

February 28, 2013

Sir Peter Westmacott KCMG, LVO
Ambassador
3100 Massachusetts Ave, NW
Washington, DC 20008

Dear Ambassador Westmacott,

Per your December 28, 2012 letter to Dr. Hamre, the CSIS Europe Program is pleased to present you with our contribution to the Balance of Competency Review. We are delighted to have been included in this timely and noteworthy endeavor. This Review and subsequent national discussion on the United Kingdom's future relationship with the Europe Union are of vital importance to the United States.

Please do not hesitate to contact us should you have any additional questions or comments regarding our contribution.

With best wishes,



Heather A. Conley
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UK Balance of Competences Review: Foreign Policy Report

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Finding Balance

As part of the general review conducted by the United Kingdom of the current state of competence between the EU and Member States in foreign and security policy, the Europe Program at the Center for Strategic and International Studies (CSIS) in Washington, D.C. welcomes the opportunity to provide its perspective in the framework of the Foreign Policy Report of “Balance of Competences Review”. Although the analytical review is summarized by seven questions provided in the call of evidence, the most important question, which determines the others, is the identification of the best balance between UK national and EU multilateral action in foreign and security policy. Put differently, what is the most effective platform for executing British foreign policy? When does national action have the greatest impact and when does acting through the EU enhance and further British national interests?

One can visualize a scale that weighs the policy benefits and costs of national and EU action which implies a comparative study of the efficiency of the two processes in defending British interests. This short essay intends to draw on the studies recently produced by the CSIS Europe Program and evaluate these policy costs and benefits.

Benefits

What are the advantages of working through the EU in foreign and security policy? The benefits, in broad terms, fall into one of two categories:

The EU is a force multiplier and can magnify British policy by 27 countries. This benefit can only be derived if: (1) British views are accepted during preliminary internal EU policy negotiations; (2) there is policy coherence among the Members States; and, (3) the EU collectively can attain better deals than Britain could on its own. The UK therefore needs to ensure that its position is taken into account in a satisfactory way in the preliminary internal EU negotiating process. If that is not the case, the benefit becomes a disadvantage.

The EU can also optimize British diplomatic efficiency amidst a time of austerity in those foreign policy areas which are not a pressing priority yet remain important to overall national interests, thus allowing British national diplomacy to focus on critical areas and issues. For example, less pressing policy matters can be addressed through the EU’s European External Action Service (EEAS) thus allowing the British government to increase its overall efficiency and to keep a lean diplomatic structure, reduce the size of its diplomatic corps and better focus on priority countries for UK trade and foreign policy. An EEAS diplomatic mission in countries

of low interest would ensure that UK positions are duly taken into account, as national interests of EU Member States in lower priority countries are often very similar and can be equally reflected as European interests.

Costs

The lack of efficiency in EU processes is a serious disadvantage to the Union's influence as a foreign policy actor. There is no need to delve at length into the bureaucratic nature of EU administration practices which are commonly known and are an equal source of frustration for many EU and national officials alike. In the context of this review however, the operative question is to determine whether this inefficiency stems from a lack of leadership oversight or if it is structural in nature and therefore unchangeable. With the former, national engagement can minimize inefficiencies. With the latter, very little can be done. For example, structural inefficiency, such as the need to work in 23 different languages, comes at a significant cost.

Another significant structural inefficiency is the complexity of the relationship between European executive, legislative and judicial branches, which requires near permanent negotiation and compromise. Unanimous, majority and qualified majority decisions make it extremely difficult to reach a final decision which leads to watered down policy decisions calling into question whether the exhaustive and intensive negotiating investment is worth the final policy product.

Of course, the greatest disadvantage to British interests would be when a policy outcome decided at the EU level is positive for the EU as a whole but detrimental to the specific interests of the UK. Although some EU policies will be beneficial for the UK and others detrimental, the balance as a whole must be understood.

'Tipping' the Scales

There is one final factor that could be seen as a tipping of the scales between benefits and costs. Combining different policies at the EU and national level can have a mutually reinforcing, 'multiplier' effect on all policies. For example, security and development policies can reinforce each other and synergies identified in combining different policy approaches such as the EU's counter-piracy mission in the Horn of Africa. This mission benefits from EU policy work to address the root causes of piracy by contributing to Somalia's social and economic development. The EU is one of the very few players able to use such a broad range of instruments.

In an attempt to demonstrate when and where the scales tip in favor of EU action as an amplification of British national action and interests, we examine four policy areas: trade policy, weapons of mass destruction (WMD) policy, human rights and overseas development assistance policy (ODA). Where the scales tend to tip in favor of national action over EU action, we examine the areas of Justice and Home Affairs (JHA) and counter-terrorism policies. Briefly examining these policies should provide us with a better understanding of the right balance and policy mix of British and EU foreign and security policy competencies.

EU Trade Policy

EU commercial policy was developed in the 1970s and provides exclusive competency to the EU for trade negotiations with third states. After the negotiating mandate is agreed to by all Member States, the designated EU trade negotiator is responsible for negotiating the trade agreement with the respective foreign country. The competency, scope, role and the decision-making process of the EU Commission are enshrined in EU treaty law. EU trade policy makes full use of the leverage given by having one common EU voice but implementing the will and mandate of 27 Member States. EU trade policy benefits both from the coherence of the negotiating positions established and the trade and investment size of the EU as a whole, which is greater than any individual Member State.

For example, the British government announced that the 2011 EU – Korea Free Trade Agreement with South Korea (the first EU free trade deal with an Asian country) would be worth an extra £500 million to UK businesses based on trading levels and create £2 billion of additional export opportunities for UK businesses. As a result of the EU-Korea FTA, British exports to Korea increased by 77.2 percent from July 2011 to June 2012. It is unlikely that London could have reached a better deal if it had negotiated an agreement at the national level. Therefore, the UK clearly benefits from the leverage of being part of the EU, the largest exporter and the second largest importer in the world.

EU Justice and Home Affairs

The EU Justice and Home Affairs (JHA) policy is comparable with EU trade policy in that both are exclusive competencies of the EU. It allows for a common approach to migration, improves law enforcement's ability to combat cross-border crime, and helps standardize law enforcement capabilities across borders. Under the Lisbon Treaty, the UK has the right to “opt in” and “opt out” of some measures of Justice and Home Affairs Policy.

The EU JHA policy, for example, can claim limited success. The introduction of the European Arrest Warrant reduced average extradition times between Member States from nine months to 43 days. Yet, the policy efficacy derived from having a common JHA policy is much less tangible than in trade. European citizens already benefit from freedom of movement and benefit less from a common visa policy. Although attempts are made to achieve European-level policy on domestic issues such as migration and internal security, these efforts are weak at best as the Member States seek to retain their respective sovereignty over this space. Because the EU's competency in the JHA space is much less clear-cut than its competency in trade, it seeks to expand its competency as much as possible with uneven effect.

Counter-Terrorism Strategy

The EU counter-terrorism strategy aims to facilitate the coordination of actions by Member States by creating common standards. Again, EU policies are hindered by the sensitivity of the subject matter and by competition and coordination of other international organizations and actors with more experience in this field, such as INTERPOL, the G8 and the Global Counter-Terrorism Forum. Because counter-terrorism is strongly linked to national intelligence collection capabilities, Member States are reluctant at best to raise sensitive national information among 27

states and a bureaucratic superstructure. Therefore, EU counter-terrorism policy development is largely limited to Member State briefings and general exchanges of information. In fact six years ago, the EU argued whether or not it was necessary to have an EU Counter-Terrorism Coordinator at all.

Why is there such a difference in effect between the EU's trade policy and its JHA as well as its counter-terrorism policies? EU trade policy involves only a limited number of EU officials with clearly defined responsibilities and processes established to solve negotiating obstacles and give the EU a strong hand in its dealings with its commercial partners. JHA policy is hindered both by its subject matter which directly impacts national sovereignty and by the lack of an effective coordinating mechanism at the European level.

Weapons of Mass Destruction (WMD) Policy

However, not all EU actions in the security field which affect sovereignty are inefficient. One interesting way in which the EU leverages its trade agreements is to include national security provisions within these agreements. In 2003, the EU Council began to add a WMD clause to agreements with third countries following the recommendation of a British official, former UK Minister of Europe Denis MacShane. From 2003-2009, non-proliferation clauses were added to all new or renewed trade agreements negotiated with third countries which covered over 100 countries. Though a few exceptions can be noted (e.g., EU-India trade agreement lacked WMD clause due to resistance by the Indian government during negotiations), this systematic introduction of the WMD clause is an important example of the EU's ability to leverage one of its most successful collective policies (trade) in order to benefit another policy area (non-proliferation) although the two issues are not directly linked. The EU efficiently combines a diplomatic instrument with a political goal which standardizes an international WMD framework and strengthens the international counter-proliferation regime. Third countries also benefit from signing a trade agreement with the EU: a true "win-win" outcome.

Human Rights Policy

Similarly, the EU uses its trade agreements to promote its human rights policy. The Generalized System of Preferences (GSP), a key tool to provide 176 developing countries/territories with better access to the EU market, can be temporarily withdrawn if there is evidence of serious and systemic violations of key international law, including labor rights or laws of good governance, and human rights conventions. For example, in 1997 the EU withdrew GSP benefits from Burma over its use of forced labor. In 2006, it withdrew GSP benefits from Belarus for widespread violation of basic trade union rights.

Policy towards Burma is also an example of where EU policy amplifies policy efforts at the national level vis-à-vis human rights. The British government had established a specific set of human rights objectives in its relationship with Burma, such as improvement in prison conditions, treatment of civilians in conflict areas, forced labor and freedom of association, accountability for human rights abuses, rights and freedoms of ethnic minorities, media freedom, and democratic reform. To advance these goals, the UK raises human rights concerns with Burmese ministers, develops a network of contacts throughout Burma, and provides updates to

the UN Human Rights Committee. At the European level, the EU has also imposed an arms embargo and other restrictions on Burma. This example demonstrates there is no identifiable disadvantage in conducting a policy both at the EU and the UK level. The UK Human Rights policy regarding Burma doesn't undermine EU policy, but instead allows for more specific actions and thereby increases the general effectiveness of the Western sanctions on the Burma regime.

Overseas Development Assistance (ODA)

Like in the field of human rights, overseas development assistance (ODA) at the European level can be an amplification of British global ODA leadership. Over the past decade, the UK has tripled its ODA spending in real terms, while also remaining on track to be the first country in the G8 to meet the UN target of 0.7 percent of GNI to ODA. Following a comprehensive spending review, the Department for International Development's (DFID) budget will continue to increase and reach £10.1 billion by 2015. Similarly, the EU is the world's largest aid donor. The EU and its members provide \$66 billion in ODA each year, averaging 0.42 percent of GNI in 2011. However, a lack of cooperation between DFID and the EU is mitigating the effectiveness of a combined ODA effort. For example, in DFID's oversight of EU aid to low-income countries such as Mozambique, Tajikistan, and Uganda, the EU is often viewed by DFID's country offices as a separate donor rather than a partner. This obstructs the potential for a coordinated policy at the European level that can serve as a force multiplier for achieving DFID's goals.

Moreover, the UK has also been the international standard for EU ODA commitments to multilateral organizations such as the Global Fund to Fight Aids, Tuberculosis and Malaria and the GAVI Alliance. In 2012, the UK pledged £384 million, making it The Fund's third largest donor. The UK is also one of only two countries to contribute to the GAVI Alliance through direct funding, Advance Market Commitments (AMC), and the International Finance Facility for Immunization (IFFIm), increasing its contributions every year since 2008. As the driving force behind European ODA commitments to multilateral organizations, UK efforts are best served by continuing its policy at the national level.

Achieving Competency Balance

More often than not, the question of whether a policy should be conducted at the EU or the national level cannot be answered simply or easily. However, our findings suggest that what optimizes the implementation of British foreign and security policy is identifying the mix of policy and instrument flexibility to support British national interests at the European level. From all of the examples cited above, we conclude that the EU is more effective in supporting vital interests of the United Kingdom when conducting policies where its competency is: (1) clearly delimited and defined and, (2) when there is a clear EU decision making process with a limited group of individuals involved. Without these two elements, policies at the European level likely will not achieve a force multiplier effect or strengthen British policy positions. British authorities should actively seek those foreign and security policy areas where a combination of policies instruments can be utilized, particularly as an add-on to trade agreements even if there is no obvious policy linkage (such as trade and WMD and human rights policies).

Our findings also suggest there is no simple way to identify the specific policies which have these two characteristics. The examples of the global counter-proliferation policy and the WMD clause demonstrate that even when a policy as a whole delivers poor results, a specific policy subset may still be useful. Furthermore, the determination of the level of efficiency of conducting policy at the EU level is not part of the current decision criteria for EU policy makers. The notion of subsidiarity, which is often used as the main criteria for having or not having a policy at the EU level, partly takes into account the “force multiplier” effect but does not reflect the “focused” and “clearly delimited” criteria, which in practical terms is as important.

In conclusion, we make the following recommendations to Her Majesty’s Government as it undertakes the Balance of Competency Review in the foreign policy arena:

1. The UK should adopt a highly pragmatic, toolkit approach to EU policymaking centered upon an uncontested EU competency. Value added policies which allow maximum flexibility in implementing a policy at the national level and can amplify its impact and legitimacy at the EU level (such as trade) will be the most successful.
2. In cases where EU activities are inefficient, duplicative or where they are seeking a competency that they have not been clearly given, British authorities should not hesitate to opt out of the policy or demand a clear and limited EU mandate.
3. Policy flexibility also implies the capacity for the UK to adapt its positions over time. As the government works to map the policies which should be conducted at the national and/or at the EU level, it should prepare for periodic reevaluations of effect policy at both the national and EU levels. As the efficiency of an EU policy and its priority changes, the UK should be prepared to “move the border” as necessary. This is an active diplomatic process which requires a robust and long-term investment at the EU level. Finally, the UK can and should work to improve the efficiency of EU policies in those areas which it is most interested to increase the chances of policy success and to benefit from the policy multiplier effect.
4. The UK should consider giving priority to the following policies at the EU level:
 - a. Focus should be on policies such as trade where the “force multiplier” effect of having a common EU position is clearly advantageous for the UK.
 - b. Policies such as human rights and ODA policies can be conducted both at the national and the EU level with limited negative side effects. As part of the pragmatic approach we propose, the UK should aim for an amplifying effect between the EU and national policies without investing too much time and diplomatic energy in trying to delineate the boundaries of each level.
 - c. Seek foreign and security policy objectives which can be incorporated into current and future trade agreements. Special attention should be given to this dimension with the upcoming Transatlantic Trade and Investment Partnership (TTIP) negotiations.
 - d. Seek those specific policies where the UK can inform, direct and guide the European debate rather than be in a reactive and non-affirmative role.