



# WHY THE UKRAINE CRISIS SHOULD PUSH THE UK AND EU INTO A TIGHTER EMBRACE ON SECURITY POLICY

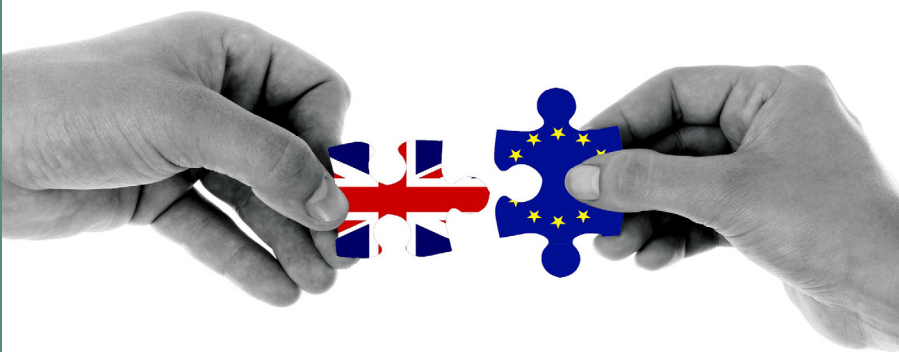
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# Why the Ukraine crisis should push the UK and EU into a tighter embrace on security policy

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## Abstract

One of the costs of Brexit is the weakened ability of both the UK and the EU to shape a strong joint response to Russia's threats to pan-European security. In the standoff over Ukraine, the need for close cross-Channel cooperation is particularly acute for any effective sanctions package negotiated with the US. Yet, post-Brexit relations between the UK and the EU are currently governed by a narrow Trade and Cooperation Agreement (TCA) which does not include a designated chapter on political dialogue and that, barring a handful of exceptions, does not contain any provisions on cooperation on foreign and security matters. Fortunately, the preparatory work undertaken to reach the bilateral accord contains the answer to the question on how trust between the parties can be regained through procedural means. This policy brief highlights the embers of the Brexit bonfire that might be raked up to rekindle the flame of dialogue and cooperation between the UK and the EU in foreign affairs and security policy.

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## Key recommendations

- Pragmatism and flexibility will be key in the development of new frameworks for EU-UK relations in foreign, security, and defence policies. The TCA is a 'living' agreement that can be adapted and complemented over time.
- The UK Foreign Secretary should be invited to take part in the Foreign Affairs Council's informal 'Gymnich' meetings.
- The UK and the EU should intensify the exchange of information at appropriate stages of any sanctions policy cycle. The UK and the EU should more systematically align their sanctions policies. The UK government should implement long-awaited reforms to close loopholes that allows illicit finance to flow through the City of London. The cost to the British economy of stopping Russian oligarchs from buying property should be shared by EU Member States, which should also get serious by equally adopting measures to end Russian money-laundering in the EU.
- The secondment of experts to each other's administrations should be considered when serving a mutual interest.
- In the future, the UK and the EU should conclude a 'Framework Participation Agreement' for the UK's case-by-case inclusion in the EU's CSDP missions and operations. The parties should intensify their interaction and exchange of information at relevant stages of the planning process of such missions and operations, proportionately to the level of the UK's contribution.
- In the same spirit, the EU should invite the UK to conclude a standard 'Administrative Arrangement' with the European Defence Agency and allow for Britain's future involvement in PESCO.

## Divergent responses to Russia's threats

Democracies usually find it hard to focus on a *'quarrel in a far away country between people of whom we know nothing'*, as Neville Chamberlain said of the British and French failure to prevent Hitler from seizing more than just parts of the Sudetenland from Czechoslovakia in 1938. Similarly, European countries have struggled in recent weeks to form a united front to deter President Putin from annexing even more Ukrainian territory on top of the territory he snatched in 2014.

That's not to say that some allies haven't been on the front foot. From sending specialist troops to Ukraine, to dispatching anti-tank missiles and taking the unusual step of declassifying intelligence to warn of a possible Kremlin-backed coup in Kyiv, the UK has been seeking to put itself at the vanguard of international efforts to forestall a new Russian invasion of Ukraine.

The crisis has been taken by Downing Street as an opportunity to showcase a post-Brexit 'Global Britain', prove the mettle of its security services, and demonstrate its military kinship with the US in NATO. Hard security is one of the few areas where the rest of Europe, especially on its eastern flank, still takes the UK seriously. In comparison, the EU response to Ukraine's call for 'lethal aid' has been muted. Member States have held each other hostage in adopting a common approach. Whereas the Baltic states, the Czech Republic and Poland have happily provided weapons to Ukraine, Luxembourg and Germany have been some of the most vocal opponents of such aid.

Meanwhile, French officials have criticised the UK government for fuelling tensions by getting too far ahead of the troops. The new German Chancellor would have certainly preferred to buy more time and explore every possible diplomatic backchannel rather than confront his own party's divisions over how to sanction another Russian incursion into Ukraine. Britain's off-diplomatic pace has been widely explained as an escape route for a prime minister mired in scandal. This captures the deeply insular motivation ascribed to the UK government's global ambitions.

The UK's intentions *vis-à-vis* Ukraine were first shared with G7 members during their December 2021 meeting, where Britain, France, Germany and the EU's High Representative for Foreign Affairs and Security Policy, Josep Borrell, agreed on a strong commitment of cooperation to deter Russia. Subsequent coordination, if any, has eluded the public eye.

However much distrust exists between British, French, German and other European instincts on Russia, the need for a regular and more structured cross-Channel exchange on foreign affairs and security policy is palpably evident over the Ukraine crisis. An uncoordinated approach only plays into the hands of a Kremlin committed to a zero-sum game and intent on exploiting whatever space is left between the various positions of its western adversaries.

One of the costs of Brexit is the weakened ability of both the UK and the EU to shape a strong joint response to President Putin's threats to pan-European security. And yet, the two are indispensable partners in forging a coherent European security policy, both on and beyond the continent. In the standoff over Ukraine, the need for close cooperation is particularly acute if any effective sanctions package negotiated with the US is to be effective: the longer-term impact of measures restricting investments in strategic Russian industries only hurts when combined with sanctions that immediately and effectively freeze the corrupt assets of Kremlin-connected individuals and stops them from travelling. Here, Britain has leverage. As a 'laundromat' for offshore wealth, the City of London provides 'ideal mechanisms' for the recycling of illicit finance. **The cost to the British economy of stopping Russian oligarchs from buying property in 'Londongrad'<sup>1</sup> should be shared by EU Member States by enacting similar measures to end Russian money-laundering in the EU.**

This raises the question on how trust between European allies can be rebuilt if security cooperation is to be sustained in the years to come. European history has taught us that establishing regular communication channels does indeed help to reduce the intensity of individual disputes and that herding negotiation processes into permanent institutions helps to build trust and cooperation between parties<sup>2</sup>.

Post-Brexit relations between the UK and the EU are currently governed by a narrow Trade and Cooperation Agreement (TCA) which does not include a designated chapter on political dialogue and that, barring a handful of exceptions, does not contain any provisions on cooperation on foreign and security matters. And yet the preparatory work undertaken to reach the bilateral accord nevertheless contains the answer to the question on how trust can be regained through architectural means.

This policy brief highlights the embers of the Brexit bonfire that might be raked up to rekindle the flame in cross-Channel cooperation in foreign affairs and security policy. These cinders can be found in a series of documents, notably the Political Declaration accompanying the Withdrawal Agreement and a collection of guidelines, technical notes, slides and draft agreements that preceded the December 2020 TCA.

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<sup>1</sup> Transparency International has estimated that UK property worth approximately GBP 1.5 billion has been bought with suspect funds from Russia, with almost 150 land titles 'ultimately owned by Russian individuals alleged to be involved in corruption or with links to Putin's regime'.

<sup>2</sup> Brexit highlights this clearly – issues such as fishing rights became much more politically charged once they were taken out of the EU's regular technocratic processes and became subject to simple bilateral negotiations with the UK as a third country.

## The unfulfilled promise of Brexit

Considering geographic proximity, the erosion of the rules-based international order, the resurgence of state-based threats, and the aspiration to promote global security, prosperity and effective multilateralism, the initial version of the Political Declaration foresaw a bilateral ‘Security Partnership’ as part of ‘an ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core<sup>3</sup>.’

While the UK and the EU agreed in principle on the aims and scope of their future cooperation in foreign policy, security and defence, their opening negotiating positions on the operational details could not have been further apart. In fact, the gap proved so wide that they ended up *not* agreeing on the inclusion of a specific chapter relating to foreign and security cooperation in the TCA.

Whereas the UK cited security interests to support its argument for a ‘bespoke’ security partnership that would go beyond any existing EU third country arrangement and allow for almost unrestricted access to, and participation in, CFSP decision-making structures, the Union’s position was framed by the 2017 guidelines of the European Council and its determination not to let Brexit affect its constitutional identity and autonomy.

As a result of what can only be described as an erratic negotiation style of successive UK governments during the withdrawal process, the EU became much more defensive of the core principles defined by the European Council and more reticent in tweaking the existing arrangements of institutional cooperation with third countries, irrespective of the alleged importance of Britain as a global actor. This attitude is enshrined in the December 2020 version of the Political Declaration that accompanied the Withdrawal Agreement: the envisaged security partnership would have to respect ‘the sovereignty of the United Kingdom and the autonomy of the Union’ (Political Declaration (PD), paragraph 78).

The hallmark of the future partnership was that the UK and the EU would pursue independent foreign, security and defence policies ‘according to their respective strategic and security interests, and their respective legal orders’ (PD, point 92). The parties would therefore also conduct ‘independent sanctions policies’ (PD, point 97). While the UK and the EU envisaged the possibility of joint outcomes and statements to support each other and ‘deliver external action and manage global challenges in a coherent manner’ (PD, point 96), no systematic alignment of positions was foreseen, or any decision-shaping procedures at all for that matter.

The security and defence segments of the Political Declaration envisaged more standard contractual arrangements of third-party state cooperation with the Common Security and Defence Policy (CSDP) to flesh out the prospective EU-UK security partnership. The most emblematic of these is a ‘Framework Participation Agreement’ for the UK’s case-by-case inclusion in CSDP missions and operations’ (PD, point 99).

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<sup>3</sup> Part III of the Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom [2019] OJ C384/178. This text was recycled in the Political Declaration accompanying the Withdrawal Agreement as published in [2020] OJ C34/1.

With respect to the development of defence capabilities, the Political Declaration envisioned cooperation ‘to the extent possible under the conditions of Union law’ (PD, point 102). The reference here is to a standard ‘Administrative Arrangement’ with the European Defence Agency and adherence to the basic conditions for third states’ involvement in PESCO. The participation of eligible UK entities in the context of the European Defence Fund was also foreseen but, as with PESCO, the criteria that non-associated countries have to fulfil to tap into the EU general budget are very demanding.

Despite the political constraints imposed on the negotiations, **the final text of the Political Declaration thus provides the policy potential and technical detail that could be explored once the current highly charged EU-UK relationship has had time to cool down and normalise**. This would then pave the way for more level-headed and sensible discussions on how to realistically achieve flexible and structured CFSP cooperation.

Such cooperation could have different expressions. One example pertains to established practice whereby foreign dignitaries may be invited to take part in informal ministerial ‘Gymnich’ meetings of the Foreign Affairs Council (PD, point 97)<sup>4</sup>. Another indication concerns sanctions policy, where the Political Declaration states that: ‘where foreign policy objectives that underpin a specific future sanction regime are aligned between the Parties, intensified exchange of information at appropriate stages of the policy cycle will take place, with the possibility of adopting sanctions that are mutually reinforcing’ (PD, point 98). While this formula falls short of introducing a joint decision-making mechanism, **the potential for the UK to help shape and reinforce EU sanctions and blacklists would nevertheless be substantial**, especially given the role played by the City of London in channelling international money streams. A third example, briefly referred to above, concerns the intensified interaction and exchange of information at relevant stages of the planning process of CSDP missions and operations, ‘proportionately to the level of the [UK]’s contribution’ (PD, points 101 and 102)<sup>5</sup>. This would allow the UK ‘to best tailor its contribution and provide timely expertise’ to specific CSDP missions and operations, and use the EU as a force multiplier for British interests (PD, point 100).

Drawing on the British aspirations espoused in a ‘technical note on consultation and cooperation on external security’ published by the Department for Exiting the EU, the final version of the Political Declaration envisaged ‘flexible and scalable cooperation that would ensure that the United Kingdom can combine efforts with the Union to the greatest effect,

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<sup>4</sup> At the September 2021 Gymnich organised by the Slovenian Presidency in Brdo, the Indian Minister for Foreign Affairs, Subrahmanyam Jaishankar, joined for a discussion on the EU’s involvement in the Indo-Pacific region. The idea to create a European Security Council should be rejected, as the format most often suggested (UK, France, Germany, Brussels-EU and Brussels-NATO) diminishes the role of the two international organisations and their various memberships.

<sup>5</sup> As a contributor to a specific CSDP mission or operation, the UK would participate in the Force Generation Conference, Call for Contributions, and the Committee of Contributors meeting to enable the sharing of information on the implementation of the mission or operation. It should also have the possibility, in case of CSDP military operations, to second staff to the designated Operations Headquarters proportionate to the level of its contribution. See also the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information, [2021] OJ L 149/2540.

including in times of crisis or when serious incidents occur’ (PD, point 92). To this end, the parties foresaw that the future relationship would ‘provide for appropriate dialogue, consultation, coordination, exchange of information and cooperation mechanisms’ (PD, point 93), as well the secondment of experts when serving a mutual interest.

While attractive at first glance, the operationalisation of such scalable engagement would be complex, especially given the degree of resistance among EU Member States to cater for more British exceptionalism in relation to the EU. After all, while a taste for more intensified cooperation might be easily accommodated, a renewed diminished appetite on the part of the UK to contribute to the future security partnership would require a reverse mechanism to again downgrade British access to EU structures. This is something which – as the Brexit divorce proceedings show – is a different kettle of fish altogether.

In the immediate wake of Brexit, the European Commission sought to give full effect to the promise of the Political Declaration and put forward as early as 12 March 2020 a full text of a draft ‘Agreement on the New Partnership between the EU and the UK’, including a dedicated section on foreign policy, security, and defence. This draft treaty was built on the precedents of EU association agreements with deep and comprehensive free trade areas negotiated with other neighbouring countries (such as Ukraine) but included adjustments to account for the peculiar situation of the UK’s desire to erect, rather than tear down, barriers. As a result, the draft was over 400 pages long.

The UK government, however, adopted a much narrower approach to the ensuing negotiations, proposing a standard free trade agreement, with potential side deals on security and other sector-specific aspects. As a result, this ensured that a dedicated political and security chapter would never see the light of day in the eventually agreed TCA and it amounted to a clear reversal of key elements contained in the Political Declaration.

It came as no surprise that the EU saw this as a breach of good faith, thus further eroding trust in the UK government as a negotiating partner. In view of Downing Street’s intransigent position and the countdown marking the end of the transition period running down to the wire, the EU cut its losses and settled for an agreement that did not cover foreign and security policy<sup>6</sup>, thus leaving bilateral cooperation on external action to informal mechanisms<sup>7</sup>, while at the same time reserving the possibility to conclude separate formal agreements in the future.

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<sup>6</sup> There are a few exceptions, including a specific clause on ‘future accessions to the Union’ (Article 781 TCA), which implies a commitment from the EU to notify the UK about new requests for the accession of a third country to the Union and the involvement of the Partnership Council as a platform for discussion about its implications for the UK and for EU-UK relations. Scientific research under Horizon Europe (2021-2027) may include foreign and defence topics. Other than that, the TCA foresees cooperation on Copernicus, the fusion test facility ITER, the EU’s Satellite Surveillance and Tracking network, and the Northern Ireland Peace Process.

<sup>7</sup> As was necessary prior to the much-delayed recognition of the EU Delegation to the UK by Boris Johnson’s government. The issue was resolved after tedious diplomatic wrangling. See ‘High Representative/Vice-President Josep Borrell and Foreign Secretary Dominic Raab agree on an Establishment Agreement for the EU Delegation’. In a sign of pent-up anger and frustration, the UK on that same day engaged in some old-school gunboat diplomacy when HMS Tamar, a Royal Navy vessel patrolling the waters off Carbis Bay, was dispatched to the Channel Islands in a fishing dispute with France.



## Reinventing a security partnership

The meagre result of four years of negotiations to reverse-engineer 44 years of Britain's EU membership is mainly due to the ill-conceived choices made by successive Tory-led governments consisting of increasingly hardline Eurosceptics motivated by a revisionist political ideology and hellbent on the idea of restoring Britain to its supposed former sovereign greatness. The mirage of a 'Global Britain' eclipsed the UK's initial desire to forge a 'Security Partnership' with the EU, as laid down in the Political Declaration flanking the EU-UK Withdrawal Agreement.

Instead of codifying the operational detail to exchange intelligence, align sanctions, and participate in CSDP missions and operations, Boris Johnson's 180-degree reversal of commitments made in the Political Declaration has left cross-Channel relations without an institutional and procedural framework to jointly respond to foreign policy and security challenges. This has already led to divergences in the EU's and UK's sanctions regimes - **gaps which are likely to grow wider if dialogue continues to be eschewed.**

The British position has often been explained by 'the desire to preserve the independence of its diplomacy, (and) by a long-standing reluctance to institutionalise its cooperation'. But this in no way means that the UK will no longer have exchanges on foreign and security policy with the EU and, in particular, France and Germany. And while the current UK government would like this cooperation to remain purely informal, for example within the framework of the E3 (France-Germany-UK) on the Iran nuclear file or the European Quint group for the Middle East (UK, France, Germany, Italy and Spain), **there will be areas where a more structured form of cooperation with the EU makes a lot more sense.** The current standoff fabricated by Russia on the Ukrainian frontiers is a case in point.

That said, the disadvantages of slow and complicated decision-making for EU external action continue to be largely attributed to the multiple and variegated sets of competences, instruments and budget lines that need to be joined up across policy areas, with the unanimity rule for CFSP posing a major constraint. Yet, the complexity of bringing together the EU's many external relations capabilities is also a reminder that the global governance challenges of the 21<sup>st</sup> century are profoundly changing the nature of foreign policy. Even if the EU27 has already experienced irrelevance as a diminished power (with prominent examples being the Afghanistan debacle and the AUKUS fallout), the merger of geopolitics and geo-economics, and the need for more effective global regulatory policies fit well with the broad development of the EU's own competences in recent decades.

Beyond its military might and financial heft through the City of London, the UK's capabilities post-Brexit look thin and carry little weight, despite the bombastic rhetoric that has accompanied the launch of Brexit negotiations and the conclusion of opportunistic deals to showcase the supposed re-emergence of 'Global Britain'. The reality is rather more sobering. The view that the UK's secession from the EU would see a downgrade of its international standing has been repeatedly stated by the United States at the highest level. China has a similar attitude. Uncertainties over the UK's medium-term economic position after Brexit and

Covid-19 raise further questions about the affordability of the UK government's global ambitions. As the majority of commentators in the Balance of Competences Review forecasted, the UK has deprived itself of the EU serving as a multiplier for its foreign policy interests.

**The UK and the EU can achieve more in a hyper-competitive world dominated by multipolar rivalry by working together.** They can regain trust by structuring a regular dialogue on foreign affairs and security policy. Such structures should be conducive to reinforcing each other's policies and contributing to each other in crisis management situations. **Pragmatism and flexibility will be key in the development of new frameworks for EU-UK relations in foreign, security, and defence policies.** They need not be obligatory at first. The TCA is a 'living' agreement that can be adapted and complemented over time<sup>8</sup>.

The current Ukraine crisis offers a real opportunity to recover some of the ground lost in the divorce proceedings. **Good cross-Channel cooperation on sanctions policy could provide a model for a closer relationship in foreign affairs and security policy.**

For the sake of Ukraine and the future of pan-European security, the UK and the EU should not waste this opportunity.

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<sup>8</sup> Article 776 TCA prescribes that the Agreement, its supplementing accords and any matter related thereto will be jointly reviewed five years after their entry into force and every five years thereafter.