



# An Ambitious Form of UK/EU Cooperation on Foreign, Security and Defence Policy – Why and How



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*This is a revised version of a talk given by Sir Alan Dashwood KC on 28 February 2024 at a seminar jointly organised by the European & International Analysts Group and City Law School, City University of London. It is to be read in conjunction with the recent EIAG paper by Sir Julian King on the need for such a policy.<sup>1</sup>*

## Introduction

I am going to explore, in broad outline, three issues that arise in connection with the suggestion that the UK and the EU should engage in an ambitious form of structured cooperation on foreign, security and defence policy (FSD policy, for short):

- How I understand the notion of structured cooperation in this context.
- Why the FSD policy area should be seen as suitable for an ambitious form of structured cooperation between the UK and the EU.
- How to set about establishing such cooperation.

## (1) Notion of structured cooperation on FSD policy

First, then, the notion of structured cooperation on FSD policy.

Structured cooperation is not a term of art. For present purposes, I understand the notion as referring to an agreed framework organising collaborative activity between the UK and the EU of the following kinds: the systematic exchange of information about future policy intentions in the FSD field, covering both broad strategies and specific initiatives; regular meetings, whether to consider a range of available options or to discuss particular proposals regarding FSD policy, in advance of any decision being taken on them; and, where appropriate, the coordination of, or joint participation in, the implementation of decisions on matters falling within FSD policy.

Cooperation implies working together to address issues of common concern, while respecting the sovereign right of each Party to determine the course of action it judges to be in its best interests. Process is important, but it is outcomes that really matter. The

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<sup>1</sup> Sir Julian King, *The Case for an Ambitious UK/EU Security Cooperation Pact*, European & International Analysts Group, 1 February 2024

framework must be designed to create conditions encouraging a serious effort by the Parties to reach common ground.

An “ambitious” form of structured cooperation on FSD policy would be one that organises contacts between the UK and the EU in this policy area with a regularity and at a level of intensity significantly higher than that under arrangements between the EU and third countries in general.

All of that may seem rather vague but I aim to put some flesh on the bones in the course of my talk.

## **(2) Why structured UK/EU cooperation on FSD policy?**

Moving on to my second issue. Why single out FSD policy as a suitable area in which to establish an ambitious form of structured cooperation between the EU and the UK?

There are bound to be hesitations about embarking on any new forms of UK/EU cooperation outside the structures of the Withdrawal Agreement and the TCA. On the UK side, fear of provoking allegations of betraying the will of the British people expressed in the 2016 Referendum. And that would be a concern for both the Conservatives, with the European Research Group (ERG) and Reform snapping at their heels, and for Labour with its need to assuage the Euroscepticism of the Red Wall. While on the EU side, there is the loss of trust in the UK, in the light of Brexit and the behaviour of the Johnson Government over the implementation of the Northern Ireland Protocol. Relations are certainly warmer than they were, now that the Northern Ireland dispute has been resolved by the agreement in Feb 2023 on the Windsor Framework; as for the further twiddles to the implementation of the Framework that have at last brought the DUP back into the devolved government, these must have been run past Brussels, since we have heard no complaints from there about them. And there have been other positive developments during 2023: notably, the signing in June of the MOU on Financial Services Cooperation and the agreement in September on the terms of the UK’s association with the Horizon and Copernicus scientific programmes. Nevertheless, there is still some way to go in rebuilding trust among the EU and its Member States, in the UK as a reliable international partner.

So, what are the reasons for supposing that, despite those understandable hesitations, the establishment of structured cooperation on FSD policy is a feasible project? I can think of four reasons.

**First**, as many others have pointed out, the UK and the EU face essentially the same challenges, and these have become significantly more threatening and more urgent in the period since Brexit. We have a war of aggression being fought on European soil and another hot war in the Middle East feeding instability in that region and causing the interruption of the vital Red Sea trade route. And that is just to mention the challenges in our neighbourhood. The time is badly out of joint. And, to set it right, we may not always be able to rely on the United States, the great guarantor of our security, if the political nervous breakdown from which it appears to be suffering were to become a chronic condition. To adapt the grim old cliché, the UK and the Member States of the EU need to hang together, or we are in real danger of hanging separately.

**Secondly**, there are advantages to structured cooperation on FSD policy between the UK and the EU, which ought to be obvious to the two sides, when viewed from their different perspectives. For the EU and its Member States, this policy area will be remembered as one in which the UK could be judged to have made a strongly positive contribution during its membership of the Union; and Julian King's paper shows the multitude of ways in which structured cooperation with the UK could bring added value to the development and implementation of future FSD projects. There's clear recent evidence of this in responses to the crisis in Ukraine, including in the coordination of sanctions policies against Russia. For the UK, one advantage would be the enhanced opportunities for influencing the FSD policies of the EU, which has become a major player on the international scene, however reluctant some in our political class may be to acknowledge this fact. More significantly perhaps in the medium term, the success of an ambitious form of structured cooperation on FSD policy may be seen by a future UK Government genuinely interested in developing a closer, deeper and wider overall relationship with the EU as a template for initiatives in other policy areas.

**Thirdly**, both the UK and the EU are explicitly committed to FSD cooperation by the Political Declaration annexed to the Withdrawal Agreement. The Declaration refers to "ambitious, close and lasting cooperation on external action" and to the establishment of "structured consultation and regular thematic dialogues identifying areas and activities where close cooperation could contribute to the attainment of common objectives". And there are references to more specific forms of cooperation: on sanctions; on UK participation in peacekeeping missions and the like, through a Framework Participation Agreement"; and on the enablement of UK collaboration in a variety of capacity building projects in the area of security and defence. Of course, these are only commitments in broad principle, which are not legally binding. But the Declaration could clearly be invoked by the UK to help overcome any lingering reluctance on the EU's part to intensify cooperation on ESD policy.

My **fourth** reason is a legal one. The constitutional framework of the EU's common foreign and security policy (CFSP) and its common security and defence policy (CSDP) is relatively well adapted to structured cooperation with a third country like the UK. The framework remains broadly intergovernmental. As conceived by the EU Treaties, FSD policy is essentially an executive responsibility, in which the lead is taken by the High Representative, the European Council and the Council, with the Commission in a subsidiary role. The European Parliament is completely excluded from decision-making, though it has a right to be regularly consulted by the High Representative on the main aspects and the basic choices of the CFSP and the CSDP, to be informed of how the policies evolve, and to have its views "duly taken into consideration". The EU has no power to enact legislation in the area of FSD policy, and unanimity is required for the adoption of the basic Council decision on any CFSP matter, and for all CSDP matters. These institutional arrangements would facilitate structured cooperation, by allowing policy input by the UK at different points in the EU's decision-making process, through interactions, at the appropriate political or official level, with the European Council, the Council and Council bodies, including notably the Political and Security Committee. Another feature of the institutional arrangements is the strict limitation of the jurisdiction of the Court of Justice of the EU (CJEU). In particular, there's no equivalent of the enforcement procedure that applies to infringements by Member States of their

obligations in the socio-economic fields of EU competence. Regrettably, the absence of CJEU involvement is something a UK Government is likely to find appealing.

So I believe that there are solid reasons why the UK might wish to seek ambitious structured cooperation with the EU on FSD policy, and why it would have a good prospect of success, should it do so.

### **(3) How to set about establishing structured UK/EU cooperation on FSD policy**

Which brings me to my third question. How should a UK Government wishing to establish an ambitious form of structured cooperation with the EU on FSD policy set about doing so?

The approach should be incremental. The strategic aim should be an overarching framework for cooperation covering the whole of FSD policy. That would be for the medium term. More immediately, there are ways in which trust can be built up through regular contacts between UK Ministers and officials and their EU counterparts, and through proactively seeking out opportunities for close cooperation in specific aspects of FSD policy where the UK and the EU have interests in common. As shown in Julian King's paper, a wide range of such opportunities exists. Moreover, in some aspects of FSD policy, cooperation with third countries is an established practice, providing precedents for the UK to draw on.

Contacts between the UK and the EU can be developed informally or through participation in structured arrangements, which may be bilateral or multilateral.

I agree with the House of Lords European Affairs Committee that the UK should establish a programme of regular summits with the EU, including at the level of the Prime Minister and the Presidents of the European Council and the Commission, following the example of countries like the US, Canada and Japan. And this is something that could be done immediately.

The European Political Community (EPC) is a multilateral forum for dialogue and cooperation between the EU and countries in its neighbourhood to address issues of common interest. It has a wide remit extending to energy, transport, investment and migration, as well as political and security cooperation. There are some 47 participating countries, comprising the EU Member States, near neighbours of the EU (including the UK), and others not so near, like Armenia and Azerbaijan. One good thing Liz Truss did during her 10 minutes as Prime Minister was to attend the inaugural meeting of the EPC in Prague in October 2022. EPC summits are held biannually and the next one is scheduled to take place in the UK in the first half of 2024. I understand the date has not been announced yet, presumably in case there may be a spring election (now looking increasingly unlikely). There is a tendency to dismiss the EPC as a talking shop, but I share the positive view of it taken by the House of Lords European Affairs Committee. Among other things, the EPC provides a means of extending the EU's sphere of influence to countries that might otherwise drift into the Russian orbit, a matter of obvious concern to us. The UK should continue to engage actively with EPC partners; and it could further demonstrate its commitment by supporting the idea of creating a small secretariat, to give the EPC an institutional memory and help ensure that agreements are followed up. But such a light framework, with such disparate membership, could never turn into the structured cooperation pact the UK will need, to organise its future FSD relationship with the EU.

At a more concrete level, there are various aspects of FSD activity on which the UK could and should be cooperating with the EU. These include CSDP missions open to participation by third countries, like Operation Althea in Bosnia, which the UK pulled out of, following Brexit, and should now re-engage with. The effective collaboration achieved on sanctions against Russia could serve as a model for sanctions policy in other fields. And there are diverse opportunities for collaboration on capability development programmes, under the auspices of the European Defence Agency, the European Defence Fund and Permanent Structured Cooperation. Third countries such as Norway and the United States are already taking advantage of these opportunities.

Cooperating in an ad hoc way each time, on a wide range of matters, may be difficult, as Lord Hague observed to the House of Lords Scrutiny Committee. For the time being, until the hangover of mistrust from the Johnson era dissipates, there may be no alternative to such an approach. However, the UK should be alert to the possibility of progressively establishing cooperation frameworks for limited purposes, such as the imposition and management of sanctions and participation in FSD missions, as sufficient positive experience of cooperation accumulates.

Another suggestion of the House of Lords European Affairs Committee, which may be achievable in the short term, is that the UK Foreign Secretary take part in the informal so-called "Gymnich" meetings of EU Foreign Ministers, as Ministers from other third countries, such as Switzerland, Norway and Turkey have done. But it will take longer to establish that the UK should be given the privilege of having its Foreign Secretary attend these meetings on a regular basis.

The medium-term aim should be the systematic involvement of UK representatives at each stage of the process of preparing Council decisions on FSD policy matters, up to and including the Political and Security Committee (PSC). The outer limit of possible UK involvement is that, without amending the Treaties, no third country could be included in the actual adoption of decisions by the Council, or by the PSC in the cases where it has a power of decision. And it is not realistic to suppose that EU Governments and the Commission would undertake the complicated and risky business of Treaty amendment simply to accommodate the UK. On the other hand, I can see no objection, in primary EU law, to the creation of a special form of observer status for the UK, giving it a right to contribute to the debate, but not to vote or otherwise participate in any actual decision. And such status need not necessarily be confined to preparatory bodies but might be accorded even at the level of the General Affairs Council. Though the Council's Rules of Procedure would probably need to be amended.

A last question is what legal form an FSD Security Pact might take. In particular, should it be given binding legal effect? That would be for the Parties to decide, and my guess is that they would opt for a non-binding Joint Declaration. Which may be wise, since the Court of Justice is hypersensitive to the risk that an international agreement might disturb the institutional balance of the EU legal order. And this would be a fundamental constitutional question, transcending the limits on the Court's jurisdiction for the purposes of the CFSP and the CSDP.

## **Conclusion**

To conclude. I am very clear that ambitiously structured cooperation on FSD policy is the most promising route for the UK back to a close and deep relationship with the EU. I believe it is doable, though it won't be easy.

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## European & International Analysts Group

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