



Project no. CIT1-CT-2004-506392

NEWGOV

New Modes of Governance

Integrated Project
Priority 7 – Citizens and Governance in the Knowledge-based Society

Policy Memorandum on the Emergence and Evolution of Intergovernmental Governing Modes in the EU's Common Foreign and Security Policy

reference number: 01/D27

Due date of deliverable: January 2006
Actual submission date: March 2006

Start date of project: 1 September 2004

Duration: 48 months

Organisation name of lead contractor for this deliverable:
University of Cologne, Udo Diedrichs

Project co-funded by the European Commission within the Sixth Framework Programme (2002-2006)		
Dissemination Level		
PU	Public	X
PP	Restricted to other programme participants (including the Commission Services)	
RE	Restricted to a group specified by the consortium (including the Commission Services)	
CO	Confidential, only for members of the consortium (including the Commission Services)	

Summary

The emergence and evolution of intergovernmental modes of governance in CFSP represents the background against which processes of change and transformation in EU foreign policy governance may be assessed. The memorandum combines an analysis of the main steps and stages in the evolution of governance in CFSP, before presenting a number of recommendations and options for policy-making.

Contents

PART A. THE EMERGENCE OF INTERGOVERNMENTAL MODES OF GOVERNANCE IN CFSP	3
1. THE EMERGENCE OF FOREIGN POLICY GOVERNANCE: FACTORS AND FORCES	3
2. THE CREATION OF CFSP: A NEW STAGE IN THE DEVELOPMENT OF EU GOVERNANCE	4
3. CFSP GOVERNANCE SINCE MAASTRICHT: THE LEGAL AND THE LIVING CONSTITUTION.....	5
4. ESDP AS A DYNAMIC FACTOR FOR THE EVOLUTION OF CFSP.....	5
PART B. POLICY CONSIDERATIONS AND RECOMMENDATIONS	7
1. INTERGOVERNMENTALISM AS THE KEY HERITAGE OF EU FOREIGN POLICY	7
2. TRENDS TO BE REINFORCED BY GUIDED POLITICAL ACTION.....	7
3. FLEXIBILITY AND DIFFERENTIATION AS KEY FEATURES OF GOVERNANCE	7
4. ESDP AS AN OPPORTUNITY FOR DEEPENING EU GOVERNANCE IN CFSP.....	7
5. THE CONSTITUTIONAL TREATY: WITH OR WITHOUT RATIFICATION	8
6. INTERNATIONAL CRISES: INSTITUTIONAL LEARNING IS PARAMOUNT	8
BIBLIOGRAPHY	9

Part A. The Emergence of Intergovernmental Modes of Governance in CFSP

1. The Emergence of Foreign Policy Governance: Factors and Forces

Studies on European Political Cooperation (EPC) and on the Common Foreign and Security Policy (CFSP) have been characterised by a growing interest in theoretical questions over the last years (Bretherton/Vogler 1999; Smith 2001; Tonra 2001; Schmalz 2004; Wagner/Hellmann 2003). However, in CFSP there is so far no broader academic debate about “new” modes of governance, or about ‘innovative’ elements in decision-making – except for the introduction of flexibility as an option offering a way out of the impasse created by the potentially paralysing effect of unanimity and the impossibility of introducing qualified majority voting (Diedrichs and Jopp, 2003).

The creation of a European voice in foreign policy was driven by a series of factors and forces, each of which reveals a particular logic (Nuttall 1992; de Schoutheete 1986; Regelsberger 2004):

- the functional need for expanding the scope of EC policy-making driven by the completion of the customs union and the establishment of a common external tariff;
- the growing perception of commonality among the member states as a result of dense and intensive interactions within the European Communities;
- the increasing number of international contacts and formalized forms of dialogue by the EC and the need to provide a political framework and orientation to numerous external relationships;
- the demand for a European profile within the East West conflict that had moved to a period of détente and mutual arrangements among the superpowers;
- the interests of key member states to use the EC for a more global role between the superpowers and to enhance thus national influence via Brussels.

Thus, the impetus for the emergence of EPC came from internal as well as external factors. It responded thus to a demand for more consistency among the member states without entering the framework of institutions created by the EC.

EPC was able to grow and to develop its own institutional and procedural profile in the shadow of the European Communities and their well-structured institutional set-up (Pijpers/Regelsberger/Wessels 1988).

At the time, the belief in the *political dimension* of the integration process, which was expected to follow with from the economic paths with a strong and irresistible logics, provided a key impetus for the formulation of EPC. Furthermore, there was the explicit aspiration by the member states as provided in the Copenhagen Report of 1973 to organise a new kind of international relations.

From the start, the development of EPC can be characterised by a dynamics that led to a strengthening of the formal quality of the process. In this context, Michael E. Smith identifies a trend towards “legalisation” which he defines as a process in which rules or standards of behaviour in a social setting are clarified, codified and invested with the status of law (Smith 2001: 81), representing a type of institutionalisation, which itself in a broader sense refers to the development of expectations of behaviour (Smith 2001: 82). The idea of legalisation in the sense of progress towards legal bindingness of social and political behaviour provides an important supplement to the conceptualisation of EPC/CFSP as an intergovernmental process

neatly separated from the supranational structures of the Communities. Two levels of interaction are distinguished: the summit-level legalisation which according to Smith stalled from the mid-1970s until the 1980s, and the process of emergence of informal customs which later matured into written rules (Smith 2001: 87): “As EC governments could not agree at this time to establish and codify their own procedural rules for EPC, these eventually developed as working habits in behind-the-scenes discussions among regular EPC participants” (Smith 2001: 87). The most important of these habits have been confidentiality, consensus and consultation. In addition to these norms, the value of reputation was widely appreciated among the partners, leading to solutions beyond the lowest common denominator level: “These fundamental norms or customs (among others), practised and reinforced in a dense transgovernmental network of experts, gradually gave substance to the EPC process” (Smith 2001: 87).

In parallel, a growing rapprochement between EPC and the EC became evident in a number of institutional details which were designed to lead to better coordination. Thus, the Copenhagen Report provided for the Commission to be contacted on EPC matters that affected the European Communities (Tonra 2001: 2). The London report went a step further by stating that the Commission would in general be fully integrated in the conduct of EPC, making it officially a player in the process, which de facto it had already become in the years before.

2. The Creation of CFSP: A New Stage in the Development of EU Governance

The demand for translating EPC into a more coherent, effective and legitimate policy structure increased considerably in the 1980s. The reasons were multiple (Diedrichs 1996):

- the dynamic evolution of the European Community triggered off by the Single European Act (Ifestos 1987; de Ruyt 1986), the Single Market programme and the introduction of majority voting in the Council called for a closer link to foreign policy cooperation, avoiding a split of the integration process;
- success of EPC since the mid-1980s, like the growing use of group-to-group dialogue (Edwards/Regelsberger 1990) created a positive pressure for further steps, enhancing the scope of action
- member states tried to build up a stronger European role in foreign and security policy as a response to the end of the Cold War and the new challenges to international security.

When the Common Foreign and Security Policy (CFSP) came into existence with the entry into force of the Treaty of Maastricht, the modes of decision-making and interaction in this policy domain were already well-defined and successfully working (Regelsberger 2003). Still, a “new threshold” (Tonra 2001: 3) in EU foreign policy cooperation was reached. Although there was no radical change in the mode of governance, the legal base had fundamentally been altered; the establishment of an enhanced institutional and procedural framework for what had been foreign policy cooperation among the member states of the European Communities meant in the first place that new potentials and perspectives could be activated, but it had a rather modest impact on the daily routines and the deep-rooted practices in Europe’s diplomatic community.

The following features of CFSP in comparison to EPC are of crucial importance:

- the formal “legalisation” (Smith 2001) of foreign policy cooperation within the framework of the Treaties, including the single institutional framework, with the European Council and the Council as the key bodies;

- a certain “scope enlargement” of CFSP, in particular by covering security policy and by introducing closer relations with the WEU as an integral part of the process of European integration;
- the expansion and differentiation of legal instruments, which should include – beneath declarations – joint actions and common positions. These were de facto already existent under EPC, but received a more systematic structure.
- a differentiation of procedures in the sense of defining a possibility for majority voting, while consensus remained the rule.

After having described the major factors that accounted for the emergence of CFSP, it is now necessary to assess the importance of decision-making procedures and the patterns of interaction. CFSP provides an excellent example of the importance to distinguish between decision-making procedure and mode of governance, the latter being more comprehensive than the former. The legal provisions are rather parsimonious and clear. Consensus is the rule, i.e. every member government is expected to agree to a decision before it can be taken. On the other hand, the style of interaction is highly influenced by the rules of diplomatic intercourse and marked by a considerable degree of collegiality, informal practice and confidentiality.

3. CFSP Governance since Maastricht: the legal and the living constitution

After the coming into force of the Treaty of Maastricht, the institutional reform debate on CFSP did not come to an end. There was continuing pressure for further reform, mainly under the label of efficiency, effectiveness and legitimacy (Regelsberger 2004: 13ff.). The perspective of enlargement was increasingly regarded as a catalyst for major procedural and institutional modifications. In the end, the result of the Treaty reforms lied in a modification of the set-up of CFSP without changing its basic face. The creation of the High Representative for CFSP and the introduction of constructive abstention for decision-making, and of common strategies as a new instruments in the Treaty of Amsterdam (1997), in the end led to a perfection of a “rationalised intergovernmentalism” (Wessels 1998), which tried to improve the working of the mechanism of CFSP, without altering its nature.

In parallel, the implementation of the Treaty on European Union revealed an intensive use of its provisions by the EU. In particular joint actions and common positions belong to the usual repertoire of CFSP, while after 2001 also agreements with third countries have become increasingly important. These reflect the growing activities of the EU in the field of crisis-management, where the Union invites third countries to participate in crisis-management operations

4. ESDP as a Dynamic Factor for the Evolution of CFSP

The creation of the European Security and Defence Policy added new impetus and new elements to the debate about CFSP.

- The military “hard core” of ESDP is legally highly fragile and uncertain; pledges by the member states have no binding legal force, i.e. they are formally free to deliver; still, ESDP relies upon these commitments as the backbone of its crisis-management capacities.
- Decisions in ESDP on a military operation are the result of a complex interplay between EU legal acts (Joint Actions adopted by the Council), national decisions to deploy troops or other staff/material, if required third parties’ involvement in the running of the operation, like NATO in the case of a “Berlin Plus”-mission, and non-member countries which may be invited to participate in a mission.

- Flexibility is already a reality in daily life of ESDP, and it will remain an important trend in the future. Flexible forms of decision-making and participation in operations may represent a solution to the tension between keeping unanimity, and ensuring effectiveness.
- External embedment is crucial for ESDP to work; without NATO assets and resources ESDP would not be able to implement a major operation.
- Intergovernmentalism is the dominant feature of decision-making, but again it is embedded in a dense network of contacts that lead into a ‘transgovernmental’ direction.
- The Defence Agency will introduce new forms of interaction in ESDP; while officially an intergovernmental agency, it will have close relations with national experts and the Commission, particularly in the area research.

Part B. Policy Considerations and Recommendations

1. Intergovernmentalism as the key heritage of EU foreign policy

As has been shown, intergovernmentalist structures and procedures have been dominating the decision-making process as well as the policy output in EPC and CFSP from the start. They belong to the heritage of the development of EU foreign policy, not expected to cede simply for opening the path towards supranational policy-making. Thus, in CFSP, a key lesson from the emergence of modes of governance lies in the fact that the solutions for improvement of decision-making have to take account of the intergovernmental nature of this area of action.

This does not mean, however, that dynamic evolution of the modes of governance might not take place. There are considerable opportunities beyond formal Treaty provisions. Innovative and creative solutions are required for enabling reforms without following classical models of supranational policy-making. Differentiation and flexibility should not be a taboo after the possible failure of the Constitutional Treaty, even if started outside the EU framework (see item 3)

2. Trends to be reinforced by guided political action

The development of governance in CFSP hints at a process of step-by-step progress in legalisation (of Treaty base, instruments and capabilities), socialisation (of actors at the EU level) and Europeanisation (of national foreign policies). These trends open a repertoire for European modes of governance which can be reinforced by targeted action only to a limited extent. It is rather in the daily practice of CFSP than in single events or decisions that these trends are reinforced and stabilised. For that purpose, it is crucial to preserve the familiar and discrete character of deliberations in CFSP, particularly in the COPS, and the working groups, under the conditions of an enlarged European Union. Thus, a key priority for reforms after enlargement at the working level should be to ensure that a sufficient level of familiarity is preserved in different bodies and institutions, if necessary by reducing the number of overall participants. Procedures should be adjusted to provide for meetings at informal level, while formal proceedings could be handled increasingly by written procedure or alternative ways of communication (electronic communication).

3. Flexibility and differentiation as key features of governance

Flexible modes of governance have become a prominent feature in CFSP in the last years. With the development of ESDP, this trend will continue and even be reinforced. Under these conditions, it is extremely important to avoid a break-up or a split of the Union. The legal opportunities within the TEU for enhanced cooperation should be exploited to a greater extent, in order to build up experience. Models for closer cooperation could start outside the Treaties, and at a later stage inserted into the Union, as the Schengen example shows. The High Representative can play a crucial role in ensuring coherence and consistency of EU action even if not all EU countries are involved. After the possible failure of the Constitutional Treaty, flexibility should be taken as an opportunity for the EU to move ahead instead of waiting for the slowest partner.

4. ESDP as an opportunity for deepening EU governance in CFSP

The perhaps most dynamic element in the development of CFSP will lie in the European Security and Defence Policy (ESDP), which has evolved in a highly speedy way since 1998. ESDP will in particular strengthen the relationship between the pillars, it will reinforce the differentiation of decision-making in the EU, it will open ways for the defence agency acting

in CFSP and it will also bring new actors into the game of the EU. Instead of strengthening the intergovernmental features of the CFSP, ESDP should be seen as an opportunity for developing further EU foreign policy in terms of procedures and output. In particular the interface between EC and CFSP within the Defence Agency, or in the implementation of civilian crisis management operations, are of high relevance. The Agency should be supported and taken as a serious partner by the Commission; links and contacts should be elaborated and deepened over time, trying to trigger a dynamic interaction that could bring the Commission closer to ESDP business.

5. The Constitutional Treaty: With or Without Ratification

The adoption of the Constitutional Treaty would have opened some important possibilities for CFSP, like the creation of an EU Minister of Foreign Affairs, or an external action service, or permanent structured cooperation. With the failed referendums in France and the Netherlands, it is important to design possibilities for CFSP even without the Constitutional Treaty, and to find ways of compensation for non-reform. The non-ratification could even offer opportunities which otherwise would not exist. In absence of a Foreign Minister, the Commission and the Council could be urged to develop stronger forms of inter-institutional cooperation, e.g. by bringing the High Representative into a closer contact with the Commission, by participation at College meetings, trying to build up mutual trust and confidence, thus reinforcing the socialisation trends already working in CFSP. Thus, the existing Treaties could be used for introducing reforms and innovations.

From a Commission point of view the absence of a Foreign Minister would be a clear advantage anyway; the intended nomination of the High Representative for the post would not represent the optimal solution, as he could regard his new office as a “High Representative Plus”. In this regard no solution would be better for the Commission than the one planned (for the time being). The Commission should have insisted on a person neither committed to the Council nor to itself before taking the office of a Foreign Minister.

6. International Crises: Institutional Learning is Paramount

International Crises like that on Iraq 2003/2004 or the Kosovo in 1998/1999, represent situations where governance in CFSP is put under stress, and where the formal and informal procedures of decision-making have to prove their efficiency and effectiveness. Unlike many observers who regard the Iraq crisis as a proof of failure of CFSP, the identification of the described trends allows us to look beyond single events and assess the impact of the crisis in a longer-term perspective. In this view, it is essential to focus on the learning effects taking place within CFSP. Similar to the case of Yugoslavia where in the early 1990s a lack of coherence and effectiveness became obvious in EPC/CFSP, it is important to draw the lessons. Thus, premature media commentaries on failure of a CFSP should not be taken seriously, but a longer-term strategy should be developed as a roadmap for CFSP over 5 years, with concrete steps and missions. Similar to the European Security Strategy (ESS), an EU foreign policy strategy (EFPS) would be helpful.

Bibliography

- Bretherton, Charlotte/Vogler, John (1999): 'The European Union as a Global Actor', London/New York. De Ruyt, Jean (1987): *L'Acte Unique Européen*, Brüssel.
- de Schoutheete, Philippe (1980) : *La Coopération politique Européenne*, Brussels.
- de Schoutheete, Philippe (1986) : *La Coopération politique Européenne*, Brussels, 2nd edition.
- Diedrichs, Udo (1996): *National Views and European Cleavages: From the Single European Act to the Treaty on European Union*, in: Franco Algieri und Elfriede Regelsberger (Hg.), *Synergy at Work, Spain and Portugal in European Foreign Policy*, Bonn, S. 233-258.
- Diedrichs, Udo/Jopp, Mathias (2003a): *Flexibility in ESDP: From the Convention to the IGC and Beyond*, in: *CFSP Forum Vol. 2, Nr. 2*.
- Diedrichs, Udo/Jopp, Mathias (2003b): *Flexible Modes of Governance: Making CFSP and ESDP Work*, in: *The International Spectator*, Nr. 3, pp. 15-30.
- Duke, Simon (2000): 'The Elusive Quest for European Security. From EDC to CFSP', Oxford.
- Edwards, Geoffrey (1997): 'The Potential and Limits of CFSP: The Yugoslav Example', in: Regelsberger, Elfriede/de Schoutheete de Tervarent, Philippe/Wessels, Wolfgang (Hg.): *Foreign Policy of the European Union. From EPC to CFSP and Beyond*, London, S. 173-197.
- Forster, Anthony/Wallace William (2000): 'Common Foreign and Security Policy', in: Wallace, Helen/Wallace, William (Hg.): *Policy-making in the European Union*, 4. Aufl., Oxford, S. 461-492.
- Ginsberg, Roy H. (1999): 'Conceptualizing the European Union as an International Actor: Narrowing the Theoretical Capability-Expectation Gap', in: *Journal of Common Market Studies*, Vol. 37, No. 3, Sept. 1999, S. 429-54.
- Ginsberg, Roy H. (2001): *The European Union in International Politics, Baptism of Fire*, Lanham.
- Hill, Christopher (1993): 'The Capability Expectation Gap, or Conceptualizing Europe's International Role', in: *Journal of Common Market Studies*, September 1993, S. 305-328.
- Hill, Christopher (2004): *Renationalizing or Regrouping? EU Foreign Policy Since 11 September 2001*, in: *Journal of Common Market Studies*, Vol. 42, No. 1, S. 143-163.
- Hill, Christopher/Smith, K. E (Hg.) (2000). *European Foreign Policy: Key Documents*, London, Routledge.
- Howorth, Joylon (2001): 'European Defence and the Changing Politic of the EU: Hanging Together or Hanging Separately?', in: *Journal of Common Market Studies*, Vol. 39, No.4, S. 765-789.
- Howorth, Joylon (2002): 'CESDP After 11 September: From Short-Term Confusion to Long-Term Cohesion?', in: *EUSA Review*, Winter 2002, S. 3-4.
- Ifestos, Panayiotis, 1987: *European Political Cooperation, Towards a Framework of Supranational Diplomacy?*, Aldershot etc.
- Jopp, Mathias/Lippert, Barbara/Regelsberger, Elfriede (2003): *Europäische Außen- und Sicherheitspolitik der erweiterten Union – interne und externe Herausforderungen an Politik und Institutionen in GASP und ESVP*, in: Chardon, Matthias/Göth, Ursula/Große Hüttmann, Martin/Probst-Dobler, Christine (Hg.): *Regieren unter neuen Herausforderungen: Deutschland und Europa im 21. Jahrhundert*, Baden-Baden.

- Jopp, Mathias/Regelsberger, Elfriede (2003): GASP und ESVP im Verfassungsvertrag - eine neue Angebotsvielfalt mit Chancen und Mängeln, in: *integration* 4/03, Oktober 2003, S. 550 ff.
- Pijpers, Alfred/Regelsberger, Elfriede/ Wessels, Wolfgang (Hg.) (1988): *A Common Foreign Policy for Western Europe? European Political Cooperation in the 1980s*, Dordrecht.
- Regelsberger, Elfriede (2001): 'Die Gemeinsame Außen- und Sicherheitspolitik nach ‚Nizza‘ - begrenzter Reformeifer und außervertragliche Dynamik in der ESVP', in: *integration* 2/01, S. 156-166.
- Regelsberger, Elfriede (2002): 'Gemeinsame Außen- und Sicherheitspolitik', in: Weidenfeld, Werner/Wessels, Wolfgang (Hg.): *Jahrbuch der europäischen Integration 2001/2002*, Bonn, S. 233-242.
- Regelsberger, Elfriede (2004): *Die Gemeinsame Außen- und Sicherheitspolitik der EU (GASP), Konstitutionelle Angebote im Praxistest 1993-2003*, Baden-Baden.
- Regelsberger, Elfriede/Schoutheete de Tervarent, Philippe/Wessels, Wolfgang (Hg.) (1997): *Foreign Policy of the European Union – from EPC to CFSP and beyond*, Boulder/London.
- Schmalz, Uwe (2004): *Deutschlands europäisierte Außenpolitik, Kontinuität und Wandel deutscher Konzepte zur EPZ und GASP*, Opladen.
- Smith, Michael E. (2001): 'Diplomacy by Decree: The Legalisation of EU Foreign Policy', in: *Journal of Common Market Studies*, No. 1, S. 79-104.
- Smith, Michael E. (2004), *Europe's Foreign and Security Policy, The Institutionalisation of Cooperation*, Cambridge.
- Stone Sweet, Alec/Sandholtz, Wayne/Fligstein, Neil (Hg.) (2001): *The Institutionalization of Europe*, Oxford.
- Tonra, Ben (2001): *The Europeanisation of National Foreign Policy, Dutch, Danish and Irish Foreign Policy in the European Union*, Aldershot.
- Wessels, Wolfgang (1997a): 'An Ever Closer Fusion? A Dynamic Macropolitical View on Integration Processes', in: *Journal of Common Market Studies* Vol. 35, No. 2, S. 267-299.
- Wessels, Wolfgang (2001): 'Nice Results. The Millenium IGC in the EU's Evolution', in: *Journal of Common Market Studies*, Vol. 39, No. 2, S. 197-219.