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**DIFFERENTIATION
IN CFSP:
POTENTIAL
AND LIMITS**

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DIFFERENTIATION IN CFSP: POTENTIAL AND LIMITS

by Steven Blockmans*

Abstract: With or without the UK, the main factor rendering the Common Foreign and Security Policy (CFSP) ineffective remains the search for consensus among member states that pursue different (geo)political interests and socio-economic objectives. In spite of all its emphasis on a shared vision for common action and an integrated approach to policy-making, the 2016 Global Strategy on Foreign and Security Policy (EUGS) will not change this situation. However, the EU Treaty provides several under-used mechanisms to introduce more flexibility and differentiation in EU foreign policy. In addition to this, in the past few years a practice of more or less structured core groups has emerged to facilitate coordination in foreign policy-making or spearhead European involvement in international negotiations. The Visegrad Group, the E3+3 and Normandy formats are cases in point. This paper examines the potential and limits of differentiation within and beyond the treaty framework for the CFSP.

Keywords: EU integration | CFSP | EU Global Strategy

Introduction

The Common Foreign and Security Policy (CFSP) is an area of European Union (EU) external action which is notoriously difficult to forge. The general rule of unanimity in CFSP decision-making often holds the EU back in its attempts to protect its interests and pursue its global objectives. Differences between member states' (geo)political interests, socio-economic aims and historical trajectories contribute to the creation of fissures in the image of the

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EU's persona as an actor on the international stage. The EU's recent foreign policy successes (e.g. normalization of relations between Serbia and Kosovo, and the adoption of sanctions against Russia over Ukraine) seem to be the exceptions rather than the rule. More often than not, a common commitment to a shared strategic vision, treaty-based values and norms, is an insufficient basis for policy consensus on what are still perceived as different foreign policy interests and threat perceptions by individual member states.

While it is true that the success of the CFSP largely hinges on the ability of the member states to find consensus on issues which touch upon the core of their sovereignty as independent international actors, a process which often results in a race to the bottom in search of the lowest common denominator, a certain flexibility has over time been introduced in the CFSP. Such steps towards a more responsive and effective EU on the international stage should be welcomed. Indeed, a certain specialization and division of labour among member states could enhance the speed and legitimacy of EU foreign policy, especially in cases where there is a lack of interest or political will among all member states to forge ahead.¹ As long as such more or less structured coalitions of member states work towards the attainment of the EU's external action objectives, this may assist in the operationalization of EU foreign policy and increase the visibility and credibility of the EU as an international actor.

This paper will explore the potential and limits of the treaty-based exceptions to unanimity decision-making in CFSP, before examining the different types of coalitions of member states which in practice coordinate matters of foreign policy more closely. Based on this analysis, the paper will offer a few recommendations for better use of the mechanisms for differentiation in CFSP.²

¹ See Stephan Keukeleire, "EU Core Groups. Specialisation and Division of Labour in EU Foreign Policy", in *CEPS Working Documents*, No. 252 (October 2006), <https://www.ceps.eu/node/1224>.

² This paper is based on Steven Blockmans, "Differentiation in CFSP", in Steven Blockmans (ed.), *Differentiated Integration in the EU. From the Inside Looking Out*, Brussels, Centre for European Policy Studies (CEPS), 2014, p. 46-56, <https://www.ceps.eu/node/8851>.

1. Treaty departures from unanimity decision-making

1.1 Constructive abstention

In a mechanism which is unique in the treaties, Article 31(1) TEU leaves room for a member state to abstain from unanimous decision-making in the field of CFSP and qualify its abstention by making a formal declaration. In the case of an abstention, the country in question is not obliged to apply the decision but accepts that the measure commits the EU. The corollary of this is that, in a spirit of mutual solidarity, the abstaining member state is obliged to refrain from any action likely to conflict with or impede EU action based on that decision. The rules of CFSP decision-making thus leave no doubt about the prevalence of external solidarity over internal divisions. All EU member states, whether giving or withholding their support, need to respect the resulting commitments for the EU as a whole and must therefore refrain from any action which goes against that decision.

In general terms, the mechanism of constructive abstention aims at reconciling the position held by the majority of member states with the reservations and concerns of some. But there are limits to the possibility of keeping a "constructive distance" from certain common positions or joint actions, as the abstention of too large a group of member states might drain the CFSP's impact. It is for that reason that Article 31(1) TEU determines that if such constructive abstentions "represent at least one third of the member states comprising at least one third of the population of the Union, [then] the decision shall not be adopted."³

In spite of the wide legal space to accommodate member states' interests in abstaining from CFSP decision-making by unanimity, the treaty-based mechanism carries little practical relevance. It has only been used once thus far, in February 2008, when Cyprus abstained from adopting a Council Decision establishing the EULEX Kosovo mission.⁴ Cyprus argued "for an explicit decision of the UN Security Council [to mandate] the EU mission in Kosovo",⁵ an entity it does not recognize as a sovereign and independent state. This significant case shows that the constructive abstention mechanism

³ European Union, *Consolidated version of the Treaty on European Union*, OJ C 326, 26 October 2012, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:12012M/TXT>.

⁴ Council of the European Union, *Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32008E0124>.

⁵ See Council Secretariat, Council Doc. CM 448/08 of 4 February 2008, point 2.

provides a form of flexibility which can prevent CFSP decision-making from reaching an impasse. It is a mechanism that the High Representative should more readily suggest to persuade persistent objectors (for instance in cases of non-recognition of statehood) to stand aside while they allow protracted negotiations to be unblocked and the majority to forge ahead.

1.2 Qualified majority voting

Since its inception, traditional intergovernmentalism has been the governance mode *par excellence* in CFSP. Yet, four exceptions to the unanimity rule have “spilled over” from adjacent fields of EU external action into CFSP. In line with Article 31(2) TEU, the Council can pursue qualified majority voting (QMV): (i) when adopting a decision defining a Union action or position on the basis of a European Council decision relating to the Union’s strategic interests and objectives; (ii) when adopting any decision implementing a decision defining a Union action or position; (iii) when appointing an EU Special Representative; and (iv) when adopting any decision defining a Union action or position, on a proposal which the High Representative has presented “following a specific request from the European Council, made on its own initiative or that of the High Representative.”

While potentially significant in the material substance of their application, none of the exceptions have been used in practice. Consensus-based politics continue to govern Council decision-making. Further, all four of the above-mentioned exceptions are limited in scope, as in each of the cases any member state is entitled to pull the “emergency brake” and block a CFSP proposal “for vital and stated reasons of national policy” (see below).

The same observation applies to the opportunity of opening up more avenues for QMV. The *passerelle* clause enshrined in Article 31(3) TEU enables the European Council to extend the cases of QMV by unanimously adopting a decision stipulating that the Council shall act by qualified majority in other cases, with the exception of decisions having military or defence implications (Article 31(4) TEU). In theory, this seemingly generous license for extending the QMV mechanism allows the European Council to adjust the CFSP decision-making order in response to future needs and considerations of member states. However, the condition of full concurrence of national positions among the heads of state and government means that the doors to the passage from unanimity to QMV will remain shut when contrary to the vital national interests or opposition of any member state. Moreover, in some member states (e.g. Denmark and Germany), the government will not be able

to agree to use this *passerelle* without prior approval by its parliament.⁶

The general rule of unanimity makes it difficult for the EU to forge common foreign and security policies on matters of both general and specific interest. On "vital" questions about the use of force or interference in the internal matters of third states in particular (e.g. Iraq 2003, Syria 2013), a "common" foreign and security policy is unlikely to emerge across the divisions that separate the member states. It is equally unlikely that EU member states are ready to give up their veto power in return for a more extended use of QMV in highly sensitive areas of international relations. QMV in CFSP will realistically work only in two situations: where none of the member states have particularly strong preferences, or when there are no major divisions within the Council. In such cases it is reasonable to assume that the Heads of State and Government could easily reach the consensus needed to request a proposal from the High Representative and that no member state would consider its interests vital enough to justify hitting the emergency brakes.

In general, though, the reality will remain that consensus among member states is sought, even where QMV is possible. Arguably, this practice does not facilitate the task of the High Representative to "conduct" the CFSP. In a similar vein, it does not help that the Heads of State or Government, even after ample consultation of their administrations and other relevant stakeholders, could not bring themselves to simply "endorse" the Global Strategy presented to them by the High Representative. If this new strategic mainframe of EU external action is to have a structural impact on the day-to-day policy-making in the Foreign Affairs Council, then the High Representative should make a point to the European Council of using the first of the above-mentioned exceptions. By turning a rolling endorsement of the EUGS into a proper "decision", the European Council would allow the Council to decide to implement the entirety of the EUGS, not just the parts on which informal consensus exists but also the more contentious parts by way of QMV.

⁶ See Jean-Claude Piris, *The Lisbon Treaty. A Legal and Political Analysis*, Cambridge, Cambridge University Press, 2010, p. 262.

2. Extension of enhanced cooperation to CFSP

Enhanced cooperation, which was designed in the pre-Amsterdam IGC to allow some member states, using the EU framework and institutions, to cooperate further between themselves in cases where the others do not wish to do so, has been extended by the Lisbon Treaty to cover the entire realm of CFSP (Article 331(2) TFEU). The Treaty also removed most of the “emergency brake” procedure and provides for a new *passerelle* that allows participants in an enhanced cooperation to decide in the Council to switch from unanimity to QMV and from a special legislative procedure to the ordinary legislative procedure, except in defence matters. Sadly, these innovations have not produced the flexibility several member states had hoped for. As a “last resort” mechanism, enhanced cooperation in CSFP remains narrow in scope and characterized by heavy procedures and strict requirements for establishing it.⁷ This explains why the mechanism has not been used in practice in the area of CFSP. Instead, member states, in particular the smaller ones, have sought refuge in alternative forms of closer cooperation, created in a more flexible and informal way outside the framework of the treaties.

3. Coalitions of member states

Close foreign policy cooperation among a limited number of EU member states is generally looked upon with suspicion as it is associated with *directoires* of large member states (e.g. France and Germany in the Normandy Format for Ukraine; and France, Germany and the UK in the context of the E3+3 negotiations with Iran). However, under certain conditions, the specialization and division of labour among EU member states, big and small, can strengthen the effectiveness and legitimacy of EU foreign policy, especially in cases where there is a lack of interest or political will among all member states to forge ahead.⁸ Indeed, as long as such more or less structured coalitions of member states work towards the attainment of the Union’s external action objectives (cf. Article 21 TEU) and policies, the extra efforts, money and other national resources devoted by “core groups” to specific foreign policy matters (regional or thematic) can help to (i) alleviate the stress on an understaffed and cash-strapped EEAS, (ii) assist in the operationalization of EU foreign policy, and (iii) increase the visibility and credibility of the EU as an international actor.

⁷ Ibid., p. 89-90.

⁸ Stephan Keukeleire, “EU Core Groups”, cit.

In practice, several types of foreign policy coalitions have been formed:

- permanent (e.g. Benelux⁹) and *ad hoc* (e.g. the UK and France pushing the EU on lifting the ban on arming opposition forces in Syria¹⁰);
- institutionalized (e.g. Visegrad Group¹¹) and loosely organized (e.g. the EU Core Group on Somalia, created early 2004, consisted primarily of the UK, Italy, Sweden and the European Commission, and was endorsed by the Council¹²);
- regional (e.g. Baltic Council of Ministers¹³), inter-regional (e.g. the partnership framework of the Baltic and Benelux countries¹⁴ and that of Nordic, Baltic and Visegrad countries¹⁵), and thematic (e.g. mediation or reconciliation efforts¹⁶).

From this overview it becomes clear that these types of coalitions of member states have the potential of reinforcing the CFSP. The challenge, however, is to make sure that these groupings do not obstruct but rather buttress the structures (in particular the HR, EU Special Representatives and the EEAS), procedures, policies and actions of the EU in the foreign and security field

⁹ Article 3(2) sub d and Articles 24-27 of the 2008 Benelux Treaty attribute an external relations competence to the institutions of the Benelux. See also Netherlands Ministry of Foreign Affairs, *Verhagen: New Impetus for Benelux Foreign Policy*, 9 April 2008, <https://www.government.nl/latest/news/2008/04/09/verhagen-new-impetus-for-benelux-foreign-policy>; and Andrew Rettman, "Benelux Countries Urge EU Unity on Syria", in *EUobserver*, 15 March 2013, <https://euobserver.com/foreign/119443>.

¹⁰ See Charlotte McDonald-Gibson, "Syria Arms Embargo Lifted: Britain and France Force EU to Relax Ban on Supplying Weapons to Rebels", in *The Independent*, 28 May 2013, <http://www.independent.co.uk/news/world/politics/syria-arms-embargo-lifted-britain-and-france-force-eu-to-relax-ban-on-supplying-weapons-to-rebels-8633597.html>.

¹¹ See the collaborative framework consisting of Poland, Czech Republic, Slovakia and Hungary intent on joining up on, *inter alia*, foreign policy towards the Western Balkans. See Visegrad Group, *Joint Statement of the Visegrad Group on the Western Balkans*, Warsaw, 25 October 2012, <http://www.visegradgroup.eu/calendar/2012/joint-statement-of-the>.

¹² See Council conclusions on Somalia, in Council of the European Union, *2718th Council Meeting General Affairs*, Brussels, 20 March 2006, p. 7, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/88923.pdf.

¹³ See the website of the Latvian Ministry of Foreign Affairs: *Co-operation among the Baltic States*, 28 December 2015, <http://www.mfa.gov.lv/en/policy/4595/cooperation-among-the-baltic-states>; also for a link to the *Terms of Reference for the Baltic Council of Ministers*.

¹⁴ See Petras Vaida, "Baltic and Benelux Formins Discuss EU Foreign Policy in Estonia", in *The Baltic Course*, 12 September 2011, http://www.baltic-course.com/eng/baltic_states/?doc=45696.

¹⁵ See Visegrad Group, *Co-Chair's Statement, Meeting of Foreign Ministers of the Visegrad, Nordic and Baltic States*, Gdańsk, 20 February 2013, <http://www.visegradgroup.eu/documents/official-statements/meeting-of-foreign>.

¹⁶ E.g. the Swedish-Finnish initiative to set up a European Institute of Peace. See Jonas Claes, "Toward a European Institute of Peace. Innovative Peacebuilding or Excessive Bureaucracy?", in *Peace Briefs*, No. 141 (21 February 2013), <https://www.usip.org/node/88766>.

by:

- pooling more intensively the coalition members' views, efforts, measures and policies to support a more coherent and effective CFSP;
- adopting new measures to further the external action objectives of the EU, particularly through measures by member states in policy domains where the EU as such has few or no competences or capabilities, but where some coordination with the EU is useful or essential;
- preparing the ground for new EU initiatives and decisions in CFSP;
- concretizing, implementing and assuring the follow-up of CFSP decisions;
- initiating, broadening or deepening the dialogue, mediation or negotiation with third parties (in particular those not recognized by the EU, e.g. *de facto* states, terrorist groups), allowing less formal and more frequent, flexible and purposive interaction, in addition to the efforts conducted by the EU;
- strengthening the coordination with external actors (e.g. third states, other regional organizations, UN agencies, NGOs), in a systematic way compatible with that of the EEAS; and
- implementing any other tasks that the Council or the High Representative may assign to a particular coalition of EU member states.¹⁷

In short, the existence of core and contact groups of EU member states should not be seen as a problem for the development of CFSP *per se*. Such groups could rather be part of the solution in overcoming the constraints in CFSP decision-making. There is, however, also a more "constitutional" obligation which has to guide the activities of these groups: participating member states have to loyally cooperate with the EU institutions (European Council, Council and Commission) and the EEAS acting under the authority of the High Representative in order to ensure the coherence and consistency of EU external action. Respect for the duty of sincere cooperation should prevent EU external policies and actions from being diluted, undermined and rendered less visible, let alone re-nationalized, by core groups' activities.

¹⁷ This list of tasks and functions is inspired by the longer one developed by Keukeleire. See Stephan Keukeleire, "EU Core Groups", cit., p. 9-10.

4. Putting the C back into the CFSP

As a general principle, the member states have to support the Union's external and security policy "actively and unreservedly in a spirit of loyalty and mutual solidarity" (Article 24(3) TEU). This does not simply mean that they are held to sincerely cooperate to develop synergies between their own policies and those developed at EU level (coherence). It also means that they are required to "refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations" (consistency). Coalitions of member states should therefore observe the Union's interests, objectives, policies and actions under the CFSP. When the "constitutional" principles of loyal cooperation, coherence and consistency are adhered to, the CFSP is set to gain from the support of differentiated sub-structures, be that in terms of visibility, legitimacy and effectiveness of the EU as an international actor.

Ultimately, what counts in reality is proper consultation and coordination between the member states and the central EU actors. With the creation of hybrid positions and bodies (High Representative and EEAS), the EU has been equipped with the necessary mechanisms to guarantee and foster this vertical coherence between headquarters and partial numbers and varying sets of its member states. The integrated approach to EU external action, as proposed in the 2016 EU Global Strategy,¹⁸ ought to ensure the best possible horizontal coherence at EU level.

5. CFSP+

Finally, looking into the near future, a sort of "add-on" model to the CFSP could also be foreseen. In the past few years, the EU has developed a practice of aligning third states to CFSP statements and decisions, thereby enlarging the gravitas with which the EU weighs in on a foreign policy matter (e.g. sanctions against a third country). This practice pertains mainly to EEA and pre-accession states. Similarly, strategic partners of the EU have been allowed to participate in CFSP decision-shaping processes. US Secretary of State John Kerry's involvement in Council discussions¹⁹ on the failed coup

¹⁸ European External Action Service (EEAS), *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy*, 28 June 2016, <http://europa.eu/!pr79yu>.

¹⁹ Council of the European Union, *3482nd Council Meeting Foreign Affairs*, Brussels, 18 July 2016, <http://europa.eu/!tp63Jy>.

attempt in Turkey, the situation Syria and the wider Middle East is a case in point. Similarly, post-Brexit, the involvement of the UK government in the decision-shaping process of the CFSP should be examined on an ad hoc basis by allowing a British representative to participate in meetings of the Foreign Affairs Council (e.g. "27+1") whenever this serves the interests and foreign policy objectives of the EU.

After all, trust, goodwill and constructive attitudes from member states and strategic partners alike are necessary to increase the effectiveness of the CFSP.

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References

Steven Blockmans, "Differentiation in CFSP", in Steven Blockmans (ed.), *Differentiated Integration in the EU. From the Inside Looking Out*, Brussels, Centre for European Policy Studies (CEPS), 2014, p. 46-56, <https://www.ceps.eu/node/8851>

Jonas Claes, "Toward a European Institute of Peace. Innovative Peacebuilding or Excessive Bureaucracy?", in *Peace Briefs*, No. 141 (21 February 2013), <https://www.usip.org/node/88766>

Council of the European Union, *2718th Council Meeting General Affairs*, Brussels, 20 March 2006, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/88923.pdf

Council of the European Union, *3482nd Council Meeting Foreign Affairs*, Brussels, 18 July 2016, <http://europa.eu/!tp63Jy>

Council of the European Union, *Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32008E0124>

European External Action Service (EEAS), *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy*, 28 June 2016, <http://europa.eu/!pr79yu>

European Union, *Consolidated version of the Treaty on European Union*, OJ C 326, 26 October 2012, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:12012M/TXT>

Stephan Keukeleire, "EU Core Groups. Specialisation and Division of Labour in EU Foreign Policy", in *CEPS Working Documents*, No. 252 (October 2006), <https://www.ceps.eu/node/1224>

Charlotte McDonald-Gibson, "Syria Arms Embargo Lifted: Britain and France Force EU to Relax Ban on Supplying Weapons to Rebels", in *The Independent*, 28 May 2013, <http://www.independent.co.uk/news/world/politics/syria-arms-embargo-lifted-britain-and-france-force-eu-to-relax-ban-on-supplying-weapons-to-rebels-8633597.html>

Netherlands Ministry of Foreign Affairs, *Verhagen: New Impetus for Benelux Foreign Policy*, 9 April 2008, <https://www.government.nl/latest/news/2008/04/09/verhagen-new-impetus-for-benelux-foreign-policy>

Jean-Claude Piris, *The Lisbon Treaty. A Legal and Political Analysis*, Cambridge, Cambridge University Press, 2010

Andrew Rettman, "Benelux Countries Urge EU Unity on Syria", in *EUobserver*, 15 March 2013, <https://euobserver.com/foreign/119443>

Petras Vaida, "Baltic and Benelux Formins Discuss EU Foreign Policy in Estonia", in *The Baltic Course*, 12 September 2011, http://www.baltic-course.com/eng/baltic_states/?doc=45696

Visegrad Group, *Co-Chair's Statement, Meeting of Foreign Ministers of the Visegrad, Nordic and Baltic States*, Gdańsk, 20 February 2013, <http://www.visegradgroup.eu/documents/official-statements/meeting-of-foreign>

Visegrad Group, *Joint Statement of the Visegrad Group on the Western Balkans*, Warsaw, 25 October 2012, <http://www.visegradgroup.eu/calendar/2012/joint-statement-of-the>

2017 is set to be a crucial year for the European Union (EU) and its Member States. Multiple crises, key electoral appointments and the celebrations of the 60th anniversary of the signing of the Treaties of Rome are among the most important events in the EU agenda. Against this backdrop, the Istituto Affari Internazionali (IAI) and the Italian Ministry of Foreign Affairs and International Cooperation (MAECI), in cooperation with the Centro Studi sul Federalismo (CSF) and in the framework of IAI's strategic partnership with the Compagnia di San Paolo, have launched a new research project: EU60: Re-founding Europe. The Responsibility to Propose. The initiative seeks to re-launch the EU's integration process, and will involve researchers from leading European think tanks who will contribute policy papers analysing specific political or institutional dimensions of the EU.



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