

The Evolution of CFSP: Trends and Assessments

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1. Reforms and Changes with and without Treaty Reform

The demand for translating European Political Cooperation (EPC) into a more coherent, effective and legitimate policy structure increased considerably in the 1980s:

- The dynamic evolution of the European Community triggered off by the Single European Act, 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 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 had already been defined and put into use during the EPC period. Still, a "new threshold" in EU foreign policy cooperation was reached.

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 labels of efficiency, effectiveness and legitimacy. 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 was a modification of the set-up of CFSP without a change to its basic nature. Driven not least by external shocks and crises such as the disintegration of

Yugoslavia in the early 1990s, the Kosovo conflict in 1998/1999 and the Iraq conflict 2002/2003, demands for improvements have become part of the regular policy debate in CFSP.

Still, a highly impressive dynamic has been triggered off in CFSP without formally changing the Treaties. The Council of the EU has assumed the role of an institutional innovator, particularly by the creation of the European Security and Defence Policy since 1999. The creation of the European Defence Agency is a particular example of this kind of institutional change, which has been enacted prior to the entry into force of the Constitutional/Lisbon Treaty. Although these decisions were taken as secondary legal acts their scope and importance go well beyond 'normal' legislation, adding a new quality to CFSP.

The inter-institutional agreement of 2006 between the EP, the Commission and the Council has opened new channels of influence for the European Parliament, while consolidating and confirming the Commission's role, defining basic rules in particular for financing CFSP.

2. Legal Acts in CFSP: Responding to Internal and External Challenges

The number of legal acts concluded within the area of CFSP has grown with a particular dynamism since the end of the 1990s, due mainly to the increase of specific instruments. Joint Actions and Common Positions have become quite dynamic especially since the late 1990s, responding both to international demands and to internal capabilities and expectations.

Besides the adoption of joint actions and common positions, the conclusion of international agreements under CFSP has been

one of the most outstanding features in the legal output. These have to be seen in direct relation to the emergence and evolution of the European Security and Defence Policy, which highlighted the need for including third countries in crisis management operations led by the EU, and also required the conclusion of agreements with those countries where operations were undertaken for defining the status and activities of the EU forces. Of the 46 agreements included in the EURLEX system between 2001 and 2004, 35 have been devoted to fixing the terms of participation of third countries in crisis management operations, while around 7 have been concluded with governments of those states where an operation took place.

Legal acts in CFSP are increasingly linked to legislation in the sphere of the European Community based upon Art. 60 TEC, Art. 301 TEC, and Art. 308 TEC. Since the end of the 1990s a real boost in EC legislation has been observed which is related to decisions taken in the framework of the Common Foreign and Security Policy. In this respect, it is not only the Council which has acquired an active role, but also the Commission—to an ever greater degree.

Further reading

This policy brief is based on research carried out within the NEWGOV project no. 1 on “The Evolution and Impact of Governing Modes”. The scientific objectives of this project are to map, measure and classify governing modes; to explain why and under what circumstances and conditions new governing modes emerge; to identify common patterns and theorise about how they interact and evolve to form new governing mixes and macro-systems; and to find criteria and parameters by which the emergence and evolution of new modes of governance may be evaluated in a comprehensive way and against the background of different theoretical and conceptual approaches.

Further information can be found on the NEWGOV Website in the [special section](#) of cluster no. 1.

3. The Financing of CFSP: Mixing Up the Sources

Actually some of the ‘hardest’ Community competencies in CFSP are to be found in the budgetary field. The EC budget contains the operational expenditure for CFSP, while the administrative expenditure is covered within the Council’s budget line and not subject to interference by the EP, according to a gentlemen’s agreement between the institutions. In addition to the Treaty, the Interinstitutional Agreement of 17 May 2006 between the EP, the Council and the Commission, contains particular provisions on financing CFSP. It states that the three institutions will engage in a conciliation procedure through a trilogue, in which they try to arrive at a common understanding on CFSP expenditure.

In the past, disputes between Council and Parliament were caused by different interpretations and preferences on financing international actions of the Union. In 2002, conflict emerged over the amount of the operational CFSP budget, which the Council wished to increase but that the EP threatened to reduce unless the Council adopted a commitment to inform the Parliament in a timely way, before taking CFSP actions. Also, the sources of financing civilian crisis management were heavily discussed: while the EP intended to finance measures for EUPM in Bosnia by resorting to the CARDS programme, the Council insisted on using the CFSP chapter.

The issue of financing is not only a playground for inter-institutional quarrels, but reveals in reality the highly composed nature of CFSP in practice. De facto, CFSP and ESDP may be financed by different sources ranging from Community programmes in support for CFSP actions, via the CFSP chapter of the EC budget for operational expenditure, into the area of financing by the member states, either by the ATHENA mechanism for common costs or by national spending on the basis of the principle that costs lie where they fall. ATHENA is managed by a Special Committee, enjoys certain legal privileges, and includes an early financing mechanism.

NEWGOV Policy Briefs

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4. Ultra -Soft Coordination in CFSP/ESDP: Shaming without Naming?

Since the summits of Cologne and Helsinki in 1999 the EU has tried to define a set of military and later also civilian goals that should be achieved in order to become fully operational for the conduct of crisis management operations. As the guiding principle of ESDP was defined in terms of voluntary national contributions to crisis management, it was clear that neither a supranational authority nor procedural patterns borrowed from the EC would be applied. The result was a tension between intergovernmentalism in institutional terms and the need for more effectiveness in capability terms.

In December 2001 the European Capabilities Action Plan (ECAP) was inaugurated officially by the European Council, which led to the creation of panels composed of national experts who were tasked with discussing the

existing lacks and gaps and finding solutions for sensitive capability deficits. ECAP allowed the mobilisation of technocratic expertise from the ministries of defence and also triggered an expert discourse on the capabilities of ESDP which created a kind of semi-public pressure upon the member states for improving their national capabilities.

In March 2003 the Capability Development Mechanism (CDM) started to operate, including mid-year progress reports as well as – since 2004 – the publication of the Capabilities Improvement Chart. Thus, due to the functional need for improving the military capabilities of the member states, a process of reporting emerged, reflected in national media and expert publications, and hinting at the capabilities-expectations gap in European security and defence policy. There has been no explicit identification of specific member states as responsible for certain gaps, so that no naming and shaming is taking place, which would be unacceptable for member states governments. On the other hand, the information and the data on defence spending regularly published, allow for comparisons and for identification of compliers and non-compliers. So far the mechanism has proved to be of little effectiveness, mostly due to its cautious approach and to the political resistance against binding obligations.

5. Regime-Building in CFSP and ESDP: Creating a Market without a Supranational Authority

The creation of the Defence Agency has introduced a new institutional player in the CFSP/ESDP arena, and it has led to the creation of a specific regime under the authority of the Agency: an emerging European procurement and defence equipment market. It represents an experiment in creating market structures by opening national procurement systems not through the Monnet method, but by an intergovernmental set of rules and principles to which participant countries subscribe.

The EDA is responsible for the coordination of ECAP, and it is also the supervising authority for the defence equipment market. Initially a child of the Convention, it has been put on the agenda of the European

Council in July 2003 and its establishment was approved before the Constitutional Treaty was submitted for ratification. Conceived as a network, it has increasingly become a focus for defence cooperation among the member states. The Western Europe Armaments Group soon disappeared, while the EDA became a crucial player in the creation of a EU defence market. On 1 July 2006 the regime for a European defence equipment market entered into force, which tried to open national procurement systems and has included up to now 22 out of 25 member states. The basis of the market is the *Code of Conduct on Defence Procurement* which constitutes a voluntary commitment by the participating states on the opening of their defence markets. It is explicitly non-binding, intergovernmental and aimed at encouraging competition based upon reciprocity between the participating states. Member states will offer – with some exceptions – fair and equal opportunities to suppliers in other participating countries, thus accepting tenders to be published by the EDA on the Electronic Board Bulletin (EBB). This would constitute a first cautious step in the direction of overcoming the impediments of Art. 296 TEC, that has prevented the application of the single market to goods in defence equipment. The crucial question will be to know whether market structures can develop under such a regime without binding rules and a strong supranational

authority supervising the application of the rules established, and whether the EDA could grow into a regulatory agency that would be able to compensate for the lack of such an authority.

6. Conceptualising Change: Hybridisation, Mixture and Innovation?

The trends and developments observed within the CFSP and ESDP since the early 1990s lead to a number of conclusions that might enable us to answer the question of new versus old modes of governance in this particular policy area.

- A major source of innovation and dynamics lies in the creation of the ESDP, which has not, as many observers expected, strengthened the intergovernmental nature of CFSP, but led to new windows of opportunity by opening up new fields of activities.
- The legal spheres of action and application have so far not been mixed up, but they have grown further together; the creation of the first double-hatted special representative might be a sign of growing coherence even to the degree of reaching the stage of creating a European external service *avant la lettre*.
- Differentiation of instruments applied in the sphere of CFSP has dramatically increased since the early 1990s. Today, more diversity is visible in the range of acts adopted under CFSP. Particularly interesting seems the increase in agreements under CFSP for including third countries in crisis management operations, and the growing correlation of Common Positions and EC regulations for economic sanctions.

The result is a CFSP which has not developed into a supranational direction as such, but uses the range of possibilities included in the Treaties and operates in a pragmatic, flexible and sometimes mixed way, not by confusing legal spheres of application, but by combining instruments from these spheres and opening paths to increasingly using joint or common resources.

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