peacemaking and post-conflict stabilisation.

Article 222 TFEU contains the so-called **Solidarity Clause** according to which the Union and its member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union is to mobilise all the means at its disposal, including the military resources made available by the Member States. There is a separate obligation upon Member States to provide assistance, if so requested by the political authorities of the victim State, coordinating themselves for this purpose within the Council. Article 222 TFEU should be read in conjunction with Declaration 37 to the Treaties which clarifies that Article 222 is not intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards another Member State that is the subject of a terrorist attack or the victim of a natural or man-made disaster.

Arrangements for implementation of the solidarity clause are to be defined in a decision yet to be adopted by the Council by QMV based on a joint proposal from the High Representative and the Commission. If the decision has defense implications then unanimity will be required. The European Parliament is to be informed but will play no formal legislative role in the adoption of the decision. Where appropriate the PSC and the standing Committee set up within the Council in order to ensure the promotion of operational cooperation on internal security may be involved and may deliver joint opinions.

(b) Action under the TFEU

Article 216 TFEU provides that the EU may enter into agreements with third countries or international organisations where the Treaties specifically allow it to do so, or when conclusion of an agreement is necessary for the EU to achieve its objectives.

Articles 206-214 TFEU deal with specific action by the EU in areas such as trade, development economic, financial and technical cooperation with third countries and humanitarian aid. In these areas action by the EU may take the form of autonomous measures (such as the adoption by the EU of regulations establishing a development aid programme), or the negotiation and conclusion of international agreements.

In other areas of EU policy (such as transport, criminal cooperation or the environment), even though the Treaties only refer in terms to action that is internal to the EU, the EU has implicit power to enter into international agreements when such action is necessary to allow it to achieve its objectives.

(c) Restrictive Measures (sanctions) – Hybrid action

There are also some measures that require hybrid action under both the CFSP and the TFEU. The EU plays an increasingly active role both in the implementation of sanctions imposed by the UN Security Council and in the adoption of its own autonomous measures against third countries and/or individuals or entities. The adoption of sanctions measures by the EU follows a two stage process. First the EU will adopt a CFSP Decision by unanimity. This will set down the framework for the sanctions to be applied and may include measures which will require implementation by both the EU and the Member States. As regards the specific measures falling within the EU's competence which require implementation, the Council, on a joint proposal from the Commission and the High Representative based on Article 215 TFEU, will adopt by QMV a Council Regulation.

International Agreements

Article 218 TFEU³ sets down the procedural framework to be followed for the conduct of negotiations on agreements on behalf of the EU including their signature and conclusion. This provision applies in all cases where an agreement will apply to the EU, irrespective of whether the agreement will be entered into by the EU alone or will be a so-called 'mixed' agreement to be entered into by both the EU and the Member States. It is noteworthy that these rules apply to both the negotiation of agreements under the CFSP and in respect of agreements relating to EU competence under the TFEU – the precise procedure will vary, however, depending on whether the agreement relates to the CFSP exclusively or covers matters falling within the scope of the TFEU. The text sets down who should negotiate agreements on behalf of the EU, the voting rules to apply in the Council for the decisions on their signature and conclusions and the role to be played by the European Parliament (consent or consultation). Article 218(11) TFEU also confers a specific jurisdiction on the Court of Justice relating to the provision of an Opinion on the compatibility of a proposed agreement with the Treaties.

EU relations with international organisations and third countries and Union Delegations

Articles 220-221 TFEU set down some general provisions on the Union's relations with international organisations and third countries and the role to be played by Union delegations. Article 220 TFEU provides for the Union to establish appropriate forms of cooperation with the organs of the UN and its specialised agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development as well as other international organisations as appropriate. Article 221 TFEU notes that it is for Union delegations in third countries and international organisations to represent the Union. Note that as with the provisions on international agreements these provisions apply in respect of both matters falling under the TFEU and under the CFSP.

Institutional framework applicable to EU foreign policy

Under the Treaties, the primary responsibility for identifying the strategic interests and objectives of all aspects of the EU's foreign policy rests with the **European Council**. The European Council (made up of heads of state or government of the 27 member states) acts by unanimity and on the basis of recommendations from the Council. The President of the European Council, a new role created by the Lisbon Treaty, chairs the European Council but is also responsible for ensuring the external representation of the Union on issues concerning the CFSP but without prejudice to the powers of the High Representative.

The **Council** (made up of ministers of the 27 member states), together with the High Representative, are tasked with ensuring the unity, consistency and effectiveness of action by the Union in the external sphere. The Council plays a key role in framing the CFSP and taking the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council. Similarly, it is the Council that decides whether the EU should enter into negotiations on agreements with third countries and international bodies and that authorises signature and conclusion of such agreements. Furthermore, it is the Council that adopts other measures such as CFSP Decisions and TFEU Regulations relating to external matters. Most action under the CFSP requires unanimity in the Council, although there are limited circumstances where action

³ Note the procedures in Article 218 TFEU may also be varied by other specific provisions in the TFEU. For example, Article 207 TFEU provides for some specific rules to apply to the negotiation of trade agreements by the EU.

under the CFSP can be adopted by qualified majority voting (QMV). In relation to policies falling within the TFEU, decision-making in the Council will normally be by QMV.

The Lisbon Treaty created the role of the **High Representative**. This new office merges the roles formerly played by the High Representative for the CFSP/Secretary General of the Council, the Commissioner for External Affairs and the President of the External Relations Council. The High Representative conducts the Union's CFSP. As a Vice-President of the Commission, the office-holder also ensures the consistency of the EU's external action, and is responsible within the Commission for the latter's responsibilities in external relations and for coordinating other aspects of the EU's external action. Furthermore, as President of the Foreign Affairs Council (a new Council configuration envisaged by the Lisbon Treaty) the office-holder oversees the external relations dossiers in all sectors.

The High Representative's responsibility for the conduct of the CFSP includes, inter alia, exercising the right of initiative and making proposals in the field of the CFSP; negotiating international agreements relating principally or exclusively to CFSP matters; representing the Union on matters relating to the CFSP (which includes conducting political dialogue with third parties); and expressing the Union's position in international organisations and international conferences. The High Representative's role has replaced the role formerly played by the rotating Presidency of the Council in relation to the external representation of the EU under the CFSP.

A further innovation introduced by the Lisbon Treaty is the creation of the **European External Action Service (EEAS)**. Its primary role is to assist the High Representative in the conduct of the CFSP working in close cooperation with the diplomatic services of the Member States. The organisation and functioning of the EEAS is established under Council Decision 2010/427/EU of 26 July 2010 ("the EEAS Decision"). The Brussels headquarters of the EEAS is organised in a series of geographical and thematic desks which have taken on the tasks previously carried out by relevant parts of the Commission and the Council Secretariat before the entry into force of the Lisbon Treaty. However, responsibility for some significant areas of external relations remains vested in the Commission and subject to the authority of the respective Commissioners – these are development, trade and enlargement.

A key function of the EEAS is to staff and operate EU delegations in third countries and to international organisations replacing the former Commission and Council delegations abroad. The Union delegations represent the EU and are placed under the authority of the High Representative. The delegations take instructions from and report to the High Representative and the EEAS as well as the relevant Commission Services, depending on whether the subject matter falls within the remit of the EEAS or the Commission. EU delegations also play a supporting role as regards diplomatic and consular protection of Union citizens in third countries. Under the EEAS Decision, the High Representative is tasked with providing a review of the organisation and functioning of the EEAS by mid-2013. It is foreseen that this review may include proposals for revision of the EEAS Decision.

The **Political and Security Committee (PSC)**, made up of Ambassadors from the twenty seven Member States is accorded an important role under the CFSP. Its remit is to monitor the international situation in the areas covered by the CFSP, to contribute to the definition of policies and to monitor the implementation of the decisions taken under the responsibility of the High Representative. The PSC also plays a key role under the CSDP. It is responsible for the political control and strategic direction of crisis management operations and is authorised to take decisions on the practical management of a crisis. In carrying out its functions under the CSDP the PSC is assisted by a number of other bodies;

- **EU Military Committee** ("EUMC") composed of the Chiefs of Defence of the Member States, who are regularly represented by their permanent military representatives. The

EUMC provides the PSC with advice and recommendations on all military matters within the EU;

- **EU Military Staff** (“EUMS”) which works under the direction of the EUMC coordinates the military instruments with particular focus on operations/missions (both military and those requiring military support) and the creation of military capability;
- **Committee for Civilian Aspects of Crisis Management** (“CIVCOM”) provides information, drafts recommendations and gives its opinions to the PSC on civilian aspects of crisis management;
- **Crisis Management and Planning Directorate** (“CMPD”) contributes to political-strategic planning of CSDP civilian missions and military operations, ensuring coherence and effectiveness of those actions as part of the EU’s comprehensive approach to crisis management and developing CSDP partnerships, policies, concepts and capabilities; and
- **Civilian Planning and Conduct Capability** (“CPCC”) which is part of the EEAS is responsible for the autonomous conduct of civilian CSDP operations. The CPCC ensures the effective planning and conduct of civilian CSDP crisis management operations and the implementation of all mission-related tasks.

The **Commission** is a relatively marginal player in terms of the conduct of the CFSP but has a significant role in the conduct of the EU’s external relations in respect of matters falling under the TFEU. In particular, under Article 218 TFEU it is for the Commission to submit proposals for the opening of negotiation on agreements with third countries and international organisations and to make recommendations to the Council concerning the position that the EU should take in international negotiations relating to TFEU matters, and the Commission will often act as negotiator on behalf of the EU.

The **European Parliament** also plays a role in external matters. Under the CFSP the European Parliament is limited to asking questions and making recommendations to the Council and the High Representative and holding a debate on the CFSP twice a year. However, the Lisbon Treaty gave the European Parliament a co-legislative role in trade policy, an area where formerly it enjoyed only a right of consultation. The Lisbon Treaty also extended the requirement for it to consent to a wide range of international agreements to be entered into by the EU in respect of matters covered by the TFEU.

The role played by the **Court of Justice** in the development of EU competence externally has been significant. The Court has defined the EU’s competence externally through its rulings on for example the doctrine of implied EU competence⁴ (now codified in Article 216 TFEU). There have also been significant judgments about the circumstances in which the EU has exclusive competence to enter into international agreements, as a result of which the Member States are unable to enter into agreements in those areas on their own behalf (the case law is now codified in Article 3(2) TFEU).

The role played by the Court of Justice in the development of EU competence externally has been significant. In the past the Court has contributed to the expansion of the EU’s competence externally through its rulings on for example the doctrine of implied EU

⁴ The doctrine of implied competence has been developed by the European Court of Justice through its case-law on EU external competence. Under this doctrine the competence of the EU in the external field arises not only from express conferment under the Treaties but may flow by implication from other provisions of the Treaties and the practice of the EU. Implied powers arise in broadly three situations. The commonest is where measures have been adopted by the institutions on the basis of an internal power. External powers may also arise even where internal measures have not been adopted, either because external and internal competence must be exercised simultaneously, or because an external power is implicit in the scheme of the internal power.

competence. Similarly, the Court has in its rulings clearly demarcated the extent of the EU and Member States' competence in international bodies such as the WTO. In recent years the Court has also been highly influential in the development of EU sanctions policy.

Although the Court continues to have limited jurisdiction under the CFSP, the Lisbon Treaty has provided for the Court to have jurisdiction to review the legality of decisions providing for restrictive measures against natural or legal persons. This has for the first time brought measures such as travel bans adopted under the CFSP Decisions within the scope of its jurisprudence. In addition, the Court has jurisdiction to police the boundaries between action taken by the EU under the CFSP and other areas of EU policy. Recently, a number of inter-institutional disputes have arisen in relation to the conduct of EU external relations following the entry into force of the Lisbon Treaty which have resulted in cases being taken in the ECJ. It is anticipated that the Court's rulings in these cases may impact significantly on the future balance of competence between the EU and Member States in the conduct of EU external relations. Similarly, with the proliferation of EU sanctions measures, a number of cases have been referred to the EU Courts in relation to measures taken against natural or legal persons both under CFSP Decisions and EU Regulations. The Court's judgments in these cases will continue to influence the future development of EU sanctions measures in particular as regards the due process requirements to be followed when subjecting individuals to an asset freeze or a travel ban.

Civil Protection

The legal base for EU action in respect of civil protection is found in Article 196 TFEU. The EU competence in this area is confined to carrying out actions to support, coordinate or supplement the actions of the Member States. Accordingly, action by the EU does not supersede the competence of Member States to act in the area and EU acts do not entail harmonisation of the laws of the Member States. Legislation based on Article 196 TFEU will be subject to adoption by the Council and the European Parliament under the ordinary legislative procedure with the Council acting by QMV.

Article 196 TFEU envisages action at the EU level to:

- "a) support and complement Member States' action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union;
- b) promote swift, effective operational cooperation within the Union between national civil protection services; and
- c) promote consistency in international civil-protection work."

The two main EU instruments currently covering prevention, preparedness and response pre-date the entry into force of the Lisbon Treaty and are:

- Council Decision 2007/162/EC, Euratom of 5 March 2007 establishing a Civil Protection Financial Instrument; and
- Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism.

Rules relating to implementation of the Mechanism and Financial Instruments are contained in two Commission Decisions - Commission Decisions 2004/277/EC (as amended) and 2007/606/EC.

There is currently a proposal for a Decision of the European Parliament and of the Council on a Union Civil Protection Mechanism which would replace the measures referred to above and builds on two Commission Communications: Towards a stronger European disaster

response: the role of civil protection and humanitarian assistance; and A Community approach on the prevention of natural and man-made disasters. The purpose of the proposal is to increase the security of EU citizens and to build resilience to natural and man-made disasters, and in so doing reduce costs to the EU economy from disasters and minimise the adverse economic, social and environmental consequences of disasters. The proposal covers prevention, preparedness, response, the external dimension and the financial provisions. It is aimed at protecting people, the environment, property, including cultural heritage, against all natural and man-made disasters including acts of terrorism, technological, radiological or environmental accidents, marine pollution and acute health emergencies, occurring inside or outside the EU.