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Brexit and UK defence: an explainer

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EU defence cooperation has been a stated ambition of EU Member States since the 1992 Maastricht Treaty. The intergovernmental nature of this policy area, however, has meant that its evolution and development has been entirely dependent upon political will and the convergence of competing national interests among the EU Member States, in particular the UK, France and Germany. Equally, impetus has quickly been lost when political will has waned in the face of other challenges, such as the 2008 global economic crisis.

In the last few years there has been a renewed enthusiasm for European defence cooperation which has seen the agreement of several initiatives that will progress the EU defence project. In the UK those developments have frequently been raised within the context of the UK's departure from the EU.

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This short briefing examines the legal basis for EU defence, the UK's views, what has been agreed within the EU since the 2016 Brexit referendum and what the UK's departure from the EU means for the UK's armed forces.

Box 1: Essential Reading

This short briefing should be read in conjunction with the following Library Briefing Papers:

- [CBP8923, The UK-EU future relationship: the March 2020 EU draft treaty and negotiations update](#)
- [CBP08834, The UK-EU future relationship negotiations: process and issues](#)
- [CBP08216, EU defence where is it heading?](#)

1. Legal Basis of European Defence

Under Title V of the [Treaty on European Union](#) (TEU), the EU's Common Security and Defence Policy (CSDP) remains exclusively within the competence of the EU Member States. The EU High Representative can make proposals in CSDP matters, but decisions are taken on an intergovernmental basis within the Council of Ministers, with unanimity largely the norm for decision making. Each EU Member State has a veto.

The powers of the European Commission in defence are limited. It cannot make laws on European defence and it has no role in the decision making, planning or conduct of EU military operations. Its competence does extend, however, to European defence industrial matters.

Article 42 of the TEU set down a commitment toward the "eventual framing of a common defence policy, which might in time lead to a common defence when the European Council, acting unanimously, so decides".

2. Is there an EU Army?

There is no "EU Army" that is a standing force directly under the control of the European Union.

EU Member States can agree, by unanimity, to the creation of an [EU-led military operation](#). The EU's Political and Security Committee exercises political control over an operation; while the EU Military Committee monitors its execution. Both bodies are responsible to the Council of Ministers, which retains ultimate decision-making responsibility for the creation, strategic objectives and termination of an operation.

Capabilities and assets are assigned to EU-led operations by individual Member States on a voluntary and sovereign basis. The common costs of EU military operations (which amount to approximately 5-10% of the total costs) are met out of the EU budget, while the remaining costs fall to participating Member States on a "costs lie where they fall" basis.

The UK contributes to 7 out of 16 EU-led military operations.¹ However, in terms of military capability, the UK could be considered a net contributor to the EU. Historically It

¹ The UK still contributes to CSDP operations until the end of 2020 as part of the transition period.

has provided an estimated 20% of the EU's force catalogue, including strategic enablers such as airlift, refuelling and intelligence surveillance and reconnaissance. The UK's principal contribution to EU-led operations has been at the strategic command level.

3. What is the UK's view on EU defence?

Successive British Governments have stated that NATO is the cornerstone of European defence and security, supported by a network of strong multilateral and bilateral alliances and partnerships of which the UK is a participant. From the UK's perspective the EU has been a notable 'soft power' actor, focusing on crisis prevention, crisis management and post-conflict stabilisation. Greater defence cooperation within the EU has thus been viewed as entirely complementary to NATO and a means of strengthening the European pillar of that Alliance.

As such, the UK has generally been supportive of CSDP and has played a significant role in its development since the 1990s.² This has been particularly evident in efforts to improve EU Member States' military assets and capabilities, including the creation of the EU battlegroups, and the establishment of the European Defence Agency. However, successive governments have been cautious in their approach to greater European defence integration, using their participation in CSDP decision making to shape its evolution in a direction that has suited British interests. For example, the UK has historically been opposed to efforts to establish a military planning capability for EU operations that is independent of NATO.

3.1 Opposing views

The opposite view, traditionally advocated by Germany and France, is that the EU should establish an independent military capability outside of the NATO framework. Germany, in particular, is an advocate of greater EU defence integration and the creation of a "European Army", a position supported by influential figures such as the European Commission President Ursula von der Leyen.

4. What has happened in EU defence since the 2016 Brexit referendum?

In 2013 EU leaders agreed that more attention needed to be paid to European defence as a result of the changing international security environment. Work subsequently began on a package of measures that focused on strengthening EU defence, improving the availability of civilian and military capabilities and strengthening Europe's defence industry. Three key documents were published in 2016 setting out the EU's goals in this area:

- An [EU Global Strategy for Foreign and Security Policy](#), which offered an overarching strategic vision for the EU's global role in the future and measures for achieving its aims.
- [A Security and Defence Implementation Plan](#) which has been described as raising "the level of ambition of the European Union's security and defence policy" and sets out a series of mutually reinforcing measures.

² A history of European defence cooperation is set out in a series of Library briefing papers dating back to 2000. See p.10 of [CBP 08216 EU defence: where is it heading?](#)

- The European Commission's [European Defence Action Plan](#), which seeks to support more efficient spending on joint defence capabilities by Member States, strengthen security and foster a competitive and innovative European defence industrial base.

On the basis of those documents, there has been considerable momentum within the EU over the last few years toward meeting its ambitions for defence.³ Among others:

- EU leaders agreed that a new permanent operational planning and conduct capability would be established within the existing EU Military Staff in order to provide an out-of-area command and control structure at the strategic level for *non-executive* military missions.⁴ That capability was subsequently strengthened in November 2018 with an agreement to expand that remit into the planning and conduct of small-scale (EU battlegroup size) executive (i.e. combat) military operations by the end of 2020. That decision has been viewed as a step towards an independent operational planning capability for the EU.
- EU leaders agreed to the establishment of Permanent Structured Cooperation (PESCO), an un-utilised element of the Lisbon Treaty, that would allow a smaller group of willing Member States to collaborate on defence projects, specifically in capabilities development. 25 EU Member States have signed up to PESCO and, to date, [47 projects](#) have been agreed. In the future PESCO projects will be able to utilise the European Defence Fund to obtain a higher rate of EU financing (30%) than that available to other projects (20%).

Any capabilities developed through PESCO will remain owned and operated by Member States. They will not be 'EU' assets but remain under national control and capable of being deployed in other frameworks such as the UN and NATO. Going forward, only participating Member States will have decision making rights on PESCO projects or the future strategic direction of this initiative.

- EU Member States endorsed a Co-ordinated Annual Review on Defence (CARD), which is intended to provide an overview, at the EU level, of defence spending, national investment plans and defence research efforts by each individual Member State. Following a trial run, CARD became a standing annual activity in autumn 2019. In the longer term it is intended to feed into the projects developed under PESCO.
- In June 2017 the European Commission launched the European Defence Fund (EDF). It will support investment in joint research and the joint development of defence equipment and technologies, with a view to more efficient defence spending and avoiding duplication. The fund will not be established with additional contributions by EU Member States but will be provided out of the existing EU budget. This will be the first time that the EU budget has been used for defence purposes.

A two-step approach is being taken in the creation of the EDF. A pilot period under the current 2014-2020 multiannual financial framework which has two strands (the Preparatory Action on Defence Research and the European Defence Industrial Development Programme) and with a budget of €590 million; and the creation of a dedicated European Defence Fund for the period 2021-2027, which will combine both these elements.

³ A timeline of decision making in CSDP, setting out all the major summits and significant meetings of the Council of Ministers, starting with the Bratislava summit in September 2016, is available at: <https://www.consilium.europa.eu/en/policies/defence-security/defence-security-timeline/>

⁴ Non-combat operations.

4.1 What did the UK sign up to?

While an EU Member State the UK was part of all decision making relating to the strengthening of CSDP. It also retained a veto in CSDP decision making.

Until 31 January 2020 the UK was, therefore, a full participant in the EU's defence-related activities, including CSDP planning structures, the financing of CSDP initiatives and several EU military operations. The UK took part in the trial run of CARD and signed up to several of the projects that form part of the pilot phase of the European Defence Fund.

The UK did not sign up to PESCO.

5. The impact of Brexit

The MOD has been clear in its position that, post Brexit, the UK will retain sovereignty over its defence policy and its armed forces. In answer to a Parliamentary Question in April 2019 the MOD stated:

The UK will be leaving the EU's common security and defence structures, and our future relationship with those structures will be as a third country. The UK will pursue a distinctive, independent, and sovereign foreign and defence policy that meets British interests and promotes our values...⁵

In October 2019 the Government issued the following statement in response to media claims that the UK could be forced to join an EU defence force after Brexit:

The Daily Express has reported incorrect claims by a campaign group that British troops could be forced to join an EU defence force after Britain leaves the European Union.

These false claims were corrected by the Ministry of Defence, which confirmed that the UK has always had the sovereign right to deploy military troops and equipment and will continue to do so after Brexit.

A Government spokesperson said:

Claims that the UK could be forced into any form of EU Army are inaccurate.

The UK has always made our own sovereign decisions on defence spending on where and how to deploy our Armed Forces. This will remain the case as we leave the EU.

Any decision to involve British Armed Forces in co-operative missions with other countries would be taken by the UK based on an assessment of the UK's best interests.

The UK is committed to Europe's security and will continue to demonstrate that commitment through our leading role in NATO and other international organisations. The UK also has extensive bilateral arrangements for defence and security.⁶

5.1 Status of defence co-operation during the transition period

Having formally left the EU on 31 January 2020, the UK is now considered a third country in relation to the EU, its structures and decision making.

Several features of UK membership will, however, be maintained during the transition period, which is provided for by the [Withdrawal Agreement](#), and will last until the end of December 2020.

⁵ PQ242049, *EU Defence Policy*, 16 April 2019

⁶ Ministry of Defence, [Defence in the Media](#), 8 October 2019

Under **article 127(2)** of the WA the EU's provisions on Common Foreign and Security Policy (CFSP) and CSDP will continue to apply to the UK during the transition period, unless an agreement on the future EU-UK relationship is reached and becomes applicable during that time. In the event of such an agreement, CFSP and CSDP treaty provisions, as set out in the TEU, will cease to apply to the UK.

On that basis, the UK can continue to participate in CSDP operations, and will continue to take part in the pilot capability projects of the EDF. The UK will also continue to fund defence-related agencies, such as the European Defence Agency, and CSDP operations.

However, as a third country the UK is no longer represented in the EU institutions and will not participate in EU decision-making. This includes those bodies relating to the conduct of CSDP, such as the Foreign Affairs Council and the Political and Security Committee, which oversees EU military operations. UK representatives will only be able to participate, on a case-by-case basis, where discussions are directly relevant to the UK. The UK will not, however, have voting rights, thereby effectively losing its veto.

The Withdrawal Agreement also sets limits on the UK's role in CSDP during the transition period. The UK will be able to abstain from certain CSDP decisions "for vital and stated reason[s] of national policy". Although in "a spirit of mutual solidarity" the UK will refrain from any action that is likely to conflict with, or impede, EU action. EU Member States will, in turn, respect the UK's position.

While the UK will be able to continue its participation in EU-led operations during the transition period, it cannot provide:

- Commanders for civilian operations, heads of mission, or military operations conducted under CSDP.
- The operational headquarters for CSDP missions or operations. The UK will also not serve as a framework nation (the nation providing the core command, staffing and logistics) for EU battlegroups.⁷
- The head of any operational actions taken under CFSP Council Decisions.

Responding to various concerns that Brexit will lead to a loss of sovereignty over defence and the British Armed Forces, the MOD stated on 28 January 2020:

The UK has no agreement with the EU about British participation in the establishment of a 'European Defence Union'.

The Withdrawal Agreement and Political Declaration provide the option, but no obligation, for the UK to continue to contribute to CSDP operations and missions on a voluntary basis, and where of benefit to UK interests. This does not undermine the UK's sovereignty, our command or control of our Armed Forces nor does it oblige us to participate in a 'defence union' or any EU defence initiatives.

The UK will retain full sovereign control over its defence, intelligence services and decision-making after leaving the EU. The UK will also retain control over the deployment of its Armed Forces and their equipment. Any future security partnership negotiated with the EU would reflect this position.

The UK currently has no agreements with the EU on military command and control procedures other than those in the Withdrawal Agreement referring to continued participation in CSDP operations and missions during the Implementation Period. UK personnel remain under UK sovereign command at all times.

⁷ In early March 2019, for example, operational command responsibility for the EU's anti-piracy mission, Operation Atalanta, was transferred from the UK to Spain, ahead of the UK's initial expected departure from the EU on 29 March 2019. The OHQ for Atalanta was originally established at PJHQ Northwood in 2008. The UK also withdrew from leading an EU Battlegroup in the latter half of 2019.

The UK does not have any agreements with the EU on British participation in the 'Five Eyes' community. Any future relationship agreement with the EU will not undermine our partnership with the US, Canada, Australia and New Zealand. The intelligence cooperation between these 'Five Eyes' partners is the broadest, deepest and most advanced of any grouping of nations and we are committed to maintaining it.

The UK has not entered into any agreements with the EU to participate in the procurement of military equipment from EU-wide organisations. There are no agreements with the EU about British participation in transfer of nuclear technology licensed to the UK by the US.⁸

5.2 Basis for future defence cooperation

The [revised Political Declaration](#) published on 17 October 2019 forms the basis of negotiations for future cooperation. It is, however, a broad framework of aspirations that has no legal basis and is, therefore, open to renegotiation.⁹

Indeed, Government statements since leaving the EU have indicated that it is no longer seeking the institutionalised relationship in foreign affairs and defence that is envisaged in the Political Declaration, and instead favours a flexible, ad-hoc approach.

What does the Revised Political Declaration currently say?

The revised Political Declaration envisages the creation of a “Framework Participation Agreement” that will go beyond existing EU third-party agreements and establish an unprecedented relationship between the EU and UK in defence matters.

In that document the UK indicated its willingness to engage, as a third-party participant, in EU military operations and to consider involvement in EU capability development mechanisms such as PESCO and the European Defence Fund, albeit on a case-by-case basis and where it is in the UK national interest to do so.

Military operations

The decision to commit forces would continue to be a sovereign decision taken by the UK Government.

The Declaration suggests that consultation and the exchange of information would remain proportionate to the level of participation by the UK. Should the UK choose to become involved in any CSDP operation it would be entitled to participate in the Force Generation conference and the Committee of Contributors to enable the sharing of information. The secondment of staff to the designated Operational HQ would also be a possibility. The UK will not, however, be able to command a CSDP operation and it is unlikely that the UK would have access to operational planning documents. Such access would go far beyond the parameters of current EU third-party arrangements and is a UK request that the EU has long resisted.

It also remains the case, that as a third country the UK would have no decision-making rights with respect to the direction of the EU-led operation, regardless of its contribution, which would remain within the purview of the EU Member States.

For many commentators the commitment of UK military capabilities to an operation over which the UK Government would have no formal say, is an unacceptable compromise.

⁸ PQHL456, *EU Defence Policy*, 28 January 2020

⁹ A Declaration is not a formal EU law instrument under the EU Treaties. The legal status of the Political declaration is examined in greater detail in Library Briefing Paper CBP08714, [Revisions to the Political Declaration on the framework for future EU-UK relations](#)

Involvement in PESCO, European Defence Agency (EDA) projects and the European Defence Fund (EDF)

The revised Declaration states that participation in EDA capability development projects, PESCO or defence projects supported by the EDF will be *considered* “to the extent possible under the conditions of Union law” (paragraph 102, author’s emphasis). The original Political Declaration stated that such participation would be “enabled”.

Any involvement by the UK in PESCO, the EDA or the European Defence Fund once it is fully established in 2021, would subsequently be as a third country. Collaboration with the EDA could continue under an Administrative Agreement. Collaboration within the EDF and PESCO, however, will be subject to conditions set down in EU law, and the details of that third-party participation are currently being discussed within the EU’s institutions. While nothing has been formally concluded, it is expected that the regulations controlling third-party access to either mechanism will be strict requiring, in some form, a commitment to strengthening EU defence.

Recent Government statements

The UK [negotiating objectives](#) published on 27 February stated that foreign policy will be determined “within a framework of broader friendly dialogue and cooperation between the UK and the EU”. The document makes no direct reference to defence or participation in EU programmes such as the EDF and PESCO.

Foreign affairs and defence cooperation has thus been excluded from the future relationship negotiations. Neither have they been included in the [UK’s draft agreement texts](#), published by the Government on 19 May 2020.

Yet, the UK is a significant military power in Europe.¹⁰ It has often been noted that, in defence terms at least, the EU needs the UK more than the UK needs the EU. The Government’s use of defence cooperation as a bargaining chip in the broader negotiations on a future relationship cannot, therefore, be discounted.

The Government is also likely to want to link up any future cooperation with its [Integrated Security, Defence and Foreign Policy Review](#), the outcome of which is now expected next year.¹¹

The EU’s position on negotiations

It has been the longstanding view of the EU that, as a third country, the UK cannot “have the same rights and enjoy the same benefits as a member”.¹² There will also be no standing invitation to participate in CSDP operations.

However, the EU still seeks an institutionalised relationship and on 18 March 2020 published a [draft text on the foreign policy, security and defence provisions](#) of the Agreement on the New Partnership with the UK. It did so while acknowledging “that the United Kingdom has stated that it does not wish to engage in negotiations on these matters”.

¹⁰ Historically the UK has provided an estimated 20% of the EU’s force catalogue, including strategic enablers such as airlift, refuelling and intelligence surveillance and reconnaissance. The UK’s principal contribution to EU-led operations has been at the strategic command level. The UK is one of only a few EU Member States capable of providing an operational HQ. In absolute terms, the UK also has the largest defence budget in Europe.

¹¹ The outcome of the review had initially been expected towards the end of 2020. The review has been put on hold, however, due to the Covid-19 pandemic.

¹² European Commission, [Recommendation for a Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland](#)

The draft text closely reflects the provisions of the revised Political Declaration and the EU's [adopted negotiating mandate](#), which views any partnership agreement as a "single package", of which foreign policy and defence will be one of three main components.

There is nothing in the draft text which would indicate a change of position by the EU on the contentious issues of UK access to operational planning documents for CSDP operations, or the terms of UK participation in the EU's defence capability development mechanisms.

There are two observations worthy of note:

- **Defence capability development** - While the draft text makes provision for potential inclusion in the European Defence Agency and possible participation by the UK in individual PESCO projects, a notable omission is any reference to UK access to the European Defence Fund.
- **Protocol on participation in CSDP operations** - The draft text includes a new Protocol on arrangements for the UK's participation in EU-led crisis management operations. It is the first time either Party has included detailed terms of participation.

The Protocol sets out arrangements for decision making on participation, the status of British forces, the command and control of forces, the financing of operations, and the exchange of classified information. However, the Protocol largely mirrors existing third-party Framework Participation Agreements that the EU has with other countries.¹³ It does not include any provisions that would be unique to the UK. The draft text reiterates the EU's longstanding position that cooperation, including the exchange of information, would be proportionate to the level of the UK's contribution.

¹³ See for example: [Agreement between the European Union and Australia establishing a framework for the participation of Australia in European Union crisis management operations](#), L 160,21/06/2012