

UNIVERSITY OF TWENTE

Brexit and the UK's future participation in the EU's foreign and security policy

Richard Haringsma (S1887963)

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Supervisor: Ramses Wessel

2nd supervisor: Claudio Matera

Foreword

This research represents my thesis on: Brexit and the UK's future participation in the EU's foreign and security policy''. The research concerning this thesis has been carried out through desk research using a wide range of research- and official documents. This thesis has been written as part of the Master program at the University of Twente in Enschede. The work on this thesis took several months, with research starting in February 2018.

Through collaboration with my professor Ramses Wessel a research question was designed. With qualitative research the questions asked during the research were answered and thus the possibilities for UK participation in the EU's CFSP were shown. Through the course of this research both of my supervisors, Ramses Wessel and Claudio Matera, stood ready to assist and answer my questions regarding the research. Their support and wisdom was essential towards successfully completing my thesis.

Lastly, I hope this research can play a beneficial role for further research and as a source of information for those who are interested.

Richard Haringsma

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Abstract

As the United Kingdom is preparing to leave the EU and negotiations are taking place for a withdrawal agreement, there still appear to be questions on what the possibilities are for the United Kingdom on cooperation with the EU on foreign policy. Currently it is uncharted territory for a member state to leave the EU. In mapping out the possibilities for such cooperation, it is important to know the instruments that can be used and what is possible legally and politically. The UK shared in a policy paper that they seek a relationship that is more ambitious than any other third state has with the EU on foreign policy. Part of that ambition is to join the EU on foreign policy statements, participate in EU sanctions and increased dialogue. The policy paper did lack any clear plan on why it is so ambitious, as the things mentioned are similar to what states such as Norway already have with the EU. The UK House of Commons did advise the UK government to pursue observer rights within high-level Council formations such as the Foreign Affairs Council (FAC) and the Political and Security Committee (PSC).

For the UK to be able to reach partly or all of the aforementioned plans, it has the possibility to use numerous instruments. The European Free Trade Association (EFTA) might be an option for the UK. Being a member of EFTA, it is possible to become part of the European internal market through the Economic Area Agreement (EEA). Member States of the EFTA have an agreement through their EFTA/EEA membership that allows them to join EU statements and positions. EFTA members meet the EU through the EEA Council; during these meetings foreign policy is discussed. Switzerland as a pure EFTA member has a more bilateral relationship with the EU. This means that in comparison to Norway, Switzerland is more selective on the EU committees, agencies and programs it participates in. Other instruments are the Partnership and Cooperation agreement (PCA), the Association Agreement (AA) and the framework agreement. Through the PCA and AA states joined the EU on foreign policy statements, positions, sanctions and have increased regular dialogue. Through the AA, Ukraine has for example yearly high-level summit and has regular ministerial and senior-official meetings. The difference between a PCA and AA agreement is that the latter involves reciprocal rights and obligations and that it speaks of convergence on foreign policy while the former purely mentions increase of cooperation. A framework agreement on the other hand can be about anything that both parties desire, it can purely consist of foreign policy elements for that matter. In that sense a framework agreement could have reciprocal rights and obligations as well. Currently the EU has such agreements with Australia and Canada that intensify dialogue and consultations.

The UK has enough possibilities on agreements as most offer similar forms of cooperation. If the UK wishes to do more than for example Norway, it has to negotiate these additions into an existing agreement or through a tailor made agreement. Voting rights within Council formations are nearly impossible as the treaties do not allow it and the EU is not willing to change them. Observer status with speaking rights in the PSC, and perhaps even in the FAC, is the highest attainable form of cooperation achievable for the UK and thus should be their goal as an old member state. There they can influence EU decision making through speech even though they cannot vote. Both parties would in the end benefit from such intensive cooperation. Moreover, it would show states such as Russia and China that even though Brexit happened, the UK and EU still have the same views. However, so far the EU has internally, and through certain officials, stated that they seek a relationship with the UK on existing third country terms. In that sense the outcome of future cooperation between the EU and the UK on foreign policy could become the victim of politics in which the question get raised who needs who more and how the image of Brexit will look like, for both the EU and UK government.

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Abbreviations

- Association Agreement (AA)
- Common Foreign and Security Policy (CFSP)
- Common Security and Defence Policy (CSDP)
- Directorates Generals (DG)
- European Central Bank (ECB)
- European Defence Agency (EDA)
- European Economic Area (EEA)
- European Free Trade Association (EFTA)
- European Neighborhood Policy (ENP)
- European Union (EU)
- European Union Institute for Security Studies (EUISS)
- European Union Satellite Centre (EUSC)
- Foreign Affairs Council (FAC)
- Free Trade Agreements (FTA)
- High Representative of the Union for Foreign Affairs and Security Policy (HR)
- Partnership and Cooperation Agreement (PCA)
- Political and Security Committee (PSC)
- United Kingdom (UK)
- Stabilization and Association Agreement (SAA)
- Western European Union (WEU)
- Qualified Majority Voting (QMV)

1. Introduction

On the 23rd of June in 2016 a majority of British voters voted for the United Kingdom (UK) to leave the European Union (EU). It came as a surprise to most people that followed the referendum, as the ‘remainers’ were leading the polls. However, the supporters of Brexit won with 53% and thus the process of Brexit began. The process of Brexit is a two year negotiation with the EU and its Member States on the details of the divorce. Details such as the border between Ireland and Northern-Ireland (part of the UK) and the payments for EU programs during the divorce phase. During the negotiations the EU and the UK are also discussing the details of a future trade agreement and other means of cooperation. In March 2019 there should be a treaty on the future relations between the EU and the UK.

The EU would still count 27 members after Brexit, with even more possible members in the near future (EEAS, 2017), making it influential on the world stage. The UK on its own, with its relatively large military and strong economy, has decent influence in world affairs (Sanders, et al, 2016) (Focus Economics, 2017) (Global Firepower, 2017). Therefore it might be in the best interest of both the UK and the EU to continue cooperation on foreign affairs. The combined power of both parties will increase the influence of both the UK and the EU worldwide. Currently the negotiations between the EU and the UK are underway with a deadline in March 2019. The discussions on the negotiations are numerous although the discussion on the future of foreign policy for both the UK and the EU lacks research. There are a couple of academic articles that discuss EU foreign policy and Brexit and those will be used as literature for this research. Additionally, it remains the question what kind of agreement will come from the negotiations as currently it goes everything except smoothly. Still, it is to be expected that the UK and the EU would benefit in the future from each other with cooperative foreign policy. For the UK it will be important to keep the EU and its Member States as allies while the EU could make good use of the UK, as till today it remains a state with a decent amount of influence in the world (Chalmers, 2017). The problem however, lies within the fact that this is the first time a member of the EU will leave the club. It is uncharted territory on how an old member can align itself on EU foreign policy. Questions arise such as: ‘Does the EU legal framework allow for some sort of extensive cooperation on foreign policy?’ or ‘Which legal instruments can the UK make use of when wishing to cooperate with EU foreign policy?’. EU legal documents and also previous done research concerning Brexit will help this research in answering such questions. Other European states that are not part of the EU can be used as examples on how they align themselves with EU foreign policy. This will sum up the main question of this report: What are the legal and political possibilities for the UK to align itself with the EU’s Common Foreign and Security Policy after Brexit? In chapter two the research question will be presented in more detail.

This research aims to answer that question by researching EU law, making use of previous scientific research and articles and by looking at other non-EU European countries like Norway and Ukraine. These example countries are not part of the EU but might cooperate extensively with the EU on foreign policy, through the European foreign and security policy (CFSP). Norway is part of the European Economic Area (EEA) and thus already pays for its membership of the European internal market, and with all its neighbors and allies in the EU it might make sense for Norway to seek extensive cooperation on foreign policy through the EU. Ukraine has signed an Association Agreement with the EU and since it has European ambitions it might have relevant forms of cooperation with the EU (European Council, 2017). Analyzing Association Agreements might show opportunities or solutions for the UK and its future participation with EU foreign policy while the Norway case shows it from the perspective of an EEA country, a possible future outcome for the UK (Najy & Phinnemore 2017).

1.1 CFSP – general information

The CFSP of the EU outlines the Union's foreign and security policy (Whitman 2016). Its predecessor can be found back as far as the 1970's in the formation of the European Political Co-operation. This way, EU members could discuss in an informal way how to act on foreign matters. However, it was deemed as not effective and thus with the Maastricht Treaty the CFSP came. Soon after, with the Amsterdam Treaty, the position of High Representative for the Common Foreign and Security Policy was created and was being held by the Spanish Javier Solana. With the arrival of the Lisbon treaty in 2009 new changes were applied to the CFSP. The three most important changes were the opening of an EU foreign office called the European External Action Service (EEAS), the creation of the function of High Representative of the Union for Foreign Affairs and Security Policy (HR), de facto merging the post of High Representative for the Common Foreign and Security Policy and European Commissioner for External Relations and European Neighborhood Policy. The last important change with the Lisbon treaty was the ending of the pillar system that was introduced with the Treaty of Maastricht. The merging basically made the EU a consolidated legal personality (Europa, 2017). One of the weaknesses described with the pillar system was that it created confusion over which institute represent or act on behalf of the EU as the CFSP is one of the many EU's externally facing policies as discussed by Cardwell (2017).

All the EU institutions play a role within the CFSP but the most important ones are the European Council and the Council. It is the European Council that has a leading role in the formulating CFSP policy as stated in Article 22 TEU: "the European Council shall identify the strategic interests and objectives of the Union". The Council is where the main decision making takes place for the CFSP. It defines and implements the general guidelines of the European Council, decides on the voting procedures and it reviews the principles and objectives of the Decisions.

Most CFSP Decisions are taking within the General Affairs Council (GAC) and the Foreign Affairs Council (FAC), consisting of the ministers of foreign affairs of the Member States. Another important permanent body within the European Council would be the Political and Security Committee (PSC). This group monitors the international situation in the areas covered by the CFSP and contributes by delivering opinions to the Council of Ministers, either at its request or its own initiative, and also analyzes and monitors the implementation of agreed policies. The European Defence Agency (EDA) encourages increase in EU defence capabilities, military research and the establishment of a European internal market for military equipment, hardware and technology. Two bodies that have been taken over from the Western European Union (WEU) are the European Union Institute for Security Studies (EUISS) and the European Union Satellite Centre (EUSC). The EUISS is the European Union's in-house think tank. Their goal is to find a common security culture for the EU, to help develop and project the CFSP and to enrich Europe's strategic debate. The EUSC is there to provide analyses of satellite imagery and data (EAAS, 2017).

A significant part of policy within the CFSP is the Common Security and Defence Policy (CSDP). Since the Cologne European Council in 1999 the CSDP became part of the CFSP but posed little effect on the change of military cooperation within the EU. It was only after the Kosovo War that the EU Member States started to increase defensive and military cooperation. Most of these plans were written down in the Helsinki Headline Goal. The most notable progress towards European Defence was the Battlegroups. Troops consisting of multiple Member States, ready to be deployed within a short time frame (EEAS, 2017). One of recent new additions to the CSDP would be the PESCO, short for the Permanent Structured Cooperation (EEAS, 2017). It functions as a framework that aims to jointly develop defence capabilities and make them available for EU military operations.

This will enhance the EU's capacity as an international security partner by contributing to the protection of Europeans by maximizing the effectiveness of military spending by the Member States (Ertürk 2018). The main difference between PESCO and previous forms of cooperation within the EU is that PESCO is legally binding to members states who have wished to participate in it. In short, PESCO will create a framework for EU Member States to initiate projects that will foster closer cooperation. The CSDP however, will not take any part in this research. Since the CSDP itself is of very high importance, also for the UK in their relation with the EU, my colleague Eduard Hoek will write about the future of the UK and the EU when it comes down to the CSDP.

1.2 CFSP – procedures and institutionalism

The CFSP is largely intergovernmental, which might make it easier for non-EU Member States to participate with it than other EU policy areas. Within the CFSP the defining role is with the European Council and the Council of Ministers. The former being composed of the heads of state or government of the EU Member States and the latter by the respective ministers of the EU Member States, in this case the foreign ministers. The heads of state meet twice every six months and more under exceptional circumstances. It is the task of the European Council to identify key issues and strategic interests with regards to the EU's foreign policy (TEU, 2012). The way the European Council will shape the direction and policy will form the basis for CFSP Decisions taken by the Council (Wessel, 2016). Decisions are made with consensus within the European Council. The president of the European Council is tasked with managing the meetings between the heads of state, ensuring political consensus and to help the continuity of policy. The HR also takes part during the meetings at the European Council and may submit CFSP proposals. One could see the European Council president as the voice for the heads of state on foreign matters while the HR acts as the day-to-day voice of the CFSP.

The Council of Ministers is where most of the formal mechanics of the CFSP decision making are carried out. Article 26(2) TEU says the following:

“The Council shall frame the common foreign and security policy and take the Decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council.

The Council and the High Representative of the Union for Foreign Affairs and Security Policy shall ensure the unity, consistency and effectiveness of action by the Union.”

The foreign ministers from the EU Member States meet usually once a month to discuss upcoming foreign issues and situations. Voting is, again, done on basis of unanimous agreement unless stated otherwise by the treaties. If a CFSP decision has been taken then a qualified majority voting (QMV) may be used while implementing measures for that policy. Similar as that to other policy areas of the EU, Decisions for the CFSP are prepared in working groups from the Member States (in some occasions joined by the Commission). Such working groups have an important task in preparing the Decisions by researching data and doing preparatory work (Wessel, 2016).

Within the CFSP there are numerous instruments that are used to define and implement European foreign policy. These combine both informal instruments and legal acts. Informal instruments consist of dialogue between the Member States and third countries, which in some cases produce declarations. Such political dialogues always take place within the framework of the CFSP. Legal acts within the CFSP can only be adopted as ‘Decisions’, unlike other policy areas of the EU. It is important to note that the Decisions made within the CFSP are not the same as the Decisions that are listed under Article 288 of the TFEU.

Article 25 of the TEU makes a distinction between the Decisions, namely actions to be undertaken by the Union and positions to be taken by the Union. Both actions and positions can be found in a CFSP decision. The Decisions made within the CFSP limit the freedom of the Member States in their individual policy regarding foreign affairs. In Article 28(2) TEU it says clearly that Member States have to commit to the positions that they adopted in cooperation with other Member States through the European Council. Would the situation on which the decision is based change, then the Council will take the necessary action to possibly modify the decision. Member States are not allowed to deviate in the meantime. There is however one explicit exception called Article 28(4). Member States can choose to change their position against the decision when the situation has changed, there is an imperative need and the Council has not come up with a decision on the matter. It is important to inform the Council of this action and to always consider the general objectives of the common decision of the EU (Mix, 2011).

The EU as an institution created a working common foreign and security policy with all of its Member States. Through this policy, the Member States often agree on a common reaction to any situation in the world and agree on common strategic interests. When the EU does speak with one voice it has a great deal of influence in the world. The CFSP made the EU besides a strong economic actor, a player within international relations and the policies and security that fall under it. However, as one could expect, the biggest problems with the CFSP remains the importance to achieve consensus among all of its Member States, states that do have their own sovereign foreign policy. This problem can be traced back to the Iraq invasion in 2003 and also is still visible with the current division in recognizing Kosovo. In the end consensus can also be a matter of degree. Member States can disagree on one certain policy and still agree on a common approach on another level (Mix, 2011).

Another issue that EU foreign policy faces is that it lacks a clear strategy towards other countries such as China or Russia (Missiroli, 2010). The problem is the fact that all the EU Member States have different perceptions and objectives regarding foreign policy towards these countries. Some EU members are more interested in positive trade connections rather than human rights or democracy. This could most notably be seen during the Ukraine crisis, where although the EU had a unified sanctions policy against Russia but did fail to stop divergent pro-Russia policies, such as signing new energy deals or granting port access for Russian naval forces (Orenstein, et al, 2017).

Another important element of the CFSP is the HR, head of the EEAS. The role of the HR is defined in Article 27 TEU:

‘1. The High Representative of the Union for Foreign Affairs and Security Policy, who shall chair the Foreign Affairs Council, shall contribute through his proposals towards the preparation of the common foreign and security policy and shall ensure implementation of the Decisions adopted by the European Council and the Council.

2. The High Representative shall represent the Union for matters relating to the common foreign and security policy. He shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.

3. In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.’

In the end the HR can only encourage consensus on foreign affairs and not force it. Only further integration on foreign policy could every change this. However, foreign policy is rather a sensitive topic when it comes to further EU integration. Some analysts such as Missiroli, A. (2010) and Manners, I., & Whitman, R. (2000) do argue that it will be necessary if the EU wants to remain relevant player in the world. While small EU countries fear that their voice might become lost within the EU, they will arguably even less likely to be heard outside the EU. Major EU members such as Germany and France do have a lot of influence around the world but some analysts mention that in the future their influence will probably diminish while other states, such as the BRICS countries, become influential. With that being said, in the future there is great possibility that EU states will seek each other out to cooperate on foreign policy as the world keeps globalizing

2. Research Design

In this chapter the design of the research will be explained. The research will be a qualitative research as it focuses extensively on the situation & problem and since there will be no use for numerical data. The data that will be used will be research articles that will consist of detailed information, another aspect of a qualitative research.

2.1 Research Goal

The goal of the research is to find out if the UK, if it wishes to do so, can align itself with the EU in the area of the CFSP after the transition period of Brexit. European law and policies will be studied as well as cases of non-EU European countries to find out if it is possible for the UK to align itself with the EU on foreign policy and to what extent. As stated in the introduction, the UK will remain a state with a considerable amount of influence regarding foreign policy (Chalmers 2017). However, there are serious doubts about the UK's influence in comparison with the EU, making cooperation with the EU on foreign policy an important strategic decision (Lightfoot et al, 2017). Would the UK choose to work together with the EU on foreign policy then both parties would benefit in the end with a stronger voice in foreign issues.

Numerous research articles on Brexit focus on how Brexit happened and the consequences for the economy of the EU and the UK. Other recent articles such as Łazowski & Wessel (2017), Chalmers (2017) and Cardwell (2017) showed the EU and UK relationship on the CFSP prior to Brexit and how it may impact both parties after Brexit. Other recent articles hint at how cooperation could be fulfilled after Brexit (House of Commons, 2018) (Cardwell 2017). However, there is still a lack of research articles that look at the way through which instruments the UK could align itself with the EU's foreign and defence policy. Therefore this research aims to map the current possibilities for the UK to work together with the EU after Brexit. When written, this research can be used as a basis for further research in the field of foreign and defence policy and also for more general research papers on the topic of Brexit. For example, papers on the possible outcomes of Brexit might benefit from this research as it explains the possibility of the UK aligning on EU foreign policy. Other papers that focus on foreign policy can also make good use of this research. For example: a paper on the future of EU foreign policy.

2.2 The main and sub-questions

In this chapter the main research question will be presented as well as the sub-questions. The aim of the sub-questions is to answer the main question.

Main RQ: What are the legal and political possibilities for the UK to align itself with the EU's Common Foreign and Security Policy after Brexit?

The main RQ is a theoretical descriptive research question since it aims to describe the relation between the UK and the EU on foreign and security policy. This will also explain what the consequences of Brexit are when it comes down to foreign and security policy as well as showing the options the UK has in post-Brexit EU relations.

Sub-questions

Below are the sub-questions as well with explanation on what will be analyzed for that sub-question to answer that question. In the chapter of conceptualization certain definitions related to the sub-questions will be explained.

- 1. On the basis of which instruments can third state participation in EU foreign policy be realized?**
 - a. The European treaties and policy linked to the CFSP could show this connection. Scientific articles might be analyzed to ensure this. The instruments might be expanded upon during the research
 - b. identifying instruments that connect third states with the CFSP makes it more clear how these third states cooperate with the EU on foreign policy
 - c. This sub-question will be dealt with in chapter 4
- 2. What is the practice of third states to participate in (or align itself to) EU foreign and security policy?**
 - a. Treaties or agreements with other European states will be analyzed to see how they work together with the EU on foreign policy. For example: issuing combined statements on world affairs and joining the EU on treaties
 - b. It is relevant to know how the EU cooperates with third states on foreign policy at the current moment. Knowing this show how the UK might cooperate with the EU as well in the future.
 - c. This sub-question will be dealt with in chapter 5
- 3. Which institutional obstacles are there for UK participation in decision-making?**
 - a. The EU Treaties as well as the CFSP practice will be analyzed on the rules surrounding for example membership and thus if there are any obstacles for the UK. Scientific articles might have a large contribution towards analyzing this sub-question as well
 - b. It is important to determine the institutional obstacles as such obstacles could affect UK cooperation with the EU on foreign affairs
 - c. This sub-question will be dealt with in chapter 6

4. What are the parameters to take into account in establishing a framework for the UK to continue to participate in EU foreign policy?

- a. The EU Treaties as well as the CFSP practice and scientific articles will be used to analyze to find parameters that have to be taken into account
- b. Knowing the parameters is important as otherwise cooperation between the EU and the UK will not be clear
- c. This sub-question will be dealt with in chapter 7

2.3 Units of Analysis

The units of analysis for the research will consist out of the EU as an international organization with the institutions such as the Commission and the EEAS as units of analysis within the EU as an international organization. Another unit of analysis will be the EU's foreign and security policy through the CFSP and to some extent Brexit. To answer the main question and the sub-questions as well, it is important to analyze the Commission and the EEAS as institutions. The Commission, with most notably the high representative for foreign and security policy (HR), monitors and issues legislation on CFSP policy. The EEAS is the agency that is responsible for the EU's foreign and security. All policy derived from the CFSP is important as it contains all the information on the EU's foreign and security policy (EUR-LEX, glossary on HR & CFSP, 2017). The treaties of the EU, the TEU and the TFEU, are important units of analysis due to their information on what is possible regarding EU law and the procedures. Brexit is to be analyzed so that it becomes clearer what Brexit actually means and what its consequences can be towards the EU's foreign and security policy.

2.4 Variables and the setting of the research

The variables will be UK (X) and the EU's CFSP (Y) whereas the research will look how the UK (X) can align itself with the CFSP (Y) in the form of consequences. The setting of the research will take place between the day of the EU referendum which was 23 June 2016 till March 2019 when the EU and the UK are expected to have an agreement on future relations. The reason for this is that it is important to focus on a certain timeframe so that the research will not expand beyond its scope. The research will solely focus on the UK and the main EU institutions which are the Commission, the EP, The European Council and the Council of Ministers.

2.5 Conceptualization

- **Units of observation**
 - Documents meant such as: CFSP international agreements, Declarations by the Council, European Council and the Commission and other policy instruments
- **Participate**
 - That the UK can join the EU's CFSP officially through international agreements and treaties as a participating member
- **Brexit**
 - The UK leaving the European Union. The British people have decided to leave the European Union through a referendum on 23 June 2016. 52% voted to leave the European Union. This whole situation, from the referendum till the current phase of the departure negotiations, has been called Brexit. The B stands for Britain together with the word Exit
- **Common Foreign and Security Policy (CFSP)**
 - It is the all-encompassing policy on the EU's foreign and security policy. It also includes the CSDP which stands for Common Security and Defence Policy. The research will not look into the CSDP as this specific policy will be researched by a colleague
- **Third state**
 - A country that is located within Europe although not a member of the European Union. For example: Norway or Ukraine. The various third states might have different factors contributing to their willingness to align with EU foreign policy. Countries such as Serbia or Macedonia might align themselves more with EU foreign policy due to their goal of joining the EU while this is not the case with Norway or Switzerland. These differences have to be taken into account
- **Obstacles (SQ3)**
 - Problems that the UK might encounter that will hinder any cooperation with the EU on the CFSP. For example: Membership of the EU might be required to participate in discussions and agreements
- **Practice**
 - What do non-EU European states usually do when it comes to EU foreign policy? Do they align their position to the EU all the time or almost none? Participate in sanctions? Participate in EU working groups?
- **Parameters**
 - Things that have to be taken into account that might make it difficult or prohibit UK in participation with the EU's CFSP
- **Connection (SQ1)**
 - Connection in the sense that for example trade agreements could be used as an instrument to connect. In this context third states would use trade agreements as the instrument to connect itself with the EU's CFSP positions
- **Extended observer rights**
 - Is observer rights plus the ability to at least speak during meetings. Can also include agenda setting

2.6 Validity and reliability

External validity is when results from a research can be used to generalize other situations or people. Looking at the nature of this research it obviously cannot be generalized to other situations or people as the case between the EU and the UK is one of exception. However, the findings of this research should be able to be transferred to other readers. This research will thoroughly describe the context of the research to assist the reader in being able to generalize the findings and apply them appropriately in his own work.

Internal validity is the extent to which a causal conclusion based on a study is warranted, which is determined by how much the systematic error is reduced. In the case of this research, internal validity has little importance since it is solely used for researches with correlations or associations that might negatively influence certain tests. As this research is a qualitative research that focuses on documents, it is important that this research collects only meaningful data. In this case, the research will use only data from official sources, from for example European institutions or Member States, and sources such as from scientific databases like Scopus or Google Scholar. With Google Scholar it remains important to check the author as Google lists everything. Other official sources might consist of media websites; however, these sources will only be used for statements made by public figures.

Reliability is when a research can be repeated by others who will then find the same results. In the case of this research, official documents by the European institutions and the UK government will be used as well as scientific articles. Other researchers can use these same documents whereas it is expected that then they will find a similar result. Since the nature of qualitative research often results in an ever changing research setting and changing contexts, it is important that this research will document all aspects of any changes or unexpected occurrences to further explain the findings.

Confirmability is a measure of objectivity used in evaluating the results and to describe how well the research findings are supported by the actual data collected when examined by other researchers. Other researchers have their own perspectives on a research and data interpretation can be subjective in qualitative research. If findings are confirmed by others who examine the data then no inappropriate biases impacted the data analysis.

2.7 Data Analysis Plan

The research will focus heavily on previous theoretical research and official documents by the European institutions. This will consist of European law and policies. Researching EU law will give this research the opportunity to precisely know what the UK and the EU can expect when they leave the Union and thus those treaties, policy and regulation containing EU law. Other sources will consist of related researches done by respectable sources. Only scientific researches will be used and thus the source will be checked to make sure it is of quality. Legal and policy documents will be analyzed by using four steps.

The documents analysis that will be conducted for this research will consist out of a few steps. The first step will be to define the correct material. Material can range from scientific articles, official documents from institutions, interviews or perhaps even videos. The next step is to analyze the situation of data collection, which is all about who was involved in the creation of the document such as the author and where it was published. With the third step, the collected material and responses are characterized, which may include details on how the content was documented. At the fourth step, it is important to define the direction of analysis of the chosen texts and material. This step also outlines what the researcher intends to interpret from the data. Additionally, it is important to be cautious to note any differences between the obvious and implied meaning of the communication being studied. The literal or quantitative meaning must be differentiated from the inferred or qualitative meaning.

Regarding finding relevant law, there are a few important steps that should be taken. First off is indicating the correct document for the current issue that the research paper seeks to address, secondly is to find the correct law, thirdly to apply the law to the current issue and fourth, to analyze the possibilities when the law is applied and when it is not applied and what differences it brings.

Other sources will consist of related researches done by official sources. Only scientific researches will be used and thus the source will be checked to make sure it is of quality. When analyzing documents it is important to make sure that the document fits the correct time frame that benefits the research and to know who the author is. The latter is important since the author might have biases coming from his profession or political beliefs. Data will be only retrieved from official websites and scientific databases such as Scopus from the website of the University of Twente. With Google Scholar it is important to verify the sources as it can also show weak articles. Official websites of EU institutions or the websites of the governments of Member States might be used as well. These websites are expected to have reliable data. However, it is important to find data that is not political motivated. It might occur that one of the parties that are in government might show certain data that is motivated to pass certain regulation.

3. Theoretical framework

For the research it is of importance to know about the background information concerning the integration of third states with the EU and the UK relations with the CFSP. Moreover, it is relevant to read about previous research that formed scenarios on how the relation between the UK and the EU can form after Brexit. Those theories can be used at a later stage to compare it to the findings of this research.

3.1 European integration theory and third states

The integration process between all the EU Member States has been ongoing with no clear end in sight. Starting with the Coal and Steel Community back in 1952, the European Union has seen numerous treaty changes. The last change has been the Lisbon treaty, but even besides the treaties the EU and its Member States keep developing through new programs and agreements such as the Banking Union and the Permanent Structured Cooperation (PESCO). There are numerous theories on European integration. Stubb (1996) created a three-way classification that included temporal differentiation (two- or multispeed- Europe), territorial differentiation (core Europe or multiple center's) and sectorial differentiation (variable geometry or Europe a' la carte). The most prominent integration theories come down to the idea of a two- or multispeed theory. This theory became more apparent with the Schengen zone, the Eurozone and the EEA agreement. Currently the Eurozone has created its own institutions (the euro summits of the heads of state and governments, and the finance ministers of the Eurozone members) and is now moving towards a banking union under the leadership of the European Central Bank (ECB) (Adler-Nissen, 2016). The UK itself is an important player in a multi-speed Europe. It is not a member of the Euro, the Schengen zone and it remained opposed to certain integration for example on European defence. As Keedus, et al (2018) mentioned in their research, the UK is loosely integrated in the EU, both horizontally and vertically. Vertical differentiation refers to policy areas that integrate at various speeds and reached various phases of centralization over time. Horizontal differentiation means that many integrated policies are neither uniformly nor exclusively valid in each Member States. The UK does not participate in all the EU policies (horizontal differentiation) and in some others; it participates at its own speed and extend, which is deemed as vertical differentiation. In the same research it is also noted that the UK is not winning much by leaving the EU and afterwards rejoining the internal market. The internal market is beneficial to the UK economy but by leaving and then rejoining it the UK only loses their influence and voting rights. Using the theory of differentiated integration/multi-speed Europe there is enough potential for non-EU members to integrate into EU policy and programs. Examples of this are again, the Schengen zone and the EEA but also programs such as the Bologna process or Galileo programs (Holzinger, & Schimmelfennig, 2012). Especially since Brexit vote, a multi-speed Europe became the center of attention and as a possible solution for the EU's problems as it was mentioned in the Commission's white paper of March 2017 as a way forward for the EU (White Paper of the European Commission, (2017).

Besides the EU integration process with its Member States, there has been European integration in states that are not part of the EU. In the paper of Magen (2007), it has been mentioned that the promotion of EU norms and rules beyond its borders is the third phase and latest development phase in European integration. The EU has done this through numerous programs and agreements that are an alternative to EU membership. One could think of the European Neighborhood Policy (ENP), the Association Agreements (AA) and the EEA agreement for EFTA members. Through these agreements and programs the EU can expand its norms and rules to other neighboring states that either remain in 'membership waiting room' for some time and for states that have no EU membership perspective. Especially for the former group, agreements such as an AA could make possible future EU member

more ready while it can enjoy some of the EU benefits, such as cooperation in certain EU programs (Erasmus, Galileo) and partly access to the internal market (Deep and Comprehensive Free Trade Area) In the report written by Lavenex, (2011), a clear description was mentioned concerning the European integration and external relations, this has been put in a table which can be seen below:

	<i>First circle (1)</i>	<i>Second circle (2)</i>	<i>Third circle (3)</i>	<i>No external governance (4)</i>
<i>Regulatory boundary</i>				
Scope of EU <i>acquis</i> promoted	Full EU <i>acquis</i>	Partial EU <i>acquis</i>	Punctual EU <i>acquis</i>	No <i>acquis</i> promotion
Legal quality	Harmonization	Approximation	Information	No commitment
Supervision	Judicial	Political	Good faith	No supervision
<i>Organizational boundary</i>				
Inclusion in EU structures	Participation in EU legislative arena	Membership/ observer status in committees and agencies	Cooperation agreements with agencies	No inclusion
Inclusion in parallel structures	No parallel structures	Inclusion in EU-sponsored regional structures	Inclusion in independent regional and/or multilateral structures	No EU involvement in parallel structures
Main level of interaction	Transgovernmental	Mixed inter- and transgovernmental	Intergovernmental	No institutionalized interaction

The first circle consists of states that are closest to the EU without being a member. Those states are part of EFTA, signed up for the EEA agreement and have access to certain committees, programs and agencies of the EU. Moreover, these states adopt EU laws related to the internal market. The second circle consists of states that have signed an AA or PCA with the EU and have thus established a framework for cooperation on numerous sectors. Later on in the research there will be more in depth explanation on the EFTA, PCA and AA. The third circle fits states with whom the EU has extensive Free Trade Agreements (FTA) and states that fall under the ENP. It has to be mentioned that the EU performs external governance through FTA's, which usually contain aspects of human rights and environmental provisions. The final circle is states with whom the EU barely cooperates with. The author describes this circle as states to which the EU does not pursue a systematic policy of norm-transfer. In another research by Schneider (2009), the idea of EU membership was researched in relation to the bargaining power of both parties. The research notes that current EU members have little to lose when they deny a country membership status whereas the candidate country benefits a lot of membership. This results in the end that the candidate country adopts EU policy rather willingly. The research notes that the EU's internal market and export capacity is its major bargaining power.

Later in her research, Lavenex (2011) used EU instruments to show how close they integrate a third state with the EU. This can be seen below:

	<i>EEA</i>	<i>EU-CH</i>	<i>AA</i>	<i>ENP</i>
<i>Regulatory boundary</i>				
Scope of EU <i>acquis</i> promoted	(nearly) full EU <i>acquis</i>	Partial EU <i>acquis</i>	Full EU <i>acquis</i>	Partial EU <i>acquis</i>
Legal quality	Harmonization	Harmonization with flexibility	Harmonization	Approximation
Supervision	Judicial	Judicial / Good Faith	Political	Political
<i>Organizational boundary</i>				
Inclusion in EU structures	Membership/observer status in committees and agencies	Selective membership/observer status in committees and agencies	Cooperation agreements with agencies	Cooperation agreements with agencies
Inclusion in parallel structures	EEA parallel structures	No parallel structures	Inclusion in EU-sponsored regional structures	Inclusion in EU-sponsored and independent regional structures
Main level of interaction	Transgovernmental	Transgovernmental	Mixed inter- and transgovernmental	Inter- with some transgovernmental

It shows how that through the EFTA + EEA a third country would be the closest to the EU without being a member, what follows is the EFTA/Switzerland model, the AA and finally the ENP. It shows that the EEA and Switzerland model have to work with the EU Court of Justice while states through the AA and the ENP do not, as it remains purely political. The ‘Good Faith’ from the Swiss model comes from the bilateral relationship between the EU and Switzerland. It basically means that the relationship between the EU and Switzerland focuses more on good faith since the EU’s Court of Justice does not have as much power due to the bilateral relationship. Furthermore it shows how integrated states would be within EU programs and agencies and how interaction is usually done.

3.2 The relation between the UK and the CFSP

The UK was never the biggest supporter of a more integrated CFSP. Successive UK governments aimed to stop any attempts at making the CFSP less intergovernmental. One of the reasons for this was the UK's long belief that the EU is a trade bloc and should focus on that, the other reason is that the UK wished to keep its own long-standing place on the global stage through the UN Security Council and NATO and thus did not wish to receive more visibility through the EU as it was simply not needed (Blitz & Kuchler, 2012). When the Lisbon Treaty was in the works the UK still insisted that the CFSP remained a separate status within the new treaty, despite the collapse of the pillar system. All the years leading up to the referendum on the UK's membership of the EU has shown that the UK kept keeping distance from a greater EU cooperation on the CFSP (Cardwell, (2017)). The UK for example increased cooperation with other states such as Canada on diplomatic resources (Blitz & Kuchler, 2012) and emphasized the cooperation with the 'Five Eyes' security community (HM Government, 2014). Right before the referendum the UK released strategy documents including the State Security Strategy, Strategic Defence and Security Review. All these documents did not prioritize involvement in the EU frameworks in the UK's defence and security (HM Government, 2015).

To describe the UK's relationship with the CFSP at this moment or rather said, prior to Brexit, it is important to analyze its involvement. Importantly is to discuss the effect of EU law, specifically that of the CFSP within the UK. EU law is supreme over national law and thus also supreme over UK national law. The constraint on the sovereignty of EU law over UK law, as an independent state, was accepted by the Parliament through implementing legislation, called the European Communities Act in 1972. However, EU law is not entrenched in UK law because it is supreme (Case 6/64, *Costa v. ENEL*, 1964). Therefore any CFSP law from the Lisbon Treaty is excluded in Section 1(2) (S) s of the European Communities Act. Additionally, CFSP law is insulated from the supremacy of EU law, lack a domestic foothold in UK law and is not directly enforceable (EU law in the UK, 2011). The UK governments abided CFSP policy more or less under the umbrella of international legal obligations, obligations that were struck through foreign relations. UK governments have scrupulously preserved the intergovernmental character of the CFSP by removing it from EU law (Seah 2015).

As stated before, the UK's involvement with the CFSP was a mere love-hate relationship. The UK used the EU's foreign policy to strengthen its own foreign policy but kept their distance and downplaying the EU's CFSP involvement to not stir EU-skeptics. The Europeanization of the UK's foreign policy was therefore more of an act that happened behind the curtains. The UK changed their organization to fit with the EU's CFSP by creating the specific post of Political Director, making sure that the UK could participate fully in meetings of the Political Committee, the precursor to today's PSC (Duke, 2005). The UK also uploaded their nation's foreign policy with success to the European level on numerous occasions. The most notable one has been the Iran nuclear deal, a deal which had been led by the UK together with other major EU members. Other forms of successful uploading national goals by the UK are the development of EU Battle-Groups and EU crisis management operations.

The UK was also involved when it came to the cost of missions, being successful in reducing the costs of the EULEX Kosovo mission. The British were also emphasizing the need of EU capabilities in security and defence to that of NATO. The last points ultimately fall within the CSDP but do show the activeness of the UK within the CFSP as the CSDP falls within the same policy (Wright, N., 2011).

Even though that behind the scenes the UK did push for more Europeanization of their own foreign policy, publicly the UK aimed for a more intergovernmental approach towards common European foreign policy. The 2015 National Security Strategy (NSS) and Strategic Defence and Security Review (SDSR) documents have placed the EU in a minor role in the entire UK's defence and security plan. Additionally, the Foreign and Commonwealth Office wrote in their Single Departmental Plan that the EU would fit more in subordinate role rather than as a central place in UK diplomacy (Whitman, R. G. 2016).

It has also been shown that the UK does benefit from the EU's CFSP, as it used the CFSP from time to time to strengthen its own voice in foreign policy (Dijkstra and Vanhoonacker, 2017). It is even been suggested according to Cardwell (2017) that the UK gains more from the CFSP than it loses from it. The British government from 2010 till 2015 assessed the UK contribution to the CFSP as positive and that the cooperation with 27 other Member States is effective in shaping global policy (Whitman 2016). However, Due to the domestic skepticism for almost anything EU related, the UK governments remained their distance on the EU's CFSP, even downplaying their involvement to not appear too involved in EU policies. Therefore it was no surprise that the EU's CFSP played hardly any role during the debates on the UK's Brexit referendum. It is even to be expected that during the EU-UK negotiations the CFSP will play a very small role if any, however, a good atmosphere and great results on more important fields such as trade will surely have a positive impact on future collaboration on foreign policy. Therefore, it can be said that the actual negotiations will prove very important for the future of EU-UK relations on foreign policy. The way the negotiations will play out remains the question. It can be a no-deal or perhaps only some parts things will agreed upon. Łazowski & Wessel (2017) discuss in their paper the possibility between a regulated Brexit and an un-regulated Brexit and how this can impact the future relationship on EU-UK foreign policy.

In conclusion it can be said that the UK benefits from a stronger voice in global affairs when working together with 27 other European states. Especially considering that the UK's foreign influence has diminished in the last decades (Whitman 2016). In his article, Biscop (2017) wrote that the UK has the potential to influence states that are closely related to its own (Commonwealth states for example) but that the UK will lose considerable influence without the EU in the Middle-East and with China as examples. This means that the UK has to choose between joining the US or the EU on foreign policy and with the current Trump administration, which focuses on nationalism and protectionism, the UK would be wise to seek cooperation with the EU on foreign policy. The EU on the other hand would benefit from UK participation with their own foreign policy as the UK is currently still one of the three Member States with the most power and influence (others being France and Germany). Besides, the UK has a long history of international affairs, diplomatic connections and capable military. In the end both parties would benefit to cooperate, even though Brexit is happening. If the EU is going to adopt sanctions against a third country for example, any divergence between the EU and the UK would be beneficial for that third country (Biscop, 2017) (Lonardo, 2018).

In the end the main question will be how the UK can align itself with EU foreign policy. Can they do it through current existing agreements or through a new and special EU-UK relationship? In his article, Chalmers (2017) sees a special relationship happening between the EU and UK out of necessity. In this relationship the UK will be able to join joint-operations of the EU and pursue action on common areas of concern. Whitman (2016) sees something similar and presented the EU-UK foreign policy relationship in three possible scenarios. The first scenario is that of a special EU-UK relationship in which the UK is integrated into the EU's CFSP with being able to join meetings of the FAC/PSC. The second option is that of a similar scenario to that of Norway, which aligns itself with EU foreign policy, joins sanctions and plays a role in missions. The final one is that of detached observer in which the UK operates fully independent from the EU's foreign policy. The UK might decide to join the EU on foreign policy when it wishes to do so but does not seek any intensive cooperation.

	Battlegroups	European Defence Agency	Working Groups	Political and Security Committee	CSDP		Foreign Affairs Council Membership
					Civilian Operations	Military Operations	
Full EU membership	YES	YES	YES	YES	YES	YES	YES
Integrated player	YES	ASSOCIATE MEMBER	NO	SPECIAL STATUS (cooperation on selected agenda)	YES	YES	SPECIAL STATUS (in-Council cooperation on selected agenda)
Associated Partner	Permanent participation	Administrative Agreement	NO	NO	Framework Participation Agreement		NO (Norway model –foreign policy synchronisation on 'dialogue' basis)
Detached observer	NO	NO	NO	NO	Case-by-case basis	NO	NO

The scenarios given by Whitman offer great insight in what kind of future cooperation might become between the EU and the UK. For this research only the scenarios of integrated player and associated partner are relevant as this research will aim to find agreements that might offer a platform for post-Brexit cooperation.

The used articles for the theoretical framework gave a great insight in what is already known about how the current situation of Brexit might affect the EU and UK relations on foreign policy. The piece written by Łazowski, & Wessel, (2017) showed the possibilities of two types of Brexit and its impact on EU and UK foreign policy while the other piece by Dijkstra and Vanhoonacker (2017) showed a brief piece of information on how the UK worked with the EU prior to Brexit on the CFSP. The article by Cardwell, (2017) gave great insight on the EU-UK relations on the CFSP prior to Brexit and during the referendum debates. To conclude, there is previously done research that focus either on Brexit in general or on EU foreign policy regarding to Brexit. The latter addresses what Brexit will possibly mean for EU foreign policy or how the UK can cope with the loss of EU foreign policy. Moreover, the piece by Whitman showed three scenarios for future EU-UK cooperation which will be used as a reflection on the found solution in this research. In its totality this gives this research a great opportunity to fill the gap on how the UK can align on EU foreign policy if they wish to do so.

4. Instruments to allow for third state participation in EU foreign policy

When a third state cooperates with the EU on foreign affairs then there usually is some form of agreement that functions as the base for their cooperation. Certain agreements could offer explicit lines on foreign policy or will be used as a stepping stone to increase cooperation. In this chapter the goal is to find out what kind of agreements the EU has with other European third states that enhance the cooperation on foreign policy for both parties.

4.1 Institutions

4.1.1 The EFTA/EEA

The European Free Trade Association (EFTA) is an intergovernmental organisation that promotes free trade. EFTA does not envisage political integration. It does not issue legislation, nor does it establish a customs union. It focuses purely on trade liberalization by removing import duties and addressing labor and environmental standards. Its highest governing body is the EFTA Council in which the heads of the permanent delegation discuss EFTA related matters eight times a year. Discussed topics focus about trade relations with third states, administration and management of the organization (EFTA, 2018). Members of EFTA are Norway, Iceland, Lichtenstein and Switzerland.

The European Economic Area (EEA) is an agreement between European states that are either member of the EFTA or the EU. The agreement gives its members access to the European internal market meaning free movement of persons, goods, services and capital. EEA members have to pay a financial contribution for access to the internal market and need to apply European law concerning the internal market. Agriculture and fishery are exempt from the EEA (EFTA, 2018). In short, the EEA aims to increase cooperation in multiple fields such as climate, energy and upholds the EU's internal market. The non-EU states that are part of EFTA and the EEA are Lichtenstein, Iceland and Norway. To sign the EEA agreement a state has to join either the EU or the EFTA (Schroeter, & Nemecek, 2016).

EFTA + EEA states have an active role within EU decision making. EU decision making is provided by formal and informal access to the EU's own policymaking bodies where EFTA/EEA members have observer/membership status to committees and agencies. EFTA state Switzerland has selective observer/membership status in committees and agencies due to its bilateral relationship with the EU. The EFTA/EEA countries however, do not have direct access to the EU's legislative bodies. On some occasions, the EFTA/EEA states are invited to attend Council meetings, but this remains a decision of the EU Presidency. (Lavanex, 2011) (EFTA (b), 2018).

The EFTA/EEA offers formally no cooperation on the foreign policy and thus its members are freely to choose their own foreign policy. However, the EFTA/EEA is important in binding these states to the EU and making sure that there is a stable ground for cooperation. Moreover, the EU always invites EFTA/EEA countries to join EU statements and position on foreign policy (Zaremba, 2011) (MFA Norway, 2018). Furthermore, the EEA Council meets twice a year in which it meets with representatives of the Commission and the EEAS. Representatives of the European Council are present at those meetings as well as the representatives of the rotating Council presidency. During this EEA Council meeting, foreign policy is openly discussed while searching for consensus between the EU and the EEA states (46th EEA Council meetings, 2016). Switzerland is also present at these meetings as a member of EFTA.

4.2 Binding agreements

The UK also has the possibility to enhance its foreign policy cooperation with the EU through an agreement. For the EU this is not a new thing as it has signed more than 700 bilateral treaties and more than 200 multilateral treaties with third countries since its existence (European Commission (b), 2011). These agreements are all legally binding through international and European law. The EU has a lot of different kind of agreements as can be seen in the table below. The agreements that can be found below in the table are the most relevant type of agreements related to this research.

Trade agreements	Trade & political agreements	Other
Free Trade Agreement (FTA)	Partnership and Cooperation Agreement (PCA)	ENP Action Plan
Custom Unions agreement	Association Agreement (AA)	Framework agreement
	Stabilization and Association Agreement (SAA)	

Trade agreements focus obviously mostly on trade related themes. A custom union agreement is a small agreement and focuses, as the name says, on the EU custom union. A FTA can come in different sizes. The now famous TTIP and CETA are FTA's, although very large ones. Those two contain many provisions regarding law on the products, environmental standards, stimulation of investments and much more. They do not however, contain any Articles regarding foreign policy cooperation with said third state (European Commission (c) (d), 2016). Therefore pure trade agreements will not be relevant for this research as an instrument to enhance foreign policy cooperation.

The types of agreements that are more interesting are the category that is called the Trade and Political agreements. Those agreements will be explained more in depth in the corresponding chapters. Under the category of 'Other' are Action Plans and framework agreements. Action plans are agreements that the EU signs with states that are part of the European Neighborhood Policy (ENP). Framework agreements are general agreements that the EU can negotiate with any state and which can contain different policy themes. A framework agreement can be found under any various names similar to that of FTA's. These two types of agreements will also be discussed in corresponding chapters below.

4.2.1 Partnership and Cooperation Agreement (PCA)

A partnership and cooperation agreement (PCA) is a legally binding agreement between the EU and a third state. Through this agreement the EU works to support the democratic and economic development of a state. A PCA operates for ten years, after which they are automatically extended for one year, provided there are no objections. A PCA differs between each state, and the EU has signed PCA's with states close to home such as with Ukraine as also with states far away. In some cases a PCA is followed up by an AA. An AA is regarded as a more intensive agreement that brings cooperation closer than that of a PCA. PCA's leave more room for own interpretation of the implementation by a third state (Petrov, & Van Elsuwege, 2016).

To conclude a PCA the EU is bound to the rules listed in the TEU for international agreements. The main Article (217(a)) says the following:

“The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.”

A recent PCA with the Philippines does not contain any Articles on foreign policy cooperation (EEAS (d), 2018), however, an older PCA with Ukraine did have relevant Articles for this research (European Commission (e), 2003).

‘ARTICLE 6

A regular political dialogue shall be established between the Parties which they intend to develop and intensify. It shall accompany and consolidate the rapprochement between the Community and Ukraine support the political and economic changes underway in that country and contribute to the establishment of new forms of co-operation.

The political dialogue:

- *shall strengthen the links of Ukraine with the Community, and thus with the community of democratic states. The economic convergence achieved through this Agreement will lead to more intense political relations;*
- *shall bring about an increasing convergence of positions on international issues of mutual concern thus increasing security and stability;*
- *shall foresee that the Parties endeavor to co-operate on matters pertaining to the strengthening of stability and security in Europe, the observance of the principles of democracy, the respect and promotion of human rights, particularly those of minorities and shall hold consultations, if necessary, on the relevant matters.*

ARTICLE 7

Consultations as appropriate shall be held between the Parties at the highest political level. At ministerial level, political dialogue shall take place within the Co-operation Council established in Article 85 and on other occasions including with the Union Troika by mutual agreement.

ARTICLE 8

Other procedures and mechanisms for political dialogue shall be set up by the Parties by establishing appropriate contacts, exchanges and consultations, in particular in the following forms:

- *regular meetings at the level of the senior officials between representatives of Ukraine and representatives of the Community;*
- *taking full advantage of all diplomatic channels between the parties, including appropriate contacts in the bilateral as well as the multilateral field, such as United States, CSCE meetings and elsewhere;*
- *exchanging regular information on matters of mutual interest concerning political co-operation in Europe ;*
- *any other means which would contribute to consolidating and developing political dialogue''*

The PCA for Ukraine consists of ways to enhance cooperation on foreign affairs according to Article 6 as well as creating dialogue on high political and senior official level with Article 7. It does lack provisions concerning participation within EU programs and agencies.

4.2.2 Association Agreement

The Association Agreement (AA) is a type of agreement that is often being used to bind a state to the EU and in some cases is a step before EU membership. The EU signed this agreement with European states such as Ukraine, Georgia and Moldavia in the last few years but also with states that would not be deemed European such as with Morocco. The AA seeks to increase the cooperation between the third state and the EU on many aspects such as trade, energy, climate and human rights. AA's seek to establish an association between the EU and the third country, involving reciprocal rights and obligations, common action and special procedures, with the aim of setting up an all-embracing framework to conduct bilateral relations, including political dialogue (European Commission (b), 2013). They are concluded on the basis of Article 217 of the TFEU. While many see it as a stepping stone towards EU membership it does not include any line that would indicate so. It is true however; that many current EU members have signed prior to their membership an AA, but then again, a state such as Morocco and Tunisia also has an AA with the EU. Still there is a difference between the AA's of Ukraine and Morocco. The most notable difference regarding this research is that the AA of Morocco does not contain any Articles concerning the CFSP. Other North-African countries seem to lack the same in their AA's.

Taking a closer look into the AA with Ukraine for its cooperation with the EU on foreign policy the following paragraphs were found. Within the AA of the EU with Ukraine, Article 7: this article concerns cooperation on foreign and security policy and lists the following points:

''1. The Parties shall intensify their dialogue and cooperation and promote gradual convergence in the area of foreign and security policy, including the Common Security and Defence Policy (CSDP), and shall address in particular issues of conflict prevention and crisis management, regional stability, disarmament, non-proliferation, arms control and arms export control as well as enhanced mutually-beneficial dialogue in the field of space. Cooperation will be based on common values and mutual interests, and shall aim at increasing policy convergence and effectiveness, and promoting joint policy planning. To this end, the Parties shall make use of bilateral, interstate and regional fora.

2. Ukraine, the EU and the Member States reaffirm their commitment to the principles of respect for independence, sovereignty, territorial integrity and inviolability of borders, as established in the UN Charter and the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe, and to promoting these principles in bilateral and multilateral relations.

3. The Parties shall address in a timely and coherent manner the challenges to these principles at all appropriate levels of the political dialogue provided for in this Agreement, including at ministerial level.”

These three points show that EU-Ukraine cooperation on foreign policy will take place even on ministerial level, seeking also more convergence on this policy area. Both parties will also promote joint policy planning and thus integrating Ukraine within the EU's CFSP. Moreover, the AA also presents the opportunity for Ukraine to participate in EU programs and agencies. This shows that the EU is open towards third countries participating in their programs and agencies. This could give the UK the opportunity to also possibly participate in CFSP related programs, agencies and working groups. The following articles list how Ukraine can participate in EU programs and agencies:

“Participation in European Union agencies and programmes

Article 450: Ukraine shall be allowed to participate in EU agencies relevant to the implementation of this Agreement and other EU agencies, where their establishing regulations permit, and as laid down by these establishing regulations. Ukraine shall enter into separate agreements with the EU to enable its participation in each such agency and to set the amount of its financial contribution.

Article 451: Ukraine shall be allowed to participate in all current and future programmes of the Union that are opened to the participation of Ukraine in accordance with the relevant provisions adopting those programmes. Ukraine's participation in the programmes of the Union shall be in accordance with the provisions laid down in the annexed Protocol III on a Framework Agreement between the European Union and Ukraine on the General Principles for the Participation of Ukraine in Union Programmes of 2010.

Article 452: The EU shall inform Ukraine in the case of establishment of new EU agencies and new programmes of the Union, as well as regarding changes in terms of participation in the programmes of the Union and agencies, mentioned in the Articles 450 and 451 of this Agreement.”

The AA also points out that there will be a yearly summit between both parties according to Article 460. The ministerial meetings, that were mentioned earlier, will be held regularly and fall under Article 461 of the AA. Both Articles can be found below.

Article 460

“1. The highest level of political and policy dialogue between the Parties shall be at Summit level. Summit meetings shall take place in principle once a year. The Summit shall provide overall guidance for the implementation of this Agreement as well as an opportunity to discuss any bilateral or international issues of mutual interest.

2. At ministerial level, regular political and policy dialogue shall take place within the Association Council established by Article 461 of this Agreement and within the framework of regular meetings between representatives of the Parties by mutual agreement.

Article 461

1. An Association Council is hereby established. It shall supervise and monitor the application and implementation of this Agreement and periodically review the functioning of this Agreement in the light of its objectives.

2. The Association Council shall meet at ministerial level at regular intervals, at least once a year, and when circumstances require. The Association Council shall meet in all necessary configurations, by mutual agreement.

3. In addition to supervising and monitoring the application and implementation of this Agreement, the Association Council shall examine any major issues arising within the framework of this Agreement and any other bilateral or international issues of mutual interest.’’

The high-level summits and the regular ministerial meetings can prove beneficial to cooperation on foreign policy between both parties. Moreover, Ukraine can participate in EU agencies and programs. However, it does lack any substantial way to regularly influence EU foreign policy through observer rights in the PSC or FAC.

4.2.3 Stabilization and Association Agreement

The SAA that is used in the Balkan countries has similar concept with the goal to increase cooperation between the EU and the individual Balkan countries (Đukanović, 2015). In the SAA of the EU with Serbia is Article 10 that notes the further increase in cooperation between both parties in certain policy areas. Article 10,2(B)(D) are relevant for the CFSP:

“(B) an increasing convergence of positions of the Parties on international issues, including CFSP issues, also through the exchange of information as appropriate, and, in particular, on those issues likely to have substantial effects on the Parties;

(D) common views on security and stability in Europe, including cooperation in the areas covered by the CFSP of the European Union.”

The SAA shows similarities with the more recent AA of EU-Ukraine as both texts clearly show that both parties increase cooperation and convergence on the CFSP. In the end there is one important difference between the Balkan states and the other third states that have signed an association agreement. The countries in the Balkan are supposed and are expected to join the EU in the future (Petrov, et al., 2015). Currently every Balkan country is either in the negotiation process to enter the EU or is expected to start soon as a candidate country (European Commission - Enlargement, 2018). The only exception is Kosovo who has not yet applied for EU membership. One could also see Bosnia and Herzegovina as an exception as it is not a candidate country yet; however, it did apply for membership and is currently under review.

Being a candidate country or having aspirations to join the EU makes it more obvious to join the EU on foreign policy as it is part of negotiation chapter 31. The European Commission states the following on the expectations of candidate countries on chapter 31:

“The acquis consists of political declarations, actions and agreements. Member States must be able to conduct political dialogue in the framework of CFSP, to align with EU statements, to take part in EU actions and to apply agreed sanctions and restrictive measures. Applicant countries are required to progressively align with EU statements, and to apply sanctions and restrictive measures when and where required.”

Candidate countries in general, which basically are almost all countries that have signed an SAA, are invited to join Gymnich Meetings. These meetings are informal meetings of foreign affairs ministers of the EU Member States (House of Commons, 2018). These meetings are bi-annual and offer future Member States a way to get used to the EU's system of foreign policy. Moreover, candidate countries are invited to other EU formations and groups as well. Most notably is that candidate countries are allowed to participate as observer within the EU's PSC, the Council formation that decides on a lot of CFSP matters. The downside is that a candidate country is not allowed to speak, influence the agenda and has to leave during the voting and sensitive discussions (Lis, 2017). As the SAA's are intended to be a tool to support Balkan integration into the EU with membership as its ultimate goal, it is not entirely relevant to the UK. Besides the promise of EU membership the SAA are more or less similar to that of an AA. However, it does show that current candidate countries are invited to bi-annual meetings of foreign affairs ministers and receive a form of observer status within important formations such as the PSC.

4.2.4 Actions plans (European Neighborhood Policy)

The EU ENP governs the EU relations with countries that border the EU. Currently 16 countries are part of the program, countries that are in the Eastern part of Europe such as Moldavia and Ukraine and those surrounding the Mediterranean Sea like Egypt and Lebanon. Through the ENP the EU has numerous programs such as the Cross Border Cooperation and the European Instrument for Democracy and Human Rights. The most interesting is the tailored made bilateral cooperation. The EU has negotiated agreements with most of the ENP countries and those agreements consist of elements that have been deemed important for both parties. These agreements are called action plans (EEAS, (b), 2017). The ENP in itself is not an agreement but could be seen as a soft law framework that reaffirms the commitment to PCA's or AA's that these states have already signed (Lavenex, 2011).

As mentioned previously, the agreements are all tailored made. For example, the action plan with Lebanon has no agreement on any cooperation on foreign policy but the action plan with Georgia has. In some of the cases the action plan will succeeded by an AA. This has been the case with Ukraine, Georgia and Moldavia. In other cases there was already an AA in place such as with Morocco and an action plan followed after. Ukraine, Moldavia, Georgia, Armenia and Azerbaijan are the only states who formally got invited through the action plan to take part in the EU's CFSP of all the 16 participating states. Not every action plan has all the same Articles concerning the CFSP. This mostly depends on how far the state is already cooperating with the EU. Below the action plan of Georgia:

“Priority area 7

Enhance EU-Georgia cooperation on Common Foreign and Security Policy, including European Security and Defence Policy.

Georgia may be invited, on a case by case basis, to align itself with EU positions on regional and international issues.

Develop possibilities for enhanced EU – Georgian consultations on crisis management.”

The action plan gives Georgia the opportunity to align itself with EU positions and statements as well as enhancing cooperation on foreign policy. While the action plan is a legal agreement it does lack the obligation to fulfill the agreement, unlike the AA and PCA. An action plan stipulate approximating legislation with EU rules rather than adoption or harmonization, as mentioned by Lavenex (2011). An action plan can thus be more seen as reaffirmation of the current agreed content of the PCA or AA in place. Before the action plan came countries in North-Africa already had an AA while states in Eastern-Europe already had a PCA. That makes the ENP action plan not as interesting instrument as the PCA and the AA appear to be the leading agreement.

4.2.5 Framework Agreement

A framework agreement is the general agreement between the EU and a third state for when both parties wish to cooperate in certain sectors or themes. The difference between an AA and a framework agreement is that an AA seeks to bond the country with the EU whereas the framework agreement focuses more on general cooperation, more similar to that of a PCA (European Commission (b), 2013). The EU has for example a framework agreement with Australia and South Korea (Investment Policy Hub, 2013) (Australian Government, 2017). Most importantly, a framework agreement can include all kinds of policy fields, making it a customized agreement that focuses on the needs of both parties. In comparison, an AA and PCA always focus on numerous policy fields, ranging from trade to political cooperation. A framework agreement is concluded on the basis of Article 211 TFEU (development policy) or Article 212 TFEU (cooperation with third countries) and Article 207 TFEU (trade policy). In the case of this paper Article 212 TFEU would be relevant. The Council does occasionally add another sectoral legal bases (see point 1.3.1). For the framework agreement the EU would be bound to the rules listed in the TEU for international agreements. The main Article (217(a)) says the following:

‘The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union’s policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.’

The EU has signed numerous framework agreements with states. One of those states is Armenia, with whom the EU has signed a framework agreement in 2017. The agreement consists mostly of trade, rules concerning trade & businesses and on democracy and human rights (EEAS (c), 2017). To compare, the EU has also signed a framework agreement with Australia in 2017. This framework agreement focuses much more on foreign policy cooperation. Article 3 of the agreement says the following:

“ARTICLE 3 Political dialogue

1. The Parties agree to enhance their regular political dialogue.

2. The political dialogue shall aim to:

(a) Promote the development of the bilateral relationship; and

(b) Strengthen the Parties’ common approaches and identify scope for cooperation on regional and global challenges and issues.

3. Dialogue between the Parties shall particularly take place in the following forms:

(a) Consultations, meetings and visits at leaders level, which shall be held whenever the Parties deem it necessary;

(b) Consultations, meetings and visits at ministerial level, including consultations at foreign minister level, and ministerial meetings on trade and other issues as determined by the Parties, which shall be held on such occasions and at such locations as determined by the Parties

(c) Regular senior officials meetings, which shall be held as appropriate on bilateral issues, foreign policy, international security, counter-terrorism, trade, development cooperation, climate change and other issues as determined by the Parties;

(d) Sectoral dialogues on issues of common interest; and

(e) Exchanges of delegations and other contacts between the Parliament of Australia and the European Parliament.”

It shows that the EU and Australia are seeking more cooperation through more regular meetings between officials on various matters concerning foreign affairs. This could be a possibility for the UK as well as the framework agreement gives both parties the chance to negotiate freely on the content of such agreement and how deep the cooperation should go (Government of Australia, 2017). Evidently, this type of agreement has also been signed with Canada, which is called the Strategic Partnership Agreement and contains very similar articles to that of the framework agreement with Australia (European Council, Strategic Partnership Agreement (b), 2017). This agreement was negotiated at the same as CETA.

4.3 Non-binding instrument

Through a non-binding instrument a less intensive form of cooperation with the EU on foreign policy could be achieved. In this case the EU and the UK would show their political commitment by having joint statements or declarations on foreign policy on an ad hoc basis, while not legally binding. It is important to carefully draft such instruments to not make them legally binding. When it will be legally binding, Article 218 will come into effect. Therefore any language containing words such as treaty, party, shall/will, agree/decide have to be avoided. Instead words such as accept, intend, paragraphs and sides should be used. In the end a clause should be added that clearly states that this document does not constitute a binding agreement under international law (European Commission (b), 2011).

The EU treaties do not provide any meaningful provision or information regarding the procedure for a non-binding instrument and thus mostly it depends on the nature and the content of the instrument. It is expected that the Commission keeps the Council bodies informed. Additionally, the Council should sign of soft law documents that establish new political commitments; however, existing political orientations do not need to be signed by any of the Council bodies. Recurring EU-UK foreign statements could possibly fall under the latter.

Another non-binding instrument would be the promise of regular meetings between the foreign ministers of the UK and that of the HR of the EU, or perhaps even with key EU foreign ministers (from France and Germany for example). However, on one hand it might be better to have meetings which have been agreed upon in legally binding agreements, making it more official and part of the actual process of cooperation. To obtain observer rights within high-level Council formations a legally binding agreement will even be a necessity.

4.4 Conclusion

In conclusion, there are numerous instruments for the UK to keep cooperating, also in the area of CFSP, with the EU after Brexit. The UK could opt to join the EFTA and perhaps even conclude an EEA membership afterwards. EFTA/EEA membership will give certain economic possibilities but also demands more EU law within the UK concerning the internal market. Through the EFTA and EEA the UK can participate in the EEA council, join EU statements and foreign policy and participate in EU committees, programs and agencies.

The other options are pure agreements that do not require any membership; the PCA, AA or a more customized option called a framework agreement. Nevertheless, all options would require a lengthy negotiation process with the EU and possibility the consent of all its Member States. There is not a huge amount of difference between the PCA and the AA. Both affect multiple sectors such as trade, the environment and also foreign policy. Moreover, concerning foreign policy, both agreements are again similar in the sense that both speak of third state joining EU statements and positions, regular meetings on ministerial and senior-official level and participation in EU programs and agencies. The few differences between an AA and a PCA, is that the former does speak of more convergence on foreign policy, allows participation within EU programs and agencies and creates reciprocal rights and obligations between both parties. The framework agreement can be about anything and could in theory even be purely about foreign policy. Through the ENP, the EU uses so called action plans to intensify cooperation between the EU and a third state. An action plan lacks the obligations that come with a PCA and AA. Moreover, an action plan was so far always used to strengthen a current PCA or AA. In some cases in Eastern-Europe it was even used as a preparation for the upcoming AA's. An action plan does speak of intensified dialogue and aligning on foreign policy statements and positions. Through the SAA it was also shown that candidate countries take part in bi-annual foreign affairs meetings and obtain observer status in the PSC. However, the observer status lacks the tools to influence.

The final less intensive option, but could be possible in connection with the aforementioned options, is that of non-binding instruments. In the essence that means that the UK and the EU could agree to join statements or regular meetings that will not fall under European and international law. However, those meetings will be rather informal and observer rights will not be an option as it has to be legally agreed upon to participate in high-level meetings.

5. Practice of third states to participate in (or align itself to) EU foreign and security policy

After the fall of the Soviet Union the EU has been expanding eastwards, receiving new members to the Union but also creating extensive forms of cooperation with states from the Balkan area and Ukraine (Brenton & Manchin 2003). Something similar happened with other states that are bordering the Mediterranean Sea through the Mediterranean Partnership (Hoekman, & Konan, 2001). Including the growing list of international trade agreements (that on some cases consist of human rights, environmental agreements and more), it can be noticed that the EU actively seeks cooperation with many states around the world, making it not that far-fetched that the EU would like a similar approach to the UK after Brexit. According to Lavenex (2004) the EU has been using a form of inclusion policy for nearby states through for example the Eastern Partnership Summit. She calls it a form of external governance by including non-EU members into EU policy. This policy ranges from environmental policy to energy policy and sometimes even inclusion into EU organizations such as Europol and the European Environmental agency.

However, for this research it is essential to see how states that are similar to the UK (mostly European states outside the EU) can participate in EU foreign policy through the CFSP on the basis of agreements. Currently there is no known agreement specifically made for cooperation on foreign policy between the EU and third countries; however, there are provisions in other agreements that underline cooperation on foreign policy. Candidate and other European countries usually join EU statements on foreign policy systematically but do not participate in decision making. In the end this usually only consists of diplomatic statements and in some cases sanctions or other international agreements (Biscop, 2017). To further develop this research it is relevant to find out how the EU cooperates on foreign policy with third countries.

5.1 Third state practice through EFTA/EEA membership

Norway used to have European ambitions; having a referendum on EU membership two times during which the governments bid for membership got rejected by the public. The first time was in 1972 and the second time in 1994, with both times the No-camp having only a small winning margin (Pettersen, et al, 1996). After rejecting two referendums on EU membership, Norway joined the European Economic Area (EEA). As one could imagine, the EEA brings Norway close to the EU but not as a full member. Besides being a member of the EEA, Norway has also managed to secure cooperation agreements and arrangements in many other fields as well. In the foreign and security policy for example, Norway has established a political dialogue with the EU on numerous foreign policy issues. This shows that it is possible for a third state to participate in the EU's CFSP even though the EEA has no policy in regards to the CFSP. According to Rieker, (2006) and Sjursen, (2015), the officials of Norway pursued EU policy in fields that the EEA did not cover such as foreign policy. Norway established political dialogue with the EU through a formal format that consisted of two meetings a year between the Norwegian foreign ministers and the foreign minister of the EU. Additionally, there have been several meetings where officials from Norway met together with their counterparts from Iceland and Lichtenstein in CFSP working groups set up under the flag of the European Council. So far Norwegian officials have participated in CFSP working groups that operate in policy areas that Norway has an interest in. These areas have been for example the Balkans, Russia, anti-terror coordination and the Middle-East peace process. In the end, Norway is invited to sign EU foreign policy statements and thus to align its position to that of the EU, something that Norway usually does. Better yet, Norway has an unofficial policy that states to sign up with EU statements whenever possible (MFA Norway, 2018).

As mentioned earlier, Iceland also participates in CFSP meetings and tries to join the EU on statements regarding the CFSP (Isleifsson, 2014). When Iceland tried to join the EU during the financial crises, the chapter of Foreign, Security and Defence policy was quickly closed after opening since the country already met most demands. The report on this chapter also mentions that Iceland usually joined EU foreign statements and sanctions (Screening report Iceland, 2011). Ultimately, Norway and Iceland do not have any voting power within the CFSP but since the states norms and values are so similar to that of the EU it is not perceived as a problem as most of the time their positions match with that of the EU. Additionally, through the EEA Council they can discuss with the EU on foreign policy for increased cooperation. For the UK this could work in a similar way as the UK also has similar norms, values and interests as to that of the other European states.

Switzerland is also an interesting country to take a look at. It is member of EFTA but not of the EEA and thus could be seen as one of the Western-European states less integrated in the EU. Similar to that of Norway and other EEA countries, Switzerland joins the EEA Council meetings and regularly signs up to EU foreign statements and participates in EU missions. An example of Switzerland aligning itself with the EU is the Ukraine crisis (European Council EU-Switzerland relations (c), 2017). The relationship of Switzerland with the EU is besides the EFTA, notable of all the bilateral agreements that both parties have with each other. The EU has more than 120 agreements with Switzerland covering a variety of sectors. They range from the Dublin regulation, which specifies humanitarian standards regarding asylum seekers, to the Schengen zone, which removed border patrols between Switzerland and the EU.

The bilateral agreements also foresee Switzerland's participation in the decision-shaping process. Formally the rules are similar to those established for the EFTA members that have the EEA, but in practice opportunities for participation are more restricted for Switzerland. The Swiss are allowed to participate as an active observer with a right to speak, but not to vote, in multiple areas such as research, air transport and social security (Grolimund and Vahl, 2006). However, the possibilities to influence legislation, once it has passed the starting phase, decreases rapidly in contrast to the arrangement found under the EEA. The main reason for this is the elaboration of implementing legislation in the comitology committees. The informal practice that allows EEA-EFTA experts to assist comitology meetings as observers has not been extended to Switzerland. The Directorates Generals (DG) of the EU are usually in favor of this informal practice, and have thus consistently allowed the participation of Switzerland on an ad hoc and informal basis, the Legal Service of the Commission and DG Relex are increasingly disinclined to accept these special solutions for non-members (Lavenex 2011). The participation of Switzerland in EU programs is more selective than, for example, that of Norway. The same is true for its presence in EU agencies; Switzerland currently participates in the EASA and the European Environmental Agency. Due to collaboration with the Schengen and Dublin Agreements, Switzerland has also formed cooperation agreements with Europol, CEPOL, Eurojust and Frontex. However, currently the participation of Switzerland in EU agencies is less developed than with Norway. As in the EEA case, association with the Schengen and Dublin Agreements in JHA involves the most far-reaching participation rights as Swiss officials have direct access to all relevant Council working parties, yet without the right to vote. The Swiss-model has been discussed as an option for the UK after Brexit as it could be beneficial for the UK that it can choose what it wants through bilateral agreements instead of receiving the "total package" from EEA membership. However, the EU is not a fan of its current relationship with Switzerland due to too much cherry picking from the Swiss side which leads to too much sectoral diversity.

5.2 Third state practice through AA/SAA

The country of Ukraine was mentioned in the previous chapter as a European country that has signed an AA recently. However, already several years before the AA was negotiated, Ukraine joined EU foreign policy statements for around 90% of the times (this percentage dropped during the reign of Yanukovych). The EU gave Ukraine and Moldavia, the same mechanisms that are usually for EU candidate countries. With these mechanisms of aligning with EU statements and joining EU foreign policy candidate countries can get used to the system (Zarembo, 2011). As described in the AA, Ukraine has regular ministerial meetings to discuss the content of the agreement as well as yearly high-level meetings between the President of Ukraine and the President of EC and the European Council. Moreover, the AA gives the possibility for Ukraine to participate in EU agencies and programs.

While the SAA in itself has little to do with candidate countries, it is a fact that all candidate countries have signed an SAA (except Turkey). As mentioned in the previous chapter, SAA's are specifically made for the Balkan area and are almost identical to an AA. However, their candidate status makes it more interesting. Croatia for example participated in the PSC before it became officially a member state of the EU. It appointed an ambassador that regularly participated in PSC meetings but was not allowed to vote, speak and even had to leave during sensitive discussions.

5.3 Third state practice through framework agreement

A framework agreement can almost cover anything as mentioned earlier. The EU has some with European non-EU members such as Norway with agreements concerning a single policy sector such as fishing or VAT. With more distant states the EU has framework agreements as well, such as with Armenia and Australia. In the previous chapter it was shown that the framework agreement with Australia consisted of relevant Articles concerning foreign policy cooperation between both parties. Currently the agreement with Australia is still ongoing ratification. However, Australia has already regular dialogue with the EU on foreign policy (Australia MFA (b), 2018). The EU has a similar agreement with Canada which also aims at increasing dialogue between both parties.

5.4 Third state practice through Partnership and Cooperation Agreement (PCA)

The EU had signed PCA's with most Eastern-European states in 1999 and is thus the start of foreign policy cooperation between the EU and those parties. It has to be noted that the EU left out foreign policy provisions in many PCA's with countries that are not deemed Western, for example the Philippines (EEAS (d), 2018). As was already mentioned in chapter 6.2 concerning AA's, that Ukraine already joined 90% of the EU statements and positions long before the AA came into effect. The option for Ukraine back then to join EU statements was based on the PCA and ENP action plan (More on the action plans in the following sub-chapter).

The PCA gave Ukraine the chance to join EU statements and positions as well as have high level dialogue on ministerial level and regularly on senior official level. It did not give them the possibility to join EU agencies and programs, although certain cooperation could have happened beyond the PCA. Nevertheless, since the arrival of the AA it is possible for Ukraine to take part in EU agencies and programs. Other Eastern-European states had similar cooperation with the EU during the PCA period and thus before the AA came into effect. As mentioned before, a PCA lacks the reciprocal rights and obligations that come with an AA and are also less clear on the implementation and time schedule of certain policy for third countries. Due to the lack of functioning guidelines for these third countries and other limitations of the PCA, it became replaced by AA's for better practice.

5.5 Third state practice ENP action plans

All the EU action plans have been created around the year of 2005 with implementation either that same year by the third state or soon after that. Action plans are only meant for states surrounding the Mediterranean Sea and to those in Eastern-Europe. Only the action plans for Eastern-European states have provisions on foreign policy cooperation, the others do not.

The action plans for Eastern-European countries differ somewhat in all the lines concerning foreign policy but it all comes down to the increase of dialogue and the invitation for that state to EU foreign policy statements and positions. In that sense hardly anything changes concerning cooperation as similar provisions are in the PCA that each of states has signed previously. According to the action plan of Georgia the action plan is a tool to assist the PCA (or in some cases the AA): *“its implementation will also help fulfil the provisions of the PCA”*. Something similar is with the case of Ukraine. There the action plan was used as an instrument for Ukraine to focus on certain policy areas that were deemed important for the future AA (Petrov & Van Elsuwege 2016).

5.6 Third state practice on ad hoc basis

As one might already noticed, joining EU statements and positions on foreign policy is one of the more basic forms of CFSP cooperation by a third state. States that have signed a PCA, an AA, SAA or are part of the EFTA/EEA have the possibility to do so as they are invited by the EU. These states can join EU statements or a position when they want to as it is not forced. In most cases these states also have the chance to join CSDP missions if they wish to do so.

Ukraine, prior to the reign of Yanukovych, already joined the EU on 90% of the EU's statements and positions. Georgia joined 47% of the CFSP statements in 2014 (Emerson & Kovziridze 2016). Norway joins EU foreign statements in almost every case, as well as sanctions against other states (MFA Norway (b), 2018). Regarding ad hoc participation with EU foreign policy statements and positions, there is enough to choose from for the UK. All agreements that have provisions on foreign policy offer the state in question this option. And since states less integrated in the EU are invited to do so, the UK would definitely be able to reach this degree of cooperation rather easily.

6. Institutional and political obstacles for UK participation in decision-making

While there might be various ways for the UK to align itself with the EU on foreign policy, it is also a question of what is possible regarding decision making for the UK. The institutions of the EU might show obstacles for UK participation on decision making. Whitman (2016) already showed that a special agreement between the EU and the UK could consist of observer rights for the UK within Council formations. He deemed voting rights within Council formations as not possible. The institutional obstacles and possibilities for voting rights will be discussed in this chapter.

The Treaty on the European Union (TEU) acts as the fundamental architecture of the EU and holds the most important element for EU foreign policy in the form of EU law. The TEU however, does not offer much guidance for third countries that wish to be associated with the CFSP. The TEU briefly states in Article 21 that the EU seeks cooperation with third states to uphold its principles:

“The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph”

As the statement above shows, there is not much to go on within the treaties when it comes to cooperation with third countries. Using the knowledge acquired from the previous chapters, the UK would either need to use one of the current existing agreements such as the AA or a PCA to provide as fundamental foreign policy cooperation or negotiate with the EU on a framework agreement between both parties. The procedure on negotiating such treaties will be outlined in the upcoming chapter.

In general it should be possible for the UK to gain observer rights as the TEU/TFEU do not say otherwise and EU candidate countries already gain observer rights to get accustomed to the meetings. This could be done through a framework agreement and perhaps even through an AA. Then the UK could take part in meetings of Council formations such as the FAC or in the PSC. As mentioned before, countries such as Norway and Iceland do take part in various theme specific Council working groups so it would not be completely unexplored territory for the EU (Rieker, 2017). Candidate countries are even observers in the PSC (Lis, (2017). However, the EU has no experience with giving observer rights that include the right to speak and agenda making to a non-EU member in certain high-level formations such as the PSC and the FAC. Moreover, to be part of decision making within the EU would prove to be even more difficult. No other country besides an EU member has such rights and thus makes it something completely new for the EU to work with. Additionally, the current EU treaties do not offer the possibility for a non-EU member to participate in decision making as some form of half-member, as the EU treaties were never made with the idea in mind that a member state would leave the block. Therefore, the treaties do not have any provisions on how to deal with such situation. This will result in a situation in which the EU has to modify its treaties so that it would be allowed to give away such status to a third country. According to Article 48 of the TEU, this would require a common agreement and a ratification of the changes “*by all the member-states in accordance with their respective constitutional requirements*”, which can result even in referendums such as in states like Ireland. In the end this would create a situation in which the subject of negotiation would not be the exit of a member-state, but the negotiation of the EU treaties among all the EU Member States. Just in order to create a special status for one leaving member. Moreover, such ratification process might easily take up numerous years.

The EU institutions and the other Member States would have enough and important reasons to reject such type of arrangement with the UK. First of all, it would give a member state who refuses to take part in joint decision-making in most policy areas the right to participate in EU decision-making in another single policy area. This goes fully against the EU's principle that its decision making should be autonomous. Second, it would be accepting a 'à la carte' approach to membership, which despite some member state opt-outs, is still considered by many EU leaders to be a single package of benefits and duties. Lastly, such option could prove attractive for other EU-skeptical countries. For example it could open the door to similar requests from other non-EU members such as Switzerland and Norway. Moreover, it can possibly create political tensions in certain other EU Member States, like Sweden, Denmark and others, where Eurosceptic political parties could be tempted to push for half-member status, thereby opening up existential issues for the EU (Piris, 2016). Recently HR Mogherini herself told reporters that the UK will not become some form of half-member as the treaties do not allow it, putting voting rights out of the question. She did mention that both parties should intensively cooperate and communicate on foreign policy (EEAS (e), 2018). Furthermore, in the EP's March 2018 resolution on the future of EU-UK relationship they mentioned that voting rights are not considered for the UK and that the EP would never support such idea (EP, 2018).

In conclusion; it would be near impossible for the UK to gain voting rights within Council formations on CFSP related matters as the EU treaties do not allow that. Furthermore, the idea that the EU could create some sort of special status for the UK by changing its treaties and conceding its advantages, which also have been refused towards countries such as Norway, Iceland and Switzerland, putting the existence of the EU on the line, is unthinkable. EU institutions and its Member States would never opt for this choice using the arguments mentioned earlier and thus removing any chances for the UK to gain some form of voting rights within the EU institutions regarding to the CFSP (Chalmers, 2017) & (Piris, 2016). The most feasible option for the UK would be to get observer rights in the Council formations such as the FAC or in working groups such as the PSC. This way the UK can discuss all matters related to the CFSP with its European partners and even influence and sway their opinions by speech, only formal voting rights would be lacking.

7. Parameters to take into account in establishing a framework for the UK to continue to participate in EU foreign policy

In this chapter the parameters will be described that play an important role in establishing a framework for EU-UK cooperation on foreign policy. In establishing cooperation between the EU and UK the main question would be the choice between an existing form of agreement such as the EEA or AA or some sort of special agreement. The political and legal aspects will be very important parameters to take into account for the UK during their negotiations for a future agreement with the EU. The legal aspects will look into how the UK can join or negotiate certain agreements according to EU law from the EU treaties. The political aspects will look into the political side of the negotiations between the UK and the EU.

7.1 Legal Aspects

As mentioned in the previous chapters, there are a couple of options for the UK to enhance its cooperation with the EU after Brexit. The UK could choose to join the EFTA and the EEA (if this would be acceptable to the existing members), or perhaps sign an AA, PCA or framework agreement. All of these options have their ‘pros and cons’. What follows is an overview of these options and what it will mean for the UK when choosing one of those options. The table below, from the theoretical framework, will provide a clear oversight on the EU and means of general third country cooperation through all the previous mentioned instruments (Lavenex, 2011). In the table the EU-CH is the EU’s relation with Switzerland and would be thus similar if the UK would choose for the EFTA route. A PCA would fit within the AA section, albeit a lesser integrated option than the AA. Transgovernmental in this sense means: the relations and direct interactions among and within the units such as governments, agencies, IO’s, departments, whereas with intergovernmental the governments act as the primary actor. Trans-governmental relations are facilitated by extensive personal contacts among officials and by conflicts of interest between departments or agencies within modern governments.

	<i>EEA</i>	<i>EU-CH</i>	<i>AA</i>	<i>ENP</i>
<i>Regulatory boundary</i>				
Scope of EU <i>acquis</i> promoted	(nearly) full EU <i>acquis</i>	Partial EU <i>acquis</i>	Full EU <i>acquis</i>	Partial EU <i>acquis</i>
Legal quality	Harmonization	Harmonization with flexibility	Harmonization	Approximation
Supervision	Judicial	Judicial / Good Faith	Political	Political
<i>Organizational boundary</i>				
Inclusion in EU structures	Membership/observer status in committees and agencies	Selective membership/observer status in committees and agencies	Cooperation agreements with agencies	Cooperation agreements with agencies
Inclusion in parallel structures	EEA parallel structures	No parallel structures	Inclusion in EU-sponsored regional structures	Inclusion in EU-sponsored and independent regional structures
Main level of interaction	Transgovernmental	Transgovernmental	Mixed inter- and transgovernmental	Inter- with some transgovernmental

7.1.1 EFTA/EEA

The EFTA will offer the UK a trade agreement plus. It has more benefits than a usual trade agreement and will offer a platform for the UK to speak on. The EFTA has numerous formations but the most important one is that of the EEA Council. Within the EEA Council the UK could discuss with high-level representatives of the Council and the EEA on matters related to foreign affairs. The downside is that the EEA Council only meets twice a year and thus not enough to actively influence or contribute towards foreign policy.

If the UK wishes to do so, it could also choose to join the EEA as an EFTA member. It enhances cooperation between the UK and the EU on a lot of trade sectors and most importantly joins the European Single Market. However, on the field of foreign policy nothing would change as the UK would remain to participate in the EEA Council, similar to that of EFTA membership. Since EFTA, and even more so EEA countries, already participate in EU working groups where they can influence EU decision making, it might give an powerful old member such as the UK the possibility to enhance foreign policy cooperation for all the EEA and/or EFTA states. Perhaps the UK could negotiate with the EU to setup a permanent formation which includes the EU+EFTA.

To apply for the EFTA the UK would need to enter negotiations with the other EFTA states. This option could be combined with a non-binding instrument to join EU foreign statements. To achieve observer rights, the UK would have to negotiate a complete separate agreement. When the UK is a member of EFTA it could negotiate

The process of joining the EFTA is pretty straightforward. Article 56 of EFTA Convention says the following:

1. *‘Any State may accede to this Convention, provided that the Council decides to approve its accession, on such terms and conditions as may be set out in that decision. The instrument of accession shall be deposited with the Depositary, which shall notify all other Member States. This Convention shall enter into force in relation to an acceding State on the date indicated in that decision.*
2. *The Council may negotiate an agreement between the Member States and any other State, union of States or international organisation, creating an association embodying such reciprocal rights and obligations, common actions and special procedures as may be appropriate. Such an agreement shall be submitted to the Member States for acceptance and shall enter into force provided that it is accepted by all Member States. Instruments of acceptance shall be deposited with the Depositary, which shall notify all other Member States.*
3. *Any State acceding to this Convention shall apply to become a party to the free trade agreements between the Member States on the one hand and third states, unions of states or international organisations on the other.’*

Joining the EEA goes through the EEA Council. The agreement on the EEA says the following:

‘Article 128

Any European State becoming a member of the Community shall, and the Swiss Confederation or any European State becoming a member of EFTA may, apply to become a party to this Agreement. It shall address its application to the EEA Council.

The terms and conditions for such participation shall be the subject of an agreement between the Contracting Parties and the applicant State. That agreement shall be submitted for ratification or approval by all contracting Parties in accordance with their own procedures. ”

Joining EFTA will be pretty straightforward; the UK will negotiate with the other EFTA states on its ascension. Joining the EEA would prove to be more problematic as the UK will have to negotiate with both the EU and the EFTA/EEA states.

7.1.2 Association Agreement

With an AA the UK would not join any organization such as the EFTA. Instead, it would base its cooperation with the EU on an agreement that the EU uses with numerous third countries. The AA ranges from trade and environment to foreign policy and defence. While the focus of the AA is mostly on trade, political, institutional and human rights related themes, it can still serve as a perfect base for cooperation on foreign policy. The political agreement that comes from an AA also helps to from deeper cooperation. As mentioned in earlier chapter, the AA contains a few lines dedicated towards foreign policy and states that the third country should converge towards the EU on foreign policy. Through an AA the UK could join EU foreign policy statements and positions and use the agreement for regular dialogue on various levels. Moreover, the UK could possibly negotiate with the EU to include observer rights, as an AA so far does not give third countries the opportunity to receive an observer role within Council working groups. The UK does have the chance to enhance the AA with more specific wishes but any large changes to the agreement and it would become a more customized framework agreement.

Gaining an AA would take some considerable time as it needs to be agreed upon in the Council and in the EP. Afterwards it needs to be ratified by all the EU Member States. The process could easily take up a couple of years, including the negotiations.

Would the UK desire to sign an AA with the EU then it has to follow the steps laid down in Article 218 of the TFEU. As it is a Mixed agreement, Member States also have to give their vote on the agreement as well as the EP. The EP has to right to vote on the AA by EU law. The procedure that has to be followed for setting up an agreement with a third country is laid down in Article 218 TFEU. The different stages which govern the negotiation and conclusion of international agreements with third countries are: the exploratory talks, the drafting of an authorization to negotiate, the adoption of this authorization by the Council, the conduct of the negotiation and, finally, the signature and the conclusion of the agreement. However, prior to official talks there will be informal exploratory talks that will lay down the basis of the future agreement. These exploratory talks do not have any form of set goals or deadlines; instead the persons involved would need to check it on a case-by-case basis. Before negotiations will start the Council has to be informed as well as the EP.

The HR has to give recommendations for the future negotiations before the actual negotiations can start. More insight in the recommendations by the HR can be found in the attachments.

After the HR has submitted the recommendations, the Council has to approve the start of the negotiations, in doing so it can adjust any negotiation directives (in comparison with the recommendations). The Council will have to vote to start negotiations on the basis of unanimity as is required with the AA according to the following paragraph:

Article 218 (8) *“The Council shall act by a qualified majority throughout the procedure. However, it shall act unanimously when the agreement covers a field for which unanimity is required for the*

adoption of a Union act as well as for association agreements and the agreements referred to in Article 212 with the States which are candidates for accession. The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the decision concluding this agreement shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements. ”

As an AA requires the consent of the EP as well, the following rule will apply:

“Agreements listed in point (a) of the second subparagraph of Article 218(6) TFEU (most agreements, including all agreements covering fields where the ordinary legislative procedure applies): the European Parliament must give its "consent" before conclusion; in these cases, in an urgent situation, with the agreement of the Parliament, a time-limit can be set for its consent. In view of the fact that the ordinary legislative procedure applies in most policy areas (now also including trade, and economic cooperation with third countries other than development countries), the consent procedure will apply in almost all cases. ”

Both the Council and the EP cannot amend the agreement; they can only approve or reject it.

When the negotiations are finished the agreement will receive a signature that will act as a preliminary endorsement of the agreement. This means that it demonstrates the intent of both parties to ratify the agreement, without legally binding anyone. However, it does oblige by international public law that both parties do refrain from any acts that would defeat the purpose of the agreement. Afterwards the negotiator will conclude the agreement and the process of ratification begins, which has to be done by all the Member States, the Council and the EP.

7.1.3 PCA & Framework Agreement

With a PCA or framework agreement the UK and EU would negotiate either an agreement that usually is a predecessor for an AA or an entirely customized agreement where both parties can negotiate on what will be in the agreement. It could be sectors such as environment, trade or perhaps a sole agreement on foreign policy. A framework agreement gives thus more room for customizing an agreement than the PCA or AA does. The UK could negotiate to gain observer status in certain Council working groups, something that would be the maximum obtainable for the UK according to Piris (2016). The EU could allow the UK to maintain its seat on the PSC, without voting rights but perhaps with speaking rights. This way the UK could contribute its views to the EU decision-making process from the start, instead of just being able to choose whether or not to subscribe to an EU decision at the end of the process. Such an arrangement would certainly benefit the quality of EU foreign policy and that of the UK. The reason why these agreements share this chapter is because they follow the same Articles during the negotiation phase.

Similar to that of the AA, the EP has to vote as well on the ratification of a PCA. With a framework agreement it depends if it will be seen as a Mixed or Union-only agreement. Afterwards it needs to be ratified within all the EU Member States. Since there is some similarity between all the PCA's it's should take a similar amount of time as an AA. With a framework agreement it depends more on the actual content.

When the EU wishes to conclude an agreement with a third country it has to see if a so called 'Union-only agreement' is possible or that it has to be a Mixed agreement. While with the PCA and the AA it is clear that it is a Mixed agreement, with a framework agreement it depends on the content of the agreement. A Union-only agreement is an agreement that can be concluded solely by the institutions of the EU, the Mixed agreement needs the consent of the Member States and the EP as well. CFSP provisions generally fall under the Union-only agreement but every agreement requires a case-by-case analysis, making it rather unsure if in the end the only the EU gets a vote on this matter. The choice to determine if an agreement is Union-only or Mixed comes from a European Law case (C-268/94 *Portugal v Council* [1996] ECR I-6177). In this case the Court has held that given that the WTO is an international organisation which only has an operating budget and no financial policy instrument, the fact that the Member States will bear some of its expenses cannot justify participation of the Member States in the conclusion of the WTO Agreement. Case C-25/94 *Commission v Council*, [1996] ECR I-1469, paragraph 47, where the Court held in particular that provisions relating to the possibility for contracting parties to provide assistance to developing countries were not decisive as these provisions did not appear to occupy a prominent position in the draft. In the attachments more information can be found in the case that a future EU-UK agreement would consist of more than just EU only competences.

The procedure that has to be followed for setting up an agreement with a third country is laid down in Article 218 TFEU. The different stages which govern the negotiation and conclusion of agreements with third countries are: the exploratory talks, the drafting of an authorization to negotiate, the adoption of this authorization by the Council, the conduct of the negotiation and, finally, the signature and the conclusion of the agreements. However, prior to official talks there will be informal exploratory talks that will lay down the basis of the future agreement. These exploratory talks do not have any form of set goals or deadlines; instead the persons involved would need to check it on a case-by-case basis.

Before negotiations will start the Council has to be informed as well as the EP. The HR has to give recommendations for the future negotiations before it the negotiations can start. More insight in the recommendations by the HR can be found in the attachments.

After the HR has submitted the recommendations for the negotiations the Council has to approve the start of the negotiations, in doing so it can adjust any negotiation directives (in comparison with the recommendations). The Council will have to vote to start negotiations on the basis of QMV. The EP only plays an advisory role within international agreements according to the following Article. This however, still depends on the fact if the agreement is either a Mixed or Union-only.

Article 218(6)(a) 3: *“Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement:*

(a) After obtaining the consent of the European Parliament in the following cases:

- (i) Association agreements;*
- (ii) Agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;*
- (iii) Agreements establishing a specific institutional framework by organizing cooperation procedures;*
- (iv) Agreements with important budgetary implications for the Union;*
- (v) Agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.”*

The Council cannot amend the agreement; they can only approve or reject it.

When the negotiations are finished the agreement will receive a signature that will act as a preliminary endorsement of the agreement. This means that it demonstrates the intent of both parties to ratify the agreement, without legally binding anyone. However, it does oblige by international public law that both parties do refrain from any acts that would defeat the purpose of the agreement. Afterwards the negotiator will conclude the agreement, informs the EP and the Council who afterwards has to give a vote. The Council will vote with a QMV, similar as to the start of the negotiations.

7.2 Political aspects

Concerning the political side of things, the easiest route for the UK to take would be to join the EFTA and form negotiations with more ‘neutral’ states such as Norway, Iceland and Switzerland. In the case of an AA or Framework agreement the UK would be facing much more difficult negotiations on the content of such agreement, since it has to deal with many more states. While the EU would like to cooperate with the UK on foreign policy, as it remains a state of influence, the EU does have more leverage through the power of trade (Independent, 26 April 2018). Moreover, the EU would never want to give the UK too much and really wants to make Brexit look like a bad idea. Would the EU give to the UK too much in return (such as voting rights) then the EU would get more Member States or even other non-Member States that want these same rights, putting the existence of the EU at risk.

In general, the Member States of the EU are positive about intensive cooperation with the UK after Brexit will happen (Reuters, (2018). For the EU however, it is important that a future deal will consist of one of the current existing packages. For example, either the UK stays in the internal market or the customs union, or perhaps just a mere simple trade agreement. The EU does not accept any form of cherry picking thus eliminating any option for the UK to choose for the free movement of goods but not the free movement of people. On behalf of the Member States top EU negotiator Barnier has repeatedly told the UK that cherry picking would not be an option (Guardian, 20 April, 2018).

On the matter of foreign policy, the UK government has stated on 12 September 2017 that cooperation between the UK and the EU on matters of foreign policy and security should continue after Brexit. The cooperation should even be more ambitious than it currently is with any other third country agreement that the EU has. In a piece written by the House of Commons Foreign Affairs Committee, members of that committee have advised for a specialized framework agreement with the EU. An agreement that would consist of the UK being able to attend meetings of Council working groups such as the PSC and the FAC as observers. The agreement could go as far that the UK would be able to have the rights to put topics on the agenda. Based on expert meetings of the House of Commons Foreign Affairs Committee, the UK would lose its influence of EU decision making if it cannot be present in these Council working groups. So far no third country has observer plus speaking rights in either the PSC or FAC. As stated before, voting rights is out of the question as it can only be accomplished by changing the EU treaties. Till recently, any official text lacked any clear idea on how to form such partnership and what the specifics should be (HM Government, 2017). On Wednesday the 9th of May the UK government released a more concrete vision of their future cooperation with the EU on CFSP and CSDP matters. The policy paper again shows the will for a more ambitious cooperation than that the EU has with any other current third country. The policy paper also goes into more detail concerning the CFSP. It first puts forward four points concerning dialogue and coordination.

1	Consultation Framework	Regular structured UK-EU27 consultation, up to leader level, which would be flexible and scalable according to the depth and ambition of our cooperation in any given area, alongside regular thematic dialogue.
2	Crisis Cooperation	Intensify cooperation in specific circumstances, such as in crises. This could include continued cooperation on consular provision and protection.
3	Coordination of Levers	Coordinate the use of foreign policy levers, including an option to agree shared positions and statements, joint demarches, jointly organised events and UK support to EU programmes and election observation missions.
4	International Organisations	Coordinate in International Organisations to promote and defend our shared values.

It shows that the UK is willing to cooperate with the EU on foreign policy statements and positions, joint demarches, jointly organized events and the support of the UK for EU programs and missions. Regular dialogue is also one of the points; it however, goes not in depth in how this will work out. Will there be special meetings or will the UK take a seat in existing EU meetings? Thematic dialogue might go similar to that of Norway who also has regular thematic (Balkan, Middle-East) dialogue with the EU.

1	Provide information and expertise	Provision of UK information and technical support and expertise to contribute to existing and future EU listings, and vice versa. Over 50% of existing EU sanctions designations are underpinned by UK evidence.
2	Consult and cooperate on measures	Close cooperation and consultation on the development and adoption of measures will be in the UK and EU interest. Sanctions are a multilateral tool which are most effective when used in coordination with partners.

The UK wants to closely cooperate on the implementation of sanctions against other states and wish to be in dialogue with the development towards said sanctions. Moreover, the UK will look how to transfer all current EU sanctions into UK law after Brexit occurs. The report continues to lay down ideas for cooperation considering the CSDP, possible inclusion for PESCO projects and participation to missions on ad hoc basis (HM Government (d), 2018).

In March 2018, the UK also came with a draft withdrawal agreement. The agreement lacks any plans regarding future EU-UK cooperation on the CFSP. However, most noteworthy in the agreement is Article 122 (2), it says the following:

“Should the Union and the United Kingdom reach an agreement governing their future relationship in the area of the Common Foreign and Security Policy and the Common Security and Defence Policy which becomes applicable during the transition period, Chapter 2 of Title V of the TEU and the acts adopted on the basis of those provisions shall cease to apply to the United Kingdom from the date of application of that agreement.”

Meaning that if the EU and the UK reach an agreement on the future of their CFSP cooperation during the transition period, Title V of the TEU will not be applicable anymore for the UK, which is EU law concerning the CFSP.

Throughout the current negotiation process the EU has taken a more passive role and let the UK come up with the ideas concerning their future. So far the EU has not yet reacted officially towards the idea laid out in the policy paper by the UK but did comment on how they see future cooperation. The EU recently stated that they are against any form of half-member and voting rights for non-members. They do see potential in aligning with foreign policy and intensive dialogue and cooperation. Mogherini said that they do appreciate to receive advice and views on matters regarding foreign policy, giving potential for observer rights. Although, observer rights were not explicitly mentioned (EEAS, (e), 2018). However, other EU officials expressed the fact that the UK would in fact become a third country and would probably not receive any special treatment regarding far reaching observer status within the PSC (Lis, 2017). In early 2018, the Commission had Internal EU 27 preparatory discussions on the framework for the future relationship: 'Security, Defence and Foreign Policy'. There was stated that the Commission seeks a EU-UK relationship based on existing third country instruments plus special consultancy and dialogue mechanism (European Commission (f), 2018)

In the end, the UK has also enough political problems at home. The UK government has lost multiple votes in the House of Lords concerning Brexit, the two ministers David Davis and Boris Johnson have stepped up after disagreeing with process concerning Brexit and the momentum for a second referendum is increasing (The Guardian, (2018), Telegraph, (2018), Tibke (2018). Moreover, there have been problems over dissidents in the conservative party, the difficult relation with the coalition partner Democratic Unionist Party concerning the Irish border situation and the growing public remorse concerning Brexit (Reuters, 30 April 2018). Whatever the UK government is planning to do during- and after Brexit, it will face enough political resistance at home, making future negotiations tiresome for the EU. It could create situations where the EU demands that the UK government gets the consent of its own people before the EU starts ratifying an agreement. This in turn could lead up towards a less motivated UK when it first has to find agreement at home and then has to hope that all the EU Member States will agree on it.

7.3 Conclusion

The choice for the UK on which type of instrument to choose comes mostly down to what it wants, not only regarding foreign policy but also with trade for example. In the (perhaps theoretical) case that the UK desires to be part of the internal market, it could choose to join the EEA by being a EFTA member and enjoy the benefits that it offers regarding, trade, discussions through the EEA Council and new political allies in the form of fellow EFTA/EEA members. The UK might also choose to have an entire customized framework agreement besides EFTA/EEA membership, or perhaps just purely a PCA, AA or framework agreement. To conclude, there are choices enough for the UK. However, looking at the statements given by the UK, one of the possible outcomes would be that of a tailor made agreement that uses the framework agreement as a basis. Furthermore, it will probably be heavily inspired by other existing agreements such as the PCA and AA.

There also will be differences in the speed of joining certain agreements. An agreement with the EU will probably take longer than an agreement with the EFTA states. Nevertheless, the UK has to negotiate with the EU on foreign policy cooperation in most cases. Like when it joins the EEA, or with an AA or PCA. Another difference is that with the AA the EP also has a say in it, unlike with a PCA or framework agreement.

For a long part the UK government remained rather vague on concrete ideas for future foreign policy cooperation with the EU. They claimed so far that they wish to seek a partnership that is more ambitious than any other current partnership with a third country. This could hint to the idea that the UK government wishes to gain observer status within the PSC or perhaps even in the FAC formation.

Till today no other third country has received such status in the PSC or the FAC. Norway and Iceland do participate in certain theme specific working groups (working groups focusing on the Balkan or Middle-East for example) so to have an old member state to receive similar rights for more high-level formations is not that farfetched (Rieker, 2017). The Foreign Affairs Committee of the UK House of Commons has also requested the UK government to come up with a more elaborate plan for post-Brexit, including their wish for UK observer rights. Both the House of Commons as the UK government have thus showed their ambitions with future cooperation. It seems that the UK would not be satisfied with signing up to EU foreign statements or missions after the decisions have been made or to be part of meetings that only take place twice a year. No, in that sense it is to be expected that both the House of Commons and the UK government are aiming for something that is more than that states such as Norway have, which probably will be extended observer rights within the FAC/PSC.

In May 2018 the UK government released a policy paper that outlines a more concrete vision than that they showed before. It states that the UK wishes to join EU foreign statements and positions when it wishes to do so, keep regular dialogue with the EU and the other 27 Member States and join the EU on sanctions. While it is good that the UK finally comes with something more concrete on their vision for cooperation with the EU on foreign policy it does lack anything substantial that might show they are aiming for a relationship that surpasses the one of Norway for example. Joining EU statements and positions as well as participating in sanctions is something that Norway already does. Additionally, Norway joined EU thematic work groups just like what the UK envisions as well in their policy paper. This might change with an even more detailed policy paper in the near future, but so far there are no clear signs on what a future EU-UK relationship on the CFSP might entail that a state such as Norway lacks.

In the same month that the UK released their policy paper the EU also discussed more details on future cooperation with the UK during an event at the EU's institute for security studies. There the HR mentioned that they wish to seek intensive cooperation with dialogue and consultation. The HR told that any form of half-membership is not possible due to the treaties and that voting rights are out of the question. Observer rights were not directly mentioned. The same was said during an internal Commission meeting in the beginning of 2018 regarding future EU-UK cooperation. The question remains how far the EU and UK will come during the transition period as currently the negotiations have more pressing matters such as the Irish border, the government's defeat at the House of Lords concerning who has the final say in Brexit and the rights of EU citizens in the UK. Moreover, the final date of March 2019 is coming closer and closer. The chances are there that there will not be an agreement on foreign policy cooperation, meaning that it will have to be negotiated after Brexit. Then the negotiations itself will easily take several years. Therefore it could be so that only when Brexit happens some real concrete plans will appear from the UK on how they would like to see future cooperation with the EU on foreign policy.

8. Conclusion

In the beginning of this research the following main question was asked: What are the legal and political possibilities for the UK to align itself with the EU's Common Foreign and Security Policy after Brexit? Using the information from the previous chapters, this question can now be answered.

The instruments that are used to enhance cooperation between the EU's CFSP and third countries are all quite similar in the end, at least when it comes down to what it does for foreign policy. Between the EU and third countries are a couple of relevant instruments to enhance cooperation on foreign policy. The European Free Trade Association (EFTA) is an intergovernmental organization that might be an alternative for the UK. Being a member of EFTA, it is possible to become part of the European internal market through the EEA agreement. Member States of the EFTA have an agreement through their EFTA/EEA membership that allows them to join EU statements and positions. Members of these institutions meet twice a year at the EEA Council at which the European Council and the EEAS are also present. During these meetings foreign policy is discussed.

Other instruments that are not bound by an organization are the AA, PCA and the framework agreement. All are quite commonly used by the EU. The difference between the agreements is that the AA involves reciprocal rights and obligations and compasses multiple sectors, ranging from trade to human rights. The PCA does contain obligations but is not as strict as an AA; however it is similar to that of the AA as it encompasses multiple sectors. A framework agreement can include anything that both parties desire, it can purely consist of foreign policy elements for that matter. The AA's and the PCA's are more similar to each other as there are similar Articles in the agreements concerning foreign policy. Both agreements speak of increased dialogue on ministerial and senior official level and joining EU statements and positions. The AA does speak of more convergence on foreign policy unlike the PCA. Moreover, the PCA is in general seen as an agreement that occurs before an AA and which afterwards will be replaced by an AA. Another instrument that the EU uses to bind other states is the ENP with its action plans. The action plans however, are not as binding as a PCA or AA and is usually used to motivate states to work more on certain aspects from an earlier agreed agreement such as the PCA or AA. This makes it not interesting for the UK.

By looking at countries that are member of the EFTA (including ones with the EEA), have a PCA, AA or framework agreement it became more apparent what these institutions and agreements offer in practice. The EFTA/EEA countries join most of the EU statements and positions, have high-level meetings through the EEA Council twice a year and Norway is part of certain thematic EU foreign policy work groups. Most Eastern-European states had a PCA before they had an AA. Through the PCA they already joined the EU on foreign policy statements and positions and had increased regular dialogue. An AA reaffirms that a European country with an AA in place like Ukraine also joins EU statements and positions. Moreover, Ukraine has a yearly high-level summit and has regular ministerial meetings. As there are no framework agreements with European states regarding foreign policy, the state of Australia was taken as an example to look at. Australia signed a framework agreement with the EU that focused on foreign policy. Both parties agreed to more high-level meetings, even more meetings on ministerial and senior-official level and as well more common approach towards international foreign affairs. European states such as Ukraine, Georgia and Norway have the ability to align themselves with EU positions and statements on an ad hoc basis. Research has shown that Norway and Ukraine join EU statements rather often while Georgia does it at least half of the time.

Knowing the instruments and how other states work with them, gives a pretty idea on how the UK could cooperate with the EU on foreign policy after Brexit. The theoretical framework already gave a few examples on future cooperation by Whitman (2017). The two interesting variants he mentioned were the integrated player and the associated partner. The latter could be reached by joining the EFTA/EEA or by signing an AA. The former option is probably much more interesting for the UK, as the UK government has mentioned several times that they wish to have a special agreement that goes beyond any current agreement with a third country. Any of the current existing third country agreements that the EU has will thus not fit the goal of the UK government.

In May 2018, the UK government released more detailed plans for future cooperation concerning the CFSP. The UK government stated that they wish to be a part of the EU statements and positions, join sanctions and have regular dialogue. In the same paper they again stated that they were going for a special relationship that is much more ambitious than any other current agreement with a third state. However, the policy paper made this not evident as it lacked any clear text that would show something more ambitious than for example the current relation of EU-Norway (Whitman, 2018) (UK Government, 2018). The elements that the policy paper discussed could be reached by being part of the EFTA (+EEA) or by signing an AA or framework agreement. None of the agreements would need any revising. Now the question remains how these plans of the UK government will develop in the upcoming years. It could be that in a more detailed policy paper the UK government will choose for observer rights within Council formations. While no official government document talked about observer status, it has been mentioned by UK officials and researchers as the option that makes the future relation special. Candidate countries already have observer status in the PSC but are not allowed to speak and have to leave the room during sensitive discussions. This would be something that the UK would probably not accept. However, no other state had such rights as observer but since the UK would be an old member state and is a state of relevant power in the world, the EU might agree. Since the UK has not officially discussed observer status, the EU has not given any official response on the idea as well. Some EU officials did comment on it and told that the EU would give the UK the same treatment as any other third state. Even if the EU would agree, the question of what does it mean to be an observer remains. Would the UK get the right to speak or to put things on the agenda? However, voting rights are out of the question as it would require EU treaty change and will give the UK too much power for a state that would not be a member state.

While currently it is far from being clear if the EU and UK will reach a final deal during the current negotiations, it is to be expected that it will contain at least some information and rules concerning cooperation on foreign policy. The current concept withdrawal agreement barely touches the subject of foreign cooperation and only states that if an agreement is made that it will immediately take effect. As it is also not a high priority issue, unlike the Irish border and immigration, the chapter of foreign policy cooperation is expected to be not as extensive and will probably be open for future negotiations after the Brexit date. These future negotiations will then probably consist of a specialized framework agreement on foreign policy. However, the agreement on the future relationship between the EU and the UK should contain an agreement on how both parties have clear and structured lines of communication when it comes to foreign policy. One could think of regular contact between the HR and the UK foreign minister. Other aspects of future cooperation, such as the UK joining certain EU agencies or working groups and observer rights could, as stated before, be negotiated into a framework agreement.

In conclusion, it seems that a framework agreement would be the best option for the UK. A framework agreement, which usually focuses on a certain policy area'(s), could always operate besides a more general agreement. This could be the EFTA/EEA, AA or perhaps even the withdrawal agreement.

Reaching an agreement could easily take up several years and all the EU Member States will need to ratify it. Negotiating for EFTA membership could be faster, however, a state such as the UK probably will not be satisfied with lack of influence it can express through those institutions, so an additional agreement would be necessary with the EU itself, if it wishes to gain observer rights. To come back to what was mentioned in the beginning of the conclusion; within the boundary of the European treaties it is possible for the UK to gain observer rights but not voting rights. Politically the chances are very slim that voting rights would even be considered, however, observer rights fall within the scope of possibility.

9. Advice & discussion

Until this day the UK remains a powerful and influential state. Not as grand as it used to be but still a power to reckon with. On the other hand there is the EU, which includes two prominent and powerful states, France and Germany. Besides those two, there are numerous other smaller states adding their weight into having an influential EU foreign policy. This creates a situation where both parties would benefit from each other. UK foreign policy becomes stronger when it cooperates with the EU and vice versa. Intensive cooperation is therefore of the utmost importance.

As stated in this research, voting rights would be something that is simply not possible due to the treaties. Even if the treaties would allow it, the EU should be wise not to do it since it would give non-EU members too much power in decision making. It could result in more cherry-picking from other euro-sceptic Member States such as Czech Republic or states with incumbent euro-sceptic governments. For the UK it would be wise to attain observer rights through a framework agreement that at least include speaking rights within high-level Council formations such as the FAC and PSC. Even if the UK could only obtain observer rights within the PSC it would give the UK a great position to influence. This way the UK could influence by speech at these meetings and help shape European foreign policy. With any other setup that states such as Norway have the UK would not be able to influence EU foreign policy and will in most cases only get to decide if they wish to join said statement/mission at the end of the process. Observer rights that would lack any speaking rights would be almost useless for the UK and thus should be a goal on itself. The chance to put topics on the agenda would be even more beneficial for the UK.

Moreover, the UK should join EU foreign policy statements, positions and participate in sanctions. This way the world can see that both the UK and the EU aim for intensive cooperation and that Brexit does not necessarily mean a loss in European foreign policy. Specifically regarding foreign policy, there are a lot of combinations possible and all these options will more or less give the same result. The UK could explore together with the EU if this is possible through an AA, as that form of agreement might cover other areas (trade) that the UK is interested in, otherwise the UK could achieve this with a framework agreement that focuses on foreign policy. The UK could even choose to join EFTA, pursue EEA membership and have a framework agreement concerning foreign policy at the same time. This option might even be the best one as it puts the UK close to the EU, much more than any other agreement. However, it does require the UK to accept EU law, something they wanted to get rid of by leaving the EU. However, for the UK's economy to flourish and to have an effective trade relationship with the EU's internal market, it would be wise for the UK to join at least the EFTA. The UK would then also have a formal basis for cooperation with both the EU and the EFTA states and could then negotiate a framework agreement concerning foreign policy. Nevertheless, specialized observer rights are that one thing that can make the EU-UK relationship, concerning foreign policy, a special one and a new concept for EU-third state cooperation. Anything less than that will be similar to the already existing model of Norway or similar observer rights for candidate countries that speaking rights. This would surely disappoint the UK since it is aiming for a special relationship. Since the UK is an old EU member state with influential world powers, it could make good use of those facts to obtain a more special relationship with the EU.

Concerning the recommendations on how the EU-UK relationship should work post-Brexit, most other comments and articles online show similar views. Whitman (2018) has written numerous articles on foreign policy cooperation between the EU and the UK post-Brexit in which he expressed that anything less than specialized observer rights would not be attractive for the UK. In his opinion article, Jonathan Lis (2017) stressed the importance of UK inclusion within the PSC, as otherwise the UK

would lose a lot of influence in foreign affairs. Ian Bond (2018), director of foreign policy at the Centre for European Reform, said that the UK should obtain a similar agreement that the EU has with Canada. The EU has a framework agreement with Canada which is called the Strategic Partnership Agreement and offers regular consultations between both parties. Wright, N., (2017) said something similar, calling for a framework agreement that will form the basis for regular dialogue and consultation. For the UK to opt for such option would be a mistake as it would lose considerable amount of influence. While the meetings will be held on a regular basis, it will be far less often than that of the PSC. This will mean that they UK can voice its opinion towards EU representatives but will fail to influence the Member States at the moment when it is really necessary, during those PSC meetings. Therefore it would be important for the UK to try to negotiate with the EU for specialized observer rights within at least the PSC, as mentioned earlier in this chapter.

On other subjects regarding future cooperation commenters usually agree with each other. Everyone agrees that the EU and the UK should work intensively on foreign policy by having common positions, joint statement and coordinated sanctions. The difference, as could be seen earlier, is only regarding to what extent the cooperation will consist of, observer status or just dialogue.

Another aspect that is highly discussed is through which instruments it should happen. Most commenters show only two or three possibilities, either through a special framework agreement or through the EFTA/EEA. The European Parliament's March 2018 resolution on the future EU-UK relationship put forward an AA as the best possibility, since an AA is the most intensive form of agreement that the EU has with third states. Another model that has some popularity among pro-Brexit followers is the Switzerland model. Switzerland has already been discussed in this research, so the idea of the model should be more or less clear. It basically comes down to the UK joining the EFTA and negotiating numerous bilateral agreements with the EU. The EU however, is not keen on this model due to its complexity of large amounts of bilateral agreements (Swiss Info, 2018). Another reason why it is so popular among Brexiteers is that through the EFTA there would be less intrusion from the EU Court of Justice than with the EEA, since the UK is not part of the internal market.

Those opposing Brexit usually find themselves in favor of being part of the EFTA and also signing up to the EEA. This gives the UK access to the internal market, closer cooperation with numerous EU agencies and working groups and thus overall increased dialogue. While this is not directly affecting foreign policy cooperation as this research pointed out (Having an AA, EFTA, or EEA boils down to the same form of cooperation), the UK generally being closer to the EU might benefit cooperation in other fields as well such as foreign policy. In that sense it would be wise for both parties to pursue a soft-Brexit and either negotiate an extensive AA, or even better, an EEA to foster close cooperation. Through the EEA the UK would be more included with EU working groups on various policy fields than with the AA. Sadly, Theresa May (who even supported UK membership of the EU during the referendum) is steering towards a hard-Brexit, making the beginning of a new relationship only problematic.

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11. Attachments

HR recommendation for starting the negotiations with a third country

The content of a Recommendation; "Recommendation for a Council Decision authorizing the opening of negotiation and negotiating directives" must include:

- An explanatory memorandum which may vary in content and level of detail.
- The Recommendation for the authorization to open negotiations and for the appointment of the negotiator with, as an Annex, a draft Council decision authorizing the opening of negotiations, adopting negotiating directives and appointing the negotiator to which the draft negotiating directives are attached.

Normally, the explanatory memorandum as well as the Recommendation to open negotiations including its annex (in particular the negotiating directives) must be treated as an EU-restricted document. When drafting a Recommendation, care should be taken to stick firmly to the terms "negotiating authorization" and "negotiating directives" for any decision based on Article 218 TFEU.

The term "negotiating mandate" should be strictly avoided: this is neither neutral nor legally accurate. The term "mandate" conveys the incorrect impression that the Commission's negotiating role would be strictly limited to following the Council's instructions and that the Commission would act merely on behalf of and in the name of the Council. However, the negotiating directives envisaged in Article 218 TFEU are not legally binding and leave the negotiator room for initiative and maneuver within the scope of the Council's authorization. The term "mandate" is used exclusively for intergovernmental acts.

For agreements "related exclusively or principally" (Article 218(3) TFEU) to the CFSP, the Council must appoint the HR to conduct the negotiations (except where negotiations take place, exceptionally, at the level of heads of State and Government). The HR will usually appoint a member of the staff from the EEAS to lead the negotiations on the HR's behalf.

TEU, Article 218 (concerning AA/PCA/framework agreements)

1. Without prejudice to the specific provisions laid down in Article 207, agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.
2. The Council shall authorize the opening of negotiations, adopt negotiating directives, authorize the signing of agreements and conclude them.
3. The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorizing the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.
4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.
5. The Council, on a proposal by the negotiator, shall adopt a decision authorizing the signing of the agreement and, if necessary, its provisional application before entry into force.
6. The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.
 - a. Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement:
 - i. (a) after obtaining the consent of the European Parliament in the following cases:
 1. association agreements;
 2. agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
 3. agreements establishing a specific institutional framework by organizing cooperation procedures;
 4. agreements with important budgetary implications for the Union;
 5. agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.

The European Parliament and the Council may, in an urgent situation, agree upon a time-limit for consent after consulting the European Parliament in other cases. The European Parliament shall deliver its opinion within a time-limit which the Council may set depending on the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

7. When concluding an agreement, the Council may, by way of derogation from paragraphs 5, 6 and 9, authorize the negotiator to approve on the Union's behalf modifications to the agreement where it provides for them to be adopted by a simplified procedure or by a body set up by the agreement. The Council may attach specific conditions to such authorization.
8. The Council shall act by a qualified majority throughout the procedure. However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article 212 with the States which are candidates for accession. The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the decision concluding this agreement shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements.
9. The Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.
10. The European Parliament shall be immediately and fully informed at all stages of the procedure.
11. A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised.

EU law regarding negotiations covering both EU competences and sole national competences

In the case of an agreement that also covers other competences that are no sole EU competences then the following has to be taken into consideration:

Depending on the specific circumstances and in the interest of unified external representation of the Union and its Member States, outside CFSP, the Commission could also conduct negotiations covering both EU competences and subject matter where the Member States have not conferred competences to the Union.

Where the Commission is not the sole negotiator for both EU competences and sole national competences, special attention should be paid to avoid that the Council decision authorizing the opening of the negotiations has a hybrid nature (i.e. EU and intergovernmental, at the same time). Furthermore, a separate intergovernmental decision cannot cover fields conferred to the EU by the Treaties. The Commission services following the discussions in the Council must immediately consult the Secretariat-General and the Legal Service when a hybrid decision or a separate intergovernmental decision is prepared.

Where the Commission is not the sole negotiator for both EU competences and sole national competences, special negotiation arrangements should normally be agreed upon between the Commission and the Council. In the absence of such arrangements, the negotiator for the EU and the negotiator(s) for the Member States are nonetheless under the legal obligation to coordinate, in full mutual respect, and assist each other in the spirit of sincere cooperation. A clear delimitation of areas of negotiation should be made wherever possible. Prior coordination of positions to be taken in the negotiations is essential, in particular for those parts of the negotiations where sole national competences and EU competences are inter-related (European Commission (B), 2011).