Chapter 8

Foreign Policy-Making in the European Union: How the Political System Affects the EU's Relations with the United States

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The EU's decision-making in external relations can be approached as a multilevel system. In this policy field, the key actors are still the member states, each of which has its own strong national identity and historical experience. The member states affect common EU policy through their roles both in the European Council and Council—the first being composed of the member states' heads of states and the latter of members of government—as well as through various informal fora. Their positions and policy lines are influenced by various domestic and international drivers.

At the same time, the roles of the major EU institutions—the European Commission, the European Parliament (EP) and the European Court of Justice (ECJ)—have grown stronger partly because of their strengthened authority, or competence, particularly in the EU's external economic relations and its trade policy. Time has also played a role: it is more than twenty years since the common foreign and security policy (CFSP) and its instruments were established in the Maastricht Treaty. Since that time, the policy has extended its reach and now covers a wide range of fields in international politics. The more firmly the common policy is rooted in earlier decisions and existing policy lines, the less room the member states have to maneuver or to renegotiate.

A third factor affecting the role of the EU institutions is the level of discord among the member states about foreign policy issues. Sometimes a major deadlock, in particular among the large member states, may increase the chances of EU institutions agreeing to a compromise on the issue in question. The recently strengthened position of the European Commission in the EU's defense policy is a prominent example of this. By using its competencies in industrial policy, as well as in research and innovation, the Commission has succeeded in establishing a leadership role in common defense policy and promoting cooperation among member states, which has long suffered from principled controversies among member state governments.

This chapter assesses the role played by the EU's institutional set-up in its foreign-policy-making and in transatlantic relations as a part of it. I argue that the role of the common EU institutions in economic and trade relations is decisive in the formulation of the Union's policy. The key driving forces affecting the positions of EU institutions differ from those influencing member state positions. I offer a general presentation of the EU's decision-making system in external relations in the next section, after which I turn to the EU's external economic and trade policy and the role played by institutional and personal factors. In this part, as well as in the subsequent analysis of the common foreign and security policy, I use some case studies to illustrate how the substance of decisions taken reflects the configuration of institutional and personal factors behind them.

How the EU Makes Decisions on External Policies

In terms of decision-making, and for reasons emanating from the Union's history, the EU's external relations are split between two quite different areas. When it was established in the 1950s, the focus of the European Community, the forerunner of the current EU, was on economic integration, which is why external economic relations were included among the initial community competencies.[1] These competencies were extensive because a common trade policy was a necessary aspect of the customs union that had been established. Another major field of external relations dealt with association agreements that the European Community was entitled to conclude with third states. These covered a wide range of issues, including those related to development policy. From the beginning, these and some other fields of external relations were subordinated to the main system of decision-making that had been established, according to which the Commission represented the European Community in its external relations and also negotiated treaties and agreements on behalf of the member states. The role of the European Parliament in these policy fields was minor at first, but has grown significantly over the years.

The initial form of the current common foreign and security policy, termed political cooperation, only became part of the integration project during the 1970s and—due to the opposition of the UK and some smaller

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[1]   See e.g. Charlotte Bretherton and John Vogler, *The European Union as a Global Actor* (London: Routledge, 2006), pp. 63-69; I. MacLeod, I.D. Hendry, and Stephen Hyett, *The External relations of the European Communities* (Oxford: Clarendon Press, 1996), pp. 44-53.

member states—remained as informal cooperation until the late 1980s.[2] For a long time, these countries were intent on keeping foreign policy cooperation in the hands of the member states, and on denying any role to EC/EU institutions.

This separation gradually broke down, however, as the Maastricht Treaty transformed foreign policy cooperation into a *common* foreign and security policy with more ambitious goals. It became a fundamental part of the then-established EU, even if still more dominated by the member states than the external economic policy.

The most recent amendments made to the EU treaties have contributed to this development and have normalized the CFSP with respect to other policy fields. The Lisbon Treaty that came into effect in 2009 established a double-hatted High Representative of the Union for Foreign Affairs and Security Policy, and a specific European External Action Service (EEAS) to bring together the two fields of external relations under a single EU representative and administration. This and many other changes served to enhance the unity of the EU's approach to global politics. Unanimity still maintained its role as the key decision-making rule for the CFSP. However, pressure has been growing to introduce majority decision-making, which in an EU with 28 (soon 27) member states would seem to better safeguard the Union's efficiency. This change may well see daylight soon, since its most ardent opponent, the UK, is leaving the EU.

The Driving Forces of EU Policy

The background behind the positions and preferences of EU institutions on issues of external policy differs from that of member states. On the one hand, EU institutions derive their competencies from the EU's founding treaties, which, particularly in the case of the Commission and the EU Court of Justice, also affect their goals for action. In most international negotiations the Council provides the Commission with a mandate, and its position is adopted by a consensus among the member states.

The Commission's room for maneuvering varies significantly, depending on the nature of the agreement to be negotiated. In most cases of external policy, however, the success of the Commission's position in the

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[2] It was only in the Single European Act, which came into force in 1987, that political cooperation was added to the European Community's framework treaty.

later stages of decision-making depends on the support it gets from the member states (in the Council) and the European Parliament. The Commission's positions on issues of external economic relations thus reflect this general background, although more detailed personal and bureaucratic factors also play a role. The establishment of the function of High Representative of the Union for Foreign Affairs and Security Policy, and of the external action service as its administrative body, for instance, affected the relationship between the Commission and the Council (and the member states) in many fields of external policy. Both incumbents of this position of High Representative, Catherine Ashton and Federica Mogherini, have left their fingerprints on the content and foci of the EU's external policies.

The strengthened role of the European Parliament in the Union's external economic policy, and in particular its trade policy, has highlighted the influence of party politics. Traditional ideological left-right divisions have characterized the formulation of the EP's positions on the Union's free-trade agreements, to which it currently must give its consent.[3] The European Parliament has also systematically pursued openness and transparency in external relations, which will be beneficial for its own role, too.

When it comes to EU member states' positions on issues of external policy, Europeanization theory provides a good analytical framework. Europeanization in its broad sense refers to the interaction taking place between the two levels of the EU system, that of the member states and that of the EU.[4] The common starting point is the member-state level, where foreign policy preferences are perceived as a merger of long-term national interests and preferences with more context-bound factors such as worldviews of foreign policy leaders or the outcomes of bureaucratic rivalries. Europeanization is not merely a bottom-up process. It also moves in a top-down direction, the member states' identities and interests being, at the outset, influenced by the dense network of norms and expectations on the EU level. Member state goals and preferences on issues of external relations thus appear to emerge out of the interplay between the two levels.

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[3] Lore Van den Putte, Ferdi De Ville and Jan Orbie, "The European Parliament's New Role in Trade Policy: Turning power into impact," *CEPS Special Report*, No. 89 (2014).

[4] On the theory of Europeanization, see Kevin Featherstone and Claudio M. Radaelli, eds., *The Politics of Europeanization* (Oxford: Oxford University Press 2003) or Klaus H. Goetz and Simon Hix, eds, *Europeanised Politics? European Integration and National Political Systems* (London: Frank Cass, 2001).

I next analyze the two dimensions of the EU's external policies in more detail, with specific reference to the impact of institutional factors on policy content. I first investigate the EU's external economic relations and trade policy through case studies that illustrate the usual institutional setup in this field with its impact on policy. I then adopt a similar case-study approach to analyze the institutional and personal factors behind some major CFSP decisions.

The EU's Policy on Economic Affairs and Trade

It is obvious that the Commission and the European Parliament exert their powers in the EU's external economic policy in parallel with—and many times with superiority over—the member states. The examples below concern the external dimension of the EU's competition policy and the Union's trade policy, both of which are of significance for transatlantic relations.

Competition Policy

The EU's competition policy provides a prominent example of a policy field in which primary competence has been transferred to the Commission, which acts independently of the member states. Its action in preventing cartels and anticompetitive behavior in the Single Market is internally directed, but has major external ramifications.

The EU's competition policy has assumed great importance in the area of transatlantic relations in recent decades, as the Commission has exerted its powers over a number of U.S. companies by blocking mergers and imposing fines for monopolistic practices, for instance.[5] EU member states do not normally become involved in the Commission's action, which is rather seen in the light of the Commission implementing legislation that represents the common will of the member states: indeed, this is how it came into being.

The Commission's strong role has recently become a target of exceptional political criticism, having been challenged by the U.S. Treasury.[6] The U.S. position concerns the Commission's policy toward companies such as Google, Amazon and Starbucks, which it investigated concerning

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[5] See Bretherton and Vogler, op. cit., p. 71.
[6] U.S. Department of Treasury, White Paper, August 24, 2016.

their taxation in a number of EU countries. The Commission argued that the taxation practices of some member states could imply illegal state aid and thus be in conflict with the Union's competition rules. The political disagreement between the U.S. Treasury and the Commission has recently focused on whether the Commission's interpretation of taxation practices is in line with its earlier practices and EU case law, and even whether it is compatible with current international law.

The common view within the EU institutions, and among its member states, however, is that the Commission has neither violated international law nor exceeded its powers. The Commission has consequently continued the process and has, for instance, referred Ireland to the European Court of Justice for failing to recover illegal state aid from Apple, reflecting its earlier decision. Even if competition policy could be seen as quite an unusual field of the EU's external relations with respect to the logic of policy formulation represented, it still illustrates what the multi-level decision-making system means in cases of extreme independence among common EU institutions.

Trade Policy

The most visible and powerful actors in the EU's trade policy are currently the European Commission and the EP, which dominate the treaty-making process, thus leaving the member states in the background. The Commission's right to initiate new legislation also applies to trade agreements, which it is entitled to initiate from the EU's side. Whereas previously the Commission interacted with the Council, which mandated it to negotiate, currently it also increasingly has to accommodate the opinions of the European Parliament, whose consent is needed for final agreement.

The new position in trade policy provided the EP with a much-longed-for prerogative in the Union's external relations, and it has been keen to use its mandate to strengthen its visibility and profile. Thus far the EP has adopted a more protectionist policy towards the Union's free-trade issues than both the Commission and the majority of EU member states. This has led to the rejection of major agreements such as the Anti-Counterfeiting Trade Agreement (ACTA) and SWIFT agreement with the United States, as well exertion of pressure to amend the Commission's negotiating mandate with regard to the EU-Morocco free trade agreement.

Negotiations on the Transatlantic Trade and Investment Partnership (TTIP), a comprehensive free trade agreement between the EU and the

United States, exemplify the role of EU institutions in transatlantic relations. The process (thus far) could be described as a general balancing act to reconcile the interests of key EU institutions and the member states, with different alliances among them forming at different stages of the negotiations. The Commission has acted as the engine of the TTIP project on the EU's side, keeping the liberal trade agenda on track irrespective of mounting criticism in the member states and the EP. The EP's generally positive approach to this agreement has nonetheless been more protectionist than the position of the Commission and the majority of member states, and has reflected the special interests of some European constituencies in particular. For example, the EP exerted its influence on the negotiating mandate by siding successfully with a minority of member states, against the Commission, to exclude audio-visual services.[7] Later, the EP—reflecting similar demands emerging in many member states—opposed the inclusion of an investor-state dispute-settlement clause including an arbitration system in the agreement, and requested many substantive guarantees, such as the protection of national public services and of the EU's human-rights standards. The Commission had to react, proposing the creation of a bilateral investment court system, for instance.[8]

After fifteen rounds of negotiations, the TTIP process was put on hold after the change of president in the United States, and has not been resumed thus far. Whenever it continues, the EP will—like the Council—formulate positions on the issues on the agenda and will have to approve the final agreement before it can be ratified by the EU.

The Common Foreign and Security Policy

A few case studies on important CFSP decisions shed light on the variety of factors that play a role in the EU's foreign policy decision-making. Irrespective of the unanimity among member states required for all key CFSP decisions, there have been significant cases in which a strong majority—with the firm support of EU institutions—has been enough to enable the EU to adopt a strong common policy. All the cases presented

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7   See, for example, Van den Putte, De Ville and Orbie, op. cit.
8   Davor Jancic, "The Role of the European Parliament and the US Congress in Shaping Transatlantic Relations: TTIP, NSA Surveillance and CIA Renditions," *Journal of Common Market Studies*, Vol 54:4 (2016), pp. 896-912.

below have an important transatlantic dimension even if the focus is not on the relationship itself.

Kosovo

The EU's policy on Kosovo is a good example of a case in which a strong common position among the majority of EU member states and the EU institutions led to the unanimity rule being circumvented. The fact that five of the EU's member states (Greece, Cyprus, Romania, Slovakia, and Spain) have not thus far recognized Kosovo's independence, which it declared in 2008, has made it impossible to formally formulate a common EU position on issues pertaining to the status of Kosovo.[9] The EU's solution has been to take a status-neutral approach towards Kosovo—to keep its members behind a common policy—but still to take decisions that at least de facto imply its recognition. The complicated international background of this policy is beyond the scope of this chapter, but a decisive factor behind it was the EU's willingness to align itself with the United States in this major international dispute.

Lack of unanimity did not prevent the EU from launching a contractual relationship with Kosovo in the form of a Stabilization and Association Agreement (SAA), which was concluded in 2015. The political function of SAA agreements is to encourage countries to carry out the necessary reforms required to gain the status of a candidate for EU membership. The EU was able to take this political step by formally maintaining its status-neutral approach and, instead of following the normal procedure of member-state signature and ratification, carrying out this process at the EU Council level.

This instance of creativity in the context of SAA was not the first time the EU had to adopt a special approach to Kosovo. A corresponding situation emerged in 2008, when the Union decided to launch its largest-ever civilian mission (EULEX) there. Similar difficulties were encountered in the process of defining the mandate for the mission—and the EU's representation in Kosovo for that mission—as the Union could not build its activities on the formal independence of Kosovo. Nevertheless, these difficulties did not prevent the EU from launching its major mission in a country that five EU member still formally considered to be part of Serbia.

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[9] See Zephyr Dessus, Albana Rexha, Albana Merja, and Corina Stratulat, "Kosovo's EU Candidate status: a goal within reach?" *EPC Discussion Paper*, June 28, 2017.

Libya

The EU's action in the Libyan crisis of 2011 offers a contrary example, in which the position of one single member state can be quite significant. This episode concerned the common security and defense policy, which is sensitive in terms of national interests and priorities. When the humanitarian situation worsened in Libya following internal turmoil and the ousting of Mohammad Gaddafi, the UN Security Council adopted a resolution that mandated the international community to "take all necessary measures to protect civilians under threat of attack in the country" (UN SC resolution 1973).

The question of military intervention arose, which, in recognition of the strong interests of Europe in the stability of North Africa, was largely considered a European task. The bigger EU member states were divided on the issue; Germany was the only one opposing a strong CSDP mission, and thus preventing an EU operation. The ideological depth of the German position and the deep division of the EU on the issue had already surfaced when Germany became the only European state in the UN Security Council to abstain on the resolution.

Consequently, a coalition led by the United States, France and the UK first took responsibility for implementing a no-fly zone, and then launched air strikes against the Gaddafi regime. Later the operation was handed over to NATO, which launched Operation Unified Protector.

The Libyan case has been used to exemplify how major differences among member states on strategic issues can hinder the formulation of a common EU defense policy.[10] It could equally be used to showcase the consequences of the unanimity rule in the CFSP. Examples of unresolvable incompatibilities among member states positions are becoming relatively rare, however, and are most likely to concern the common defense policy, which remains the stronghold of member states. Another example from the same field is the EU's inability to use the battlegroups it established in 2004 to give itself a military rapid-reaction capacity. In this case, too, disagreements among the EU's large member states over appropriate EU military tasks constituted the main bone of contention, even if other issues, financial as well as political, also played a role.

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[10] See Garret Martin, "European diplomacy and the Iranian nuclear negotiations," *European Affairs*, The European Institute (2015); Mareike Schmitt, "Between European and National Role Conceptions: The EU3 Initiative regarding the Iranian Nuclear Programme," *European Security*, Vol 26:2 (2017).

The Nuclear Agreement with Iran

The EU's role in the negotiations on the nuclear agreement with Iran (a process launched in 2003) can be used in this context as an example of a CFSP decision dominated by the EU's official political leadership, in particular the High Representative for the EU's Foreign Affairs and Security Policy There were differences in member state policies on the Iran issue, but they did not affect the constructive mainstream approach the High Representative persistently pushed forward. The EU's three largest member states (Germany, France and the UK) took the lead when the negotiation process with Iran started in 2003, but soon after that the High Representative at the time (Javier Solana) started to act as their spokesperson, and later on the EU's representation became more tightly concentrated in the hands of the enhanced High Representative and her external action service. In the long run the three large member states had different profiles in their relationships with Iran, Germany representing the most accommodating policy and the UK the most critical one.[11]

The EU's long history of overall constructive relations with Iran, and the international visibility it was offered on this portfolio, strongly supported its common policy in a situation in which the United States faced serious domestic controversy over a possible nuclear agreement that also implied the lifting of long-standing sanctions against Iran. The economic and trade perspectives opening up along with the lifting of the sanctions constituted another strong driving force for a common EU policy.

Even if the role of the common EU institutions perhaps was not crucial in formulating the common EU policy, it was still essential in terms of keeping the negotiation process alive and the common policy on track. This time it was the EU and its member states that had to convince the United States, and during the Obama administration the Congress in particular, about the benefits of transatlantic unity, rather than the other way around.

Sanctions on Russia

Russia's annexation of Crimea and its military intervention in Ukraine in 2014, which resulted in imposition of EU sanctions on Russia, is a case

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[11] Peter Seeberg, "The EU and the international sanctions against Iran: European and Iranian foreign and security policy interests, and a changing Middle-East," Palgrave Communications 2(16080), 2016. Steven Blockmans and Astrid Viaud, "EU Diplomacy and the Iran Nuclear Deal: Staying Power?" *CEPS Policy Insights* 28/2017.

in which the strong leadership role played by Germany, and in particular by Chancellor Angela Merkel personally, was the driving force behind the maintenance of EU unity. As in the Kosovo case, the EU's willingness to ally itself with the United States in a major international crisis was a major factor affecting policy formulation in the EU. Decisions on sanctions (i.e., restrictive measures on trade, financial cooperation and asset freezing) rested with the CFSP, and therefore required unanimity among member states.

The launching of the EU's sanctions policy on Russia, as a consequence of its actions in Crimea and the eastern parts of Ukraine, took place smoothly without any major internal discord. However, as the conflict proved to be protracted and EU member states were confronted with periodic decisions to extend the sanctions, the domestic consensus in many member states broke down, and the effectiveness of sanctions was increasingly challenged.[12] Apart from political differences in their approaches to Russia, EU members differ significantly in their reliance on trade with Russia, which means that the economic burden of sanctions is distributed unevenly.

Irrespective of the increasing discord in member states such as Italy, France and Greece, but also in Germany, the EU has thus far been able to stick to its policy and to extend the sanctions several times. Chancellor Angela Merkel's leadership on this issue could in many ways be seen as the single most important factor explaining the result. Her credibility stems on the one hand from her personal engagement in the negotiations (the Minsk process), together with then-French president Francois Hollande, with Russian president Vladimir Putin, which failed to make Russia comply with the conditions set for a normalization of the relationship. On the other hand, the objectivity of Merkel's position has benefitted from the fact that it represents a change in traditional German policy vis-á-vis Russia. Merkel has thus managed to deal with the emerging domestic opposition to her sanctions policy both from her own party and from German economic circles, in particular the automotive industry, and this has consolidated her position at the EU level. Here the support of her coalition partner, the Social Democrat Party, which equally has gone through a change of its Russia policy, has been crucial.

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[12] See Marco Siddi, "Privileged partners? Italy should use its leverage for constructive policies towards Russia," *FIIA Briefing Paper* 6/2016; David Cadier, "Detour or direction? The Europeanization of France's Policies towards Russia," *FIIA Briefing Paper* 5/2016.

Even if the EU's sanctions policy on Russia demonstrates the power of a single political leader in EU's decision-making, Merkel's political background provides the necessary conditions for such a position. First, it is very difficult to imagine that the political leader of any other member state than Germany could reach such an informal leadership position in the contemporary EU. Second, Angela Merkel represents the Christian Democratic party, which is the leading political force both at the EU level and in the governments of most EU members, and which also supports her position.

Conclusions

This chapter addressed the role played by the EU's decision-making system in its external policies. In general terms, the EU's policy reflects a domestic background as rich as that of a state's foreign policy, comprising partisan, personal and bureaucratic factors. Of particular interest in this chapter is the relationship between the common EU institutions (the European Commission, the European Parliament and the European Court of Justice) and the member states, a power dimension that has been under constant change with varying dynamics operating in different fields of external relations.

First, it goes without saying that the common EU institutions currently play a major role in most fields of external relations, with their powers reaching as far as the common defence policy. The weakening dividing line between external economic relations and the CFSP opens new paths to power and leadership, but as the above analysis indicates, equally places limits on this power. Even if in most cases a solid majority of member states—with the support of EU institutions –provides sufficient conditions for a common policy, there are still cases in which the veto of one single member state—at least if powerful enough—can make a common policy fall apart.

Second, the common EU institutions are, naturally, far from a unitary force when it comes to their positions on various issues concerning external relations. The Commission is highly focused on pursuing the EU's economic performance and competitiveness, even if in general terms it promotes the broad set of common values set out in EU treaties. The European Parliament represents more divergent perspectives and viewpoints, sharing the Commission's interpretation favoring the roles of the EU institutions in the framework of external policies. The European

Court of Justice, in practice, functions in support of this interpretation as it is supposed to assess issues of competence by acknowledging the broad goals of the EU.

Set against the background described above, EU policies that can affect the United States often result from the ever-shifting dynamics of a two-level process between member states and EU institutions. Many more interests and factors are at stake than simply the historical interests and identities of the Union's largest member states. This does not make the EU an easy partner. But it does require a nuanced appreciation of how the process of European integration shapes the external policies of both the EU and its member states.