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STRENGTHS AND WEAKNESSES IN EU MEMBER STATES' COOPERATION THROUGH THE COMMON FOREIGN AND SECURITY POLICY (CFSP) FRAMEWORK IN RELATION TO RUSSIA'S FULL-SCALE INVASION OF UKRAINE



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Abstract

The Russo-Ukrainian conflict has unleashed the destructive potential of modern warfare within Europe, hindering Kyiv's sovereignty and territorial integrity while causing a massive migration wave which tested the EU's solidarity and resilience. The EU has provided Ukraine with financial and military aid while unfolding an unprecedented response under the CFSP framework through eleven packages of sanctions against Russia (EU Council, 2023f). Even so, the impact of sanctions has been downscaled compared to initial ambitions because of collisions among national interests forcing the Council to make generous concessions to Russian-dependent economies (EU Council, 2023a). The EU cannot become a credible global power if it cannot reach collective CFSP decisions. Moving towards qualified majority voting (QMV) would address structural weaknesses and serve the objective of European sovereignty, but only after forging a common foreign policy understanding of the EU's major security challenges.

After setting off with a background on the main security challenges in the Euro-Atlantic area arising from the invasion of Ukraine, this info flash discusses the role played by EU institutions throughout the decision-making process to adopt restrictive measures (section I). It then explains the influence of the regional geopolitical context on EU-level security cooperation (section II) and the outcomes thereof (section III). It concludes by forecasting some outlooks for future decision-making dynamics in CFSP matters.

Background: the Main Challenges in the Euro-Atlantic Security Landscape

On February 24th, 2022, Russia launched its "Special Military Operation" against Ukraine, undermining Kyiv's sovereignty and territorial integrity and unleashing the destructive potential of modern warfare within Europe. The European Union expressed solidarity with Ukraine and delivered military and financial support while periodically targeting Moscow with packages of restrictive measures, which the 2016 Global Strategy considered key tools bringing about peaceful change and potentially pivotal in deterrence, conflict prevention and resolution (EU Council, 2016).

To date, however, the sanctioning process has not suffocated Moscow's GDP, military technology and critical infrastructure as initially hoped, since Russia has evolved into a resilient and competitive actor in sensitive economic sectors like energy and agriculture compared to 2014 and turned to strategic partners like China to mitigate restrictions' impact (Novianto, 2022, p. 508). In parallel, the conflict has challenged European identity's solidity and the Member-States' (MS) ability to strengthen it through cooperation, not least because of the national considerations guiding much of EU CFSP (Gehring, p. 187; in Mamonov et al., 2022). Furthermore, sanctions have laid bare MSs' dependency on Russian energy sources, raising the need to establish alternative supply pathways and accelerate the green transition. This has been a contentious point during the negotiations at EU level, with the positions of Russian-sympathising countries like Hungary almost burying the restrictions against Russian coal and oil imports (Euractiv, 2022).

An equally relevant challenge has been the massive migration wave from war-torn areas. During the two months following the invasion, 4 million Ukrainians left the country and another 6.5 million were internally displaced. Such flows put neighbouring countries' refugees (especially Hungary, Poland and Romania) under stress (Wunderlich, 2022); nonetheless, by welcoming amounts of refugees comparable to the 2015 crisis, they provided a remarkable demonstration of solidarity and cohesion vis-à-vis Russia's attempts to disrupt EU cooperation and resilience mechanisms.

I. Role Played by EU Institutions

Within the CFSP framework, the Council plays the most prominent role by gathering MSs' ministers and mediating their interests (Szép, 2020; in Cardwell & Moret, 2022, p. 6). In the case at issue, it has convened in its foreign affairs configuration to unanimously adopt restrictive measures undermining Russia's economy, banking system, trade, military and dual-use technologies, state officials' assets and freedom of movement. In the European Council, heads of state and government have drawn the necessary guidelines for the Council and agreed upon the relevant steps to deal with the crisis, from issuing declarations stating unwavering support for Ukraine to laying the foundations for new sanctions regimes.

The European Commission has operated on three main fronts: condemning the aggression and vowing to take the necessary steps against Russia; holding bilateral or multilateral summits with member states' top-level officials, as well as Ukrainian and Russian counterparts to persuade Moscow to renege on its actions and negotiate hostilities' cessation; and advancing proposals to designate individuals/entities and/or to target Russian economy's most critical sectors. Lastly, despite not being involved in the decision-making process, the European Parliament has repeatedly condemned hostilities and their disastrous spill-over effects on Kyiv's sovereignty and the Ukrainian people while adopting non-binding but highly authoritative resolutions (European Parliament, n.d.).

II. Influence of the Regional Context on Security Cooperation

Foreign policy is a sensitive area where governments often cannot speak with one voice unless painful compromises are made, as witnessed during the negotiations for the NextGenerationEU funds in July 2020. In reaction to the Russia-Ukraine war, MSs seem to have learnt the lesson by displaying unprecedented political unity. For instance, Finland and Sweden applied for NATO membership (Gehring, 2022, p. 191; in Mamonov et al., 2022), with Helsinki joining the alliance last April (NATO, 2023). Additionally, Denmark overturned its opt-out from EU defence policy with the June 2022 referendum (Murray, 2022), followed by Council's decision (2023d) to welcome it into PESCO.

However, several factors have clamped down on cooperation, starting from the Council's unanimity-based voting procedure, which risks leading negotiations to a deadlock, as Cyprus did in September 2020 for restrictive measures against Belarus following the rigged presidential elections and demonstrators' repression (Rankin, 2022). In the case at issue, both for energy-related packages and sanctions targeted at figures like Patriarch Kirill (Liboreiro, 2022), states with political and economic ties with the Kremlin forced the Council to adopt less ambitious measures to safeguard consensus (Cahill, 2022).

European Commission President von der Leyen and her predecessor Jean-Claude Juncker invoked qualified-majority voting to upgrade the EU's role in global affairs (Blavoukos & Pagoulatos, 2022, p. 10) and bolster strategic autonomy (Nováky, 2021). Under art. 31 of the Treaty on European Union (TEU), MSs can abstain without undermining the EU's commitment to the decision ("constructive abstention clause"); the Council may act by qualified majority based upon European Council's decisions concerning EU's strategic interests, High Representative's proposals or decisions defining Union's actions ("enabling clause"); and EU leaders can unanimously allow the Council to act by QMV ("passerelle clause") in matters not identified by the "enabling clause". In a last-resort scenario, art. 20 TEU foresees enhanced cooperation, but requires the Council's unanimous authorisation, involvement of nine MSs (art. 329 of the Treaty of the Functioning of the European Union) and is inapplicable in military or defence matters (art. 333(3) TFEU). Likewise, art. 31 TEU's applicability is limited by "emergency brake" procedures for vital reasons of national policy (Blavoukos & Pagoulatos, 2022, pp. 5-6). On top of these normative loopholes, the urgency of responding to the invasion made it counterproductive to activate such mechanisms.

Another aspect which complicates supranational cooperation is differentiated cooperation through sub-regional groups like the Benelux and Visegrád countries, or the Franco-German duo through Normandy format talks on Ukraine (Siddi et al., 2022, pp. 113-114). As soon as the aggression unfolded, while Eastern European countries called for immediate action, Western ones did not regard it as a primary security threat (Macron, 2022; in Bosse, 2022, p. 534). While French President Macron unsuccessfully insisted on a diplomatic overture to Putin (Elysée, 2022), German Chancellor Scholz faced governing coalition divides about national security interests' redefinition vis-à-vis Russia (Bosse, 2022, p. 534). Additionally, Hungarian PM Orbán did not initially join the boycott of Russian energy resources, almost watering down the sixth round of sanctions (Herszenhorn et al., 2022).

Finally, the European security context is deeply influenced by NATO and its overlaps with the EU on defence matters. Brussels' CSDP has evolved with instruments like the European Peace Facility, under which MSs have totally contributed €3.6 billion for Ukraine (EU Council, 2023b), and the Permanent Structured Cooperation. Such initiatives have irked some Member States who fear overlaps with NATO's *raison d'être*, to the point that they are either under-funded or bypassed (Reykers & Adriaensen, 2022).

III. Outcomes of Security Cooperation

In February and March 2022, MSs agreed on substantial humanitarian aid packages, welcomed millions of Ukrainian refugees (European Commission, 2022) and adopted four economic sanctions rounds. Moreover, the Council adopted assistance measures within the EU Civil Protection Mechanism (Wunderlich, 2022), and enforced the Temporary Protection directive (Anghel & Jones, 2022, p. 10) to allow Ukrainians a 3-year right to live, work, access healthcare, housing and education in the EU (Bosse, 2022, p. 532). Decision-making just avoided a standstill about heavy weapons and fossil fuels until a fifth package banned coal imports from Russia in April, and a sixth one minimised oil imports in June, albeit after averting Hungary's veto threats and granting concessions to Visegrád countries (Genschel, 2022, p. 1892). The trend continued for the seventh and eighth packages, although accommodation of "hawkish" MSs did not impair unity and fast decision-making.

MSs have suspended Moscow's most-favoured-nation trade status alongside import and export bans on e.g. dual-use and oil-refining technology, transportation equipment, aviation and space industry and luxury goods (EU Council, 2023a). Furthermore, EU countries must not import coal, steel, gold, crude oil and, from February 2023, refined petroleum products, with temporary derogations for states heavily reliant on Russian crude oil supplies, and for Bulgaria and Croatia about seaborne crude oil and vacuum gas oil (EU Council, 2023a). The catalyst towards harsher sanctions was the evidence of Russian war crimes in Bucha (Newsweek, 2022), which reminded MSs of their moral obligation to protect Ukrainian civilians' integrity (Bosse, 2022, p. 537).

In December 2022, a price cap on Russian oil at \$60/barrel was set to limit price hikes and minimise Moscow's revenues contributing to support its military efforts (Kijewski & Cooper, 2022). Conversely, many caveats apply to road, air and maritime transport restrictions, humanitarian aid, nuclear facilities' functioning, coal and crude oil/petroleum below the price cap (EU Council, 2023a). Meanwhile, MSs have excluded Russian banks from the SWIFT circuit and prohibited transactions with the National Central Bank of Russia and the Russian Regional Development Bank. The Council has also limited Moscow's ability to absorb sanctions' costs by blocking the Russian Central Bank's access to its €200-billion foreign reserves (Nolsoe & Pop, 2022; in Alcaro, 2022, p. 3). The same steadfastness was seen against Kremlin-owned media outlets spreading disinformation to prevent their broadcasting around the EU's territory (EU Council, 2023a).

The 10th sanctions round targeted 87 individuals and 34 entities, most notably members of Russia's Federation Council, the "All-Russia People's Front" movement, high-ranked military leaders, perpetrators of Ukrainian children's deportation and forced adoption and proxy authorities in the "annexed" territories (EU Council, 2023c). The 11th package enlarged restrictive measures' scope by targeting the first individual for sanctions circumvention, IT companies and media outlets spreading disinformation, judges issuing politically motivated rulings against Ukrainian individuals opposing Crimea's annexation, and the "Foundation for the Support and Protection of the Rights of Compatriots Living Abroad" for coordinating military mobilisation (EU Council, 2023e).

Overall, such sanctions constitute the EU's most resolved response to an event unsettling the regional security order. MSs' cohesion should be read as the EU's "geopolitical awakening" (De Hoop Scheffer & Weber, 2022) and a turning point for the European project (Le Monde Diplomatique, 2022). Equally surprising was the consensus on welcoming Ukraine in the EU family, which revived enlargement prospects and shifted the sense of belonging to the Union from a "technocratic understanding" determined by history, a common market and a single body of rules to a "community" one (Bosse, 2022, p. 541) based upon values like democracy, solidarity and fundamental rights protection.

Nevertheless, national interests and differentiated cooperation dynamics have downsized sanctions' ambitiousness, demonstrating how states' "feeling of unity" is hindered vis-à-vis an existential crisis when it comes to political agency (Anghel & Jones, 2022, p. 15). Deplorably, Brussels does not ban/limit Russian gas imports, demonstrating irresoluteness to pursue energy independence and reach political consensus like for other non-renewable sources. In this regard, the price cap is only a stand-in solution which is proving counterproductive, since Russian gas companies do not seem to struggle to sell barrels within that threshold (Reuters, 2023).

Outlooks for Future CFSP Decision-Making

This study has highlighted three points of tension on which EU MSs should work on to live with an ever-changing regional security landscape. The first is to safeguard the European way of life, where different communities will have to adapt to demographic change, a shifting energy economy and the cost of climate action. The second is to preserve the European way of governance through a delicate balance of power among EU institutions and with states. The third implies pursuing a European pattern of integration by solving tensions between internal market core values and national sensitivities in a time frame shortened by the conflict (Anghel & Jones, 2022, pp. 13-14).

Winning these challenges, however, will not suffice for the Union to become a credible global power: in fact, it must be able to adopt CFSP decisions without being trampled by individual vetoing initiatives. In this regard, recourse to QMV is an asset, but should not replace unanimity on sensitive foreign and security matters (Blavoukos & Pagoulatos, 2022, p. 13) and should be preceded by a shared foreign policy understanding and prioritisation of the EU's major security threats (Blavoukos & Pagoulatos, 2022, p. 14). MSs should read the conflict as a wake-up call to close ranks to continue adopting and implementing sanctioning packages without being influenced by calls to cease hostilities to not cut bridges with Russia (Alcaro, 2022, p. 5). This will hopefully help Brussels assist Kyiv while gaining a stronger negotiating position vis-à-vis Moscow by asserting itself as the guardian of democratic values (Davis, 2022).

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