

The UK-Canada Agreement on Mutual Support of Missions Abroad: Loyalty compromised?

Steven Blockmans & Sergio Carrera

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Since becoming British Foreign Secretary more than two years ago, William Hague has engaged in what the Foreign and Commonwealth Office (FCO) calls a “network shift”, which partly aims to put the ‘C’ back into the FCO. Hague recently met his Canadian counterpart John Baird in Ottawa on September 24th to review and refresh the Canada-UK Joint Declaration agreed by Prime Ministers David Cameron and Stephen Harper a year ago. The foreign ministers signed a Memorandum of Understanding (MoU) on “Enhancing Mutual Support at Missions Abroad”. The MoU will allow the UK and Canada to optimise their respective diplomatic resources by sharing embassy and consulate sites, the joint acquisition, supply and use of services, as well as collaboration on crisis response, consular services, security, diplomatic mail, information management and IT. Describing the UK and Canada as “first cousins” under one queen and united by a set of values and “common interests”, William Hague said in a press statement that it was “natural that we look to link up our embassies with Canada’s in places where that suits both countries” so as to widen the reach abroad for businesses and citizens for less cost.

This UK move to cooperate with Canada on sharing embassy facilities abroad fuels doubt about the UK’s commitment to develop its political and diplomatic ties to the EU. It has reinforced perceptions held at EU headquarters and in capitals of some member states that the Tory-led coalition government of David Cameron remains ambivalent about forging a ‘Common’ European Foreign and Security Policy backed up by a strong EEAS.

In fact, it is striking to note that the EU, the EEAS, and the UK’s commitments within the EU framework are not mentioned once in the MoU. At the same time, this development is indicative of an increasing form of ‘EU denial’ on the part of the UK. In the area of EU foreign policy, the UK has consistently warned against ‘competence creep’. London has i) opposed the High Representative’s 2011 proposal for a 5.8% increase in the EEAS’ budget; ii) blocked the adoption of more than 70 statements to be issued “on behalf of the EU”, causing them to expire; and iii) criticised the High Representative and the EU diplomatic service for lacking ideas, reacting too slowly to world events and for failing to implement agreed policy. Somewhat cynically, especially in view of the new MoU with Canada, the UK was among the member states countering pleas by smaller members like Austria and the Benelux

Steven Blockmans is a CEPS Senior Research Fellow and Head of the EU Foreign Policy programme. Sergio Carrera is a CEPS Senior Research Fellow and Head of the Justice and Home Affairs programme.

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countries to expand the 'supporting role' of EU delegations in consular protection and crisis management.

The UK-Canada MoU therefore raises a number of questions about the UK's commitment as an EU member state and its position regarding various pieces of the future 'political union' puzzle.

The first question relates to the principle of sincere and loyal cooperation; one of the Union's founding principles. According to one aspect of this general principle of EU law, a member state must "refrain from any measure which could jeopardise the attainment of the Union's objectives" (Article 4(3) TEU). Pursuant to another strand of the same principle, a member state is also under obligation to support the EU's external and security policy "actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area" (Article 24(3) TEU).

One could read the UK's plan to share diplomatic facilities and consular services abroad with a non-EU member state as purely an attempt to 'save costs' and not as cooperation on 'ways of doing things' in policy areas. Yet, one cannot but wonder how far it is possible to ensure that cooperation on services will not impact, and potentially conflict with, specific policies with an EU dimension. Arguably, this MoU runs counter to the spirit of loyal cooperation, in particular at the level of the coordination of key policy positions and information exchange between the EEAS, EU delegations and EU member states' embassies in third countries. Clearly, there is potential to undermine the interests and effectiveness of the Union in the spheres of external and security policies. To what extent can the EU or its member states trust the UK in the sharing of classified information of strategic importance, in particular in international relations with Canada?

Similar dilemmas might be anticipated in relation to key dossiers under discussion in the wider EU-Canada partnership, some of which are particularly sensitive for certain member states. For instance, the MoU is unlikely to bring clarity to the Canada-Czech Republic visa dispute.¹ Since 2009 Canada has officially justified its application of temporary resident visa (TRV) requirements for nationals of the Czech Republic as a measure to limit the increase in asylum applications from Czech nationals of 'Roma origin'. This was the first time that a third country whose nationals enjoy visa-free travel to the EU reintroduced a visa requirement for the nationals of an EU member state. The TRV obligation thus breaches the principle of reciprocity that lies at the core of the EU's common visa policy. The European Parliament and a number of member states have linked the success of the proposed Comprehensive Economic and Trade Agreement (CETA) with Canada to the resolution of this visa dispute.

True, the UK does not participate in the common EU visa policy. It can 'opt out' of or 'opt in' to participation in migration, borders and asylum legislative measures. The UK has not been allowed to opt in to border controls and visa measures building upon the Schengen *acquis*. The UK does however take part in EU police cooperation and judicial cooperation in criminal matters, which may be subject to revision before the end of 2014, and the policing and criminal law parts (including information exchange) of the Schengen Information System (SIS). That notwithstanding, the UK-Canada MoU may bring further confusion to the EU's strategic position on this 'visa affair' as it is closely linked with the trade discussions under the CETA, to which the UK is full party.

¹ See Sergio Carrera, Elspeth Guild and Massimo Merlino, "The Canada-Czech Republic Visa Dispute two years on", CEPS Paper in Liberty & Security in Europe, CEPS, Brussels, October 2011 (<http://www.ceps.eu/book/canada-czech-republic-visa-dispute-two-years>).

The protection of EU citizens abroad constitutes another example of a policy challenge when considering the incoherencies that may emerge from the UK-Canada MoU. The protection granted by diplomatic missions abroad is one of the core components and rights of EU citizenship and has been said by the European Commission and the European Parliament to constitute “a direct expression of the principle of EU solidarity and of the ‘identity’ of the EU in third countries”. It represents a practical benefit of the status of European citizenship, in which the UK is a full participant. The MoU may lead to misunderstandings regarding the UK’s commitments on the protection of EU citizens abroad, and in particular how the UK will ensure a ‘common EU identity’ in the area of EU citizenship abroad when providing common consular services alongside a country applying visa restrictions to Czech nationals.

In sum, the UK’s move to cooperate with Canada to pool and share embassy facilities in third countries may not only undermine efforts to forge a coherent, consistent and effective EU foreign policy, it may also throw a spanner in the works of EU solidarity and the creation of a stronger EU identity, both internally and externally. The European Commission has already fired a shot across the bow of Britain’s coalition government, expressing increasing concern about attacks on core EU principles and threatening to take the UK to the European Court of Justice if it fails to respect key elements of EU law. Rather than further agreements that undermine the workings of the EU, the British government might be better advised to heed the language of the Treaty on European Union, to which it is a signatory, to “ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union”.