

Ever Challenged Union: Exploring Ways Out of the Crises

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EU COMMON SOLUTION OR INSTITUTION CONFUSION IN THE HANDLING OF THE “UKRAINIAN CRISIS”

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ABSTRACT:

Apart from dealing with amounting internal pressure the European Union (EU) has been facing an increased number of external challenges that have been waiting to be appropriately addressed. Despite being the most powerful and prominent power in Europe, the EU does not always use the plethora of instruments from its toolbox to tackle emerging issues in either a strong or consistent manner. Explanations as to why this is happening vary on a case-by-case basis. The primary concern of this paper is to analyze the decisions the EU is making in regards to external European issues. More specifically, this paper will scrutinize whether there is either a common solution or an institutional confusion within EU institutions in advancing bilateral relations with Ukraine while addressing a rapidly deteriorating security situation over Ukraine’s sovereignty and territorial integrity.

INTRODUCTION

Annual reports on the state of democracy, stability, and security throughout the world conclude that each new year brings additional challenges to the foreground. Political, economic, social, and security threats put an immense amount of pressure on both heads of state and their respective government entities and leaders of international organizations throughout the world. Out of all multilateral actors, the European Union is recognizably the entity to whom all neighbouring countries are fixed, and for which the expectations are raised quite high when it comes to facilitating the development and handling different crisis situations. States that face major internal and external challenges, such as Ukraine, rely upon their international partners and predominantly the EU to help calm down domestic turmoil and counteract the danger stemming from peripheral states. In this case the Russian Federation.

Yet, despite the EU’s own strive enshrined in Art. 26(2.2) of the Treaty of the European Union (TEU)¹ to ensure its “unity, consistency and effectiveness” in dealing with external crisis situations, to say that such endeavours come fast and effortless would be a blunt lie. Acknowledging the EU’s size and power in comparison with shattered tangential states, it is natural to expect the EU to provide immediate relief and concrete follow-up support. However, it is often forgotten that the EU is prone to taking additional time, more so than other single government entities would normally take. This delay in navigating the complexities of the EU political system in order to respond to external issues is, of course, thoroughly distressing to any member nation embroiled by issues requiring immediate assistance. Coordinating the positions of its twenty-eight Member States (MSs) in both the European Council and the various Council of Ministers settings, in addition to reconciling the European External Action Service (EEAS) activities with the general European Commission framework, all while trying to take into account the opinion of the European Parliament is anything, but easy.

¹ European Union, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, 2012/C 326/01, retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012M/TXT>

Therefore, the aim of this paper is not to pinpoint either the EU's weaknesses or criticise its shortcomings. The objective of this paper is to analyse how different EU institutions implement and enforce the roles they were charged with through established treaties and to give substantiated reflection on the ambitions and appropriateness of the decisions taken. Despite an absence of precise definitions in the treaties of what can be regarded as consistent and effective, it is common sense to assume that the EU would like to present itself to the outer world as the actor able to speak with one voice and adopt unambiguous policies which would help to ensure that its objectives are met in the most time- and resource-efficient manner. Thus, this paper is an attempt to provide a reasoned explanation as to whether the EU has so far managed to come up with a common solution to the Ukrainian crisis or whether it has been trapped in institutional confusion.

The paper is structured in the following way: it begins by describing the EU legal basis and its foreign policy toolbox. It then proceeds with disentangling EU-Ukraine relations covering such issues as the Association Agreement, sanctions against Russia, enhanced economic support, and humanitarian aid as well as miscellaneous emerging issues. The paper concludes by analysing the unity, consistency, and effectiveness of the EU's response, (as provided for by the TEU) and outlines possible and desirable ways forward.

THE LEGAL BASIS AND THE TOOLBOX OF EU FOREIGN POLICY

EU policies towards third actors – be they state or non-state actors, international organizations etc. – have been formalized under the foreign policy title in the Maastricht Treaty in the early 1990s. The Lisbon Treaty has further inscribed the contours of EU foreign policy (EU FP) by aiming at making relations more coherent, effective, and visible. To this end it has also stipulated the creation of a European External Action Service headed by the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission (HR/VP). With the EU's foreign policy gradually acquiring shape, leading European integration scholars have increasingly started to define it as “the area of European policies that is directed at the external environment with the objective of influencing that environment and the behaviour of other actors within it in order to pursue interests, values and goals”². This definition points to both the EU's strategic and normative nature, which it continually tries to reconcile with bigger or lesser degree of success.

Taken together the EU foreign policy embraces four key elements: policies developed within Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP); policies implemented in the framework of EU's external action; internal policies having external implications, and last but definitely not least, the foreign policies of its Member States. Regarding the last component, it is important to mention that the EU foreign policy by no means supersedes the policies of any of its twenty-eight Members. By participating in the European Council meetings Heads of States and Governments collectively decide upon the strategic objectives and directions of EU foreign policy. For any position to be adopted or action to be taken, their decision must be unanimous. As long as Member States' national policies conform to

² Keukeleire Stephan, Delreux Tom, *The Foreign Policy of the European Union*, Basingstoke, Palgrave Macmillan, 2014, 2nd edn., p. 1

the Union position (Art. 29 TEU)³, they are by no means restricted in exercising their own national policies towards third states on top of or in parallel to the common EU policies. At the same time, according to the Art. 24(3.2) TEU⁴ Member States shall “refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations”. However, the policies of separate Member States, prominent as they may be, will be scrutinized less in this article as the main focus will rest on the EU institutions.

The highest level platform for EU foreign policy decision-making – the European Council – is composed of the MSs’ Heads of State and their respective Governments, as well as the European Commission President. The European Council plays a decisive role in defining both the strategic direction and the scope of the Union’s foreign policy. Most often the European Council adopts its decisions on the basis of the Council’s previous agreement’s or the HR/VP and/or the Commission proposals⁵.

The Council of the European Union plays a pivotal role in the process as well. It meets in ten different configurations, but for the purposes of study the Council will refer to the gathering of MSs’ external relations ministers, better known as the Foreign Affairs Council which is chaired by the HR/VP. Adoption of Council Conclusions, unlike legislation, does not require the Commission’s initiative and is used most frequently as will be evidenced in the sections that follow⁶.

Taking into account that in such areas as EU’s external action and external policies with external implications the Council and the European Parliament can adopt legislative acts and sign international agreements only on the basis of the Commission’s formal proposal, the exceptional role of the latter cannot be disregarded as well. According to Art. 207 of the Treaty on the Functioning of the European Union (TFEU)⁷ the Commission is also tasked with negotiations and drawing conclusions on behalf of the Union of the association and cooperation agreements. In CFSP/CSDP areas however, the Commission’s role is marginal, apart from the occasions where external action instruments are used (i.e. sanctions or humanitarian aid).

The role of the HR/VP in the Union decision-making process is the most complex, albeit indispensable. According to the TEU provisions (Art. 27, 30 and 42(2))⁸, and apart from presiding over Council meetings, the HR/VP may also submit initiatives and proposals to the Council regarding CFSP/CSDP matters. The HR/VP also has a duty to keep the European Parliament duly informed on all issues pertaining to its responsibility and to make sure that the views of the latter are taken into account (Art. 36)⁹. Additionally, the HR/VP takes part in the work of the European Council according to the provisions of Art. 15(2) TEU¹⁰.

³ EU, TEU, op. cit.

⁴ Ibid.

⁵ Keukeleire and Delreux, op. cit., p. 64

⁶ Ibid, p. 70

⁷ EU, TEU, op. cit.

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

When it comes to foreign policy issues, the European Parliament is not willing to be side-lined either. Therefore, it voices its opinion on the most significant issues through self-initiated reports, resolutions, parliamentary exchange of views, and Q&A sessions with or without representatives of the other relevant EU institutions.

Disregarding the complicated nature of the decision-making process in the EU and referring back to the multifaceted EU toolbox, it becomes evident that the Union is capable of going far beyond the declaratory policies in its relations with third parties. In applying all the possible FP instruments ranging from soft to hard, the EU is perceived to be well equipped to help third states deal with “protracted political, legal, institutional and other structural reforms”¹¹.

However, what looks clear and comprehensive on paper is anything but in practice. In reality, many factors initially not taken account kick in, thus making EU foreign policy quite complicated and extremely ambiguous to outsiders. At times it is also perceived as less powerful because the EU must entertain the enormously varying opinions and needs of its Members States, particularly regarding potential detriments that would hurt the majority to help the minority.

The degree of unity, consistency and effectiveness of the EU’s response is a core issue addressed in the empirical part, which scrutinises the development of bilateral relations between the EU and Ukraine, including the response of the former to the violation of sovereignty and the territorial integrity of Ukraine.

KEY ISSUES IN UKRAINE-EU RELATIONS

NEGOTIATIONS ON AN ASSOCIATION AGREEMENT

The 2004 ‘big bang’ enlargement turned the countries of Eastern Europe (Belarus, Moldova and Ukraine) into EU neighbours and has thus approximated former distant conflicts while overlooking undemocratic regimes closer to its borders. Such a disadvantageous neighbourhood prompted the EU to devise a separate strategy, which would stipulate reform processes via a system of encouragement and pressure (carrots and sticks according to Joseph Nye). Converting its newly acquired intentions of triggering positive transformations, the EU, however, failed to see the elephant in the room. By elaborating its unilateral policies, it has inadvertently antagonized Russia with its alternative integration project¹², which was supposed to be highly beneficial and attractive for its “new post-Soviet friends”.

At the 2007 Paris Summit, Ukraine was offered to begin negotiating a “new enhanced framework agreement” with the EU. This agreement was later labelled the Association Agreement (AA), which includes an Agreement on Deep and Comprehensive Free Trade Area as its most essential part. From the numerous references during more than a few dozen rounds of negotiations to its “comprehensive character”, “unprecedented ambition,” and “long-term perspective,” it was all clear that the EU tried to brand its proposal as the utmost form of incentive Ukraine could have received within the given circumstances. However, Ukraine had never been satisfied with the offer, as it had not managed to persuade the EU to recognize its

¹¹ Keukeleire and Delreux, op, cit., p.138

¹² Casier Tom, *The clash of integration processes? The shadow effect of the enlarged EU on its Eastern neighbours*. Palgrave Macmillan, United Kingdom, 2007, pp. 90-92

membership perspective throughout the five-year period of negotiations between 2007 and 2011. The EU's attempts to underscore Ukraine's championship among its neighbours of Eastern Partnership (launched in 2009 and covering Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine) did not bear sufficient fruit.

In the meantime, domestic political context in Ukraine had drastically changed. Elected in early 2010, President Yanukovich then appointed Prime Minister Azarov from the Party of Regions under the rhetoric of pro-EU relations. However, it became decidedly apparent that the newly elected leaders sought to distance Ukraine from the values preached by the European Union. In August 2011 criminal charges were laid against former Prime Minister Tymoshenko and other members of her Cabinet. In November of the same year Prime Minister Tymoshenko was sentenced to seven years in prison after being found guilty of abusing her office when brokering a gas deal with Russia in 2009. European institutions had in unison coined these developments as instances of selective justice and political persecutions, however their concerns and pleas to dismiss the court cases were not addressed. This made the signing of the AA in 2012 conditional upon progress in three key areas: (1) Ukraine's success in addressing the issue of selective justice and preventing its recurrence; (2) the compliance of the 2012 parliamentary elections with international standards; and (3) the implementation of the reforms that were defined in the Association Agenda. The clearly set demands consequently did not have a direct impact on improving the quality and enhancing the speed of required reforms. Thus, over the years the EU had changed the positive incentives rhetoric (benefits that Ukraine would gain from signing the AA) to negative incentive discourse (losses that Ukraine would bear if it did not move forward with reforms). This approach has been, however, harshly criticised both at the time of the actual events and again in retrospect. The EU's ambiguous stance caused dissatisfaction because it, in essence, made the future of Ukraine dependent on the fate of several former politicians who were accused of misdeeds similar to those done by officials in office who persecuted them. Secondly, Tymoshenko herself would have been much better off if the AA had been signed because Ukraine would have entered legally binding commitments to adhere to the rule of law and protection of human rights. To recap on Tymoshenko being not guilty, in recollection of events, it is also now known for a fact that in the 2015 presidential elections, she had failed to garner enough support to win, which had been indicative regarding the trust the Ukrainian population vested in the former "gas princess" and her conduct while in office.

To the credit of the EU it did not, nevertheless, suspend any capacity-building programmes it was implementing in Ukraine. In December 2012 Council Conclusions it reconfirmed its commitment to providing bilateral financial assistance for the purposes of Ukraine's modernisation included in the framework of the Energy Community Treaty¹³. Yet this move might also testify to the EU's self-interest in keeping its gas supply secure even though benign commitment to Ukraine's modernisation and endless efforts to keep Ukraine on track are indeed remarkable as well.

¹³ Council of the European Union, Council Conclusions on Ukraine, 3209th Foreign Affairs Council meeting, Brussels, 10 December 2012, retrieved from http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/134136.pdf

Despite an initially suspicious attitude directed towards President Yanukovich over his falsification of the presidential elections results in 2004, the EU leadership put effort into engaging with him and his aides without prejudice to his past records. High-profile envoys to Ukraine also known as the Cox-Kwasnewski Mission had completed almost thirty visits in order to persuade their Ukrainian interlocutors to find a solution to the political deadlock Ukraine was pushing itself into.

Within the same time period, the Mission of Ukraine to the EU reported around 300 annual visits of Ukrainian officials to Brussels for the purposes of taking part in negotiations, consultations, working meetings etc. Converting this quantitative data into the qualitative seems to legitimate that the EU did not give up on its attempts to socialise Ukrainian politicians and civil servants while familiarising them with EU norms and practices.

Yet despite the moderate nature (a give and take approach built on the “more for more” principle) of EU’s proposals, both Russia’s positive and negative incentives turned out to be stronger. Anxious about Kyiv’s “European choice” and its economic implications for bilateral Ukrainian-Russian relations, Moscow commenced applying economic sanctions against Ukraine in the summer of 2013. Its various measures targeted a ban on Ukrainian chocolate production (which eventually stimulated the biggest Ukrainian confectionary oligarch Poroshenko to protect his business interests through active political participation) and wholesale disruptions of customs operation at the border. Apart from using the sticks, Russia also tried to beat the EU in terms of its rewards to Ukraine for loyalty and partnership. In exchange for suspension of signing the Association Agreement for indefinite time, President Putin offered President Yanukovich a substantial discount in the price of natural gas and a loan of US \$17 billion¹⁴.

EUROMAIDAN PROTESTS AND CHANGE OF POWER IN UKRAINE

These asymmetrical proposals made Ukrainian authorities announce a suspension in the signing of the AA with the EU a week before the Eastern Partnership Vilnius Summit took place. This inevitably triggered a taking to the streets of pro-EU representatives of the civil society, who made Maidan, a central square in Kyiv, their place for protests. After any idealistic thinking that President Yanukovich would change his mind over concluding the deal with the EU in the Lithuania’s capital faded away, EU leaders began one by one expressing their disappointment and frustration. Commenting on the Ukrainian President’s decision, the High Representative Catherine Ashton remarked “a disappointment not just for the EU but, [...] for the people of Ukraine”¹⁵. Domestic unrest in Ukraine began to gather pace under the slogan of “EuroMaidan” and the EU would resolve it was a *fait accompli* for the time being¹⁶. Yet, to agree upon what would be an appropriate response measure was not an easy task for the Union. The EU’s initial “slowness and lack of boldness in responding to gathering events in Ukraine”¹⁷, was

¹⁴ Wierzbowska-Miazga Agata And Sarna Arkadiusz, “The Moscow Deals: Russian Offers Yanukovich Conditional Support”, Centre for Eastern Studies, December 18, 2013, retrieved from www.osw.waw.pl/en/publication/analyses/2013-12-18/moscow-deals-russia-offers-yanukovich-conditional-support

¹⁵ Gotev Georgi, Ukraine, EU dig in heels as Vilnius summit opens, Euractiv, 29 November 2013, retrieved from <http://www.euractiv.com/europes-east/yanukovich-cold-shoulders-eu-ukr-news-532035>

¹⁶ Haukkala Hiski, “From Cooperative to Contested Europe? The Conflict in Ukraine as a Culmination of a Long-Term Crisis in EU-Russia Relations”. *Journal of Contemporary European Studies*, Vol. 22 (1), March 2015, p. 33-34

¹⁷ Priedham Geoffrey, EU-Ukraine Relations and the Crisis with Russia, 2013-14: A Turning Point, [The International Spectator](http://www.theinternational.org) 10/2014; 49(4), p. 55

criticised by the United States, Ukrainian protesters (who displayed banners stating “Europe, where are you?”), and international press. For almost three months the EU did not make any official statements, but had instead engaged in intensive diplomatic activities. Kyiv was regularly visited by the then Enlargement Commissioner, Štefan Füle, and EU High Representative Catherine Ashton, who had taken upon themselves the roles of mediators between the incumbent authorities and the opposition.

In its Council Conclusions on Ukraine adopted on 10 February 2014¹⁸, the EU foreign ministers renewed their commitment to supporting Ukraine’s reform course and expressed their concern over continuing political crisis on the ground. However, they remained silent about the EU’s practical proposals and restricted themselves to declaring that the EU was ready to take further action without indicating what these possible measures would be.

In reaction to the mid-February shootings in Maidan, which took the lives of approximately one hundred people (“the Heavenly hundred”), the Council iteratively adopted Conclusions on Ukraine on 20 February introducing for the first time the “targeted sanctions including asset freeze and visa ban against those responsible for human rights violations, violence and use of excessive force”¹⁹. Since then the Council has adopted and strengthened a variety of other restrictive measures which would be given a closer look in a separate section.

The Conclusions of 20 February implied that the foreign affairs ministers had underscored that finding a solution laid “squarely with President Yanukovich and the Ukrainian authorities”. To support this line of thinking, three EU foreign ministers (Radosław Sikorski of Poland, Laurent Fabius of France, and Frank-Walter Steinmeier of Germany) flew to Kyiv to mediate an agreement between President Yanukovich and opposition leaders in order to persuade the former to schedule early elections. The brokered deal, however, did not in fact hold for even a day, as President Yanukovich fled from Kyiv the following morning²⁰. Omitting a detailed description of related rapidly evolving events it is worth mentioning at this point that for the first three months since the beginning of the peaceful protests, which steadily grew into violent clashes, the EU has restricted itself to diplomatic efforts in a form of Council Conclusions and mediation done by HR/VP and Enlargement Commissioner.

An overview summarising the key developments in Ukraine and EU-Ukraine relations is provided in the timeline below.

¹⁸ Council of the European Union, Council Conclusions on Ukraine, Foreign Affairs Council meeting, Brussels, 10 February 2014, retrieved from

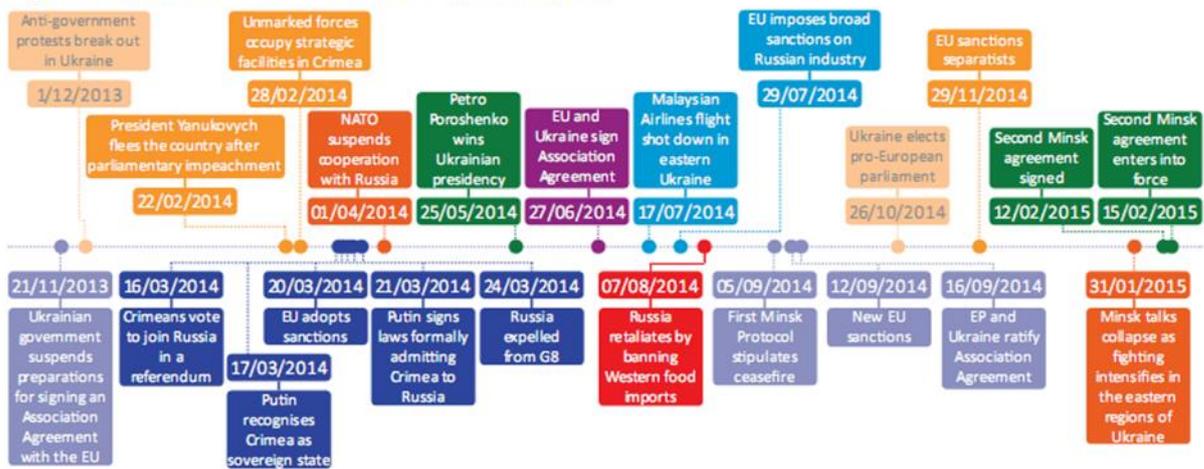
https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/140960.pdf

¹⁹ Council of the European Union, Council Conclusions on Ukraine, Foreign Affairs Council meeting, Brussels, 20 February 2014, retrieved from

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/141110.pdf

²⁰ Pridham, op. cit, p. 55-56

Figure 2 – Timeline: November 2013 – February 2015



AN ASSOCIATION AGREEMENT AFTER THE CHANGE OF POWER THROUGH TODAY

Since the resignation of Prime Minister Azarov on 28 January²¹ and the ousting of President Yanukovich on 22 February, the EU and Ukraine have reopened the issue of signing the Association Agreement. Political provisions of the Association Agreement were signed on 21 March²² with the newly appointed Prime Minister Yatsenyuk as a sign of “steadfast support for the course the people of Ukraine have courageously pursued”. On 17 March the Council had confirmed the EU commitment to sign the rest of the AA provisions²³, however, the EU remained cautious regarding such an offer before the presidential elections scheduled for 25 May took place. The delay was justified by a necessity to complete technical preparations that the Council had mandated for the signing of the AA on 23 June²⁴. The rest of the AA provisions with Ukraine, in addition to the full texts of AAs with Georgia and Moldova were signed on 27 June on the margins of the European Council in Brussels²⁵. Simultaneously the endorsement for provisional application of free trade and the Agreement upon the parliamentary approval was received.

In spite of coordinated AA signing by the European Parliament and the Verkhovna Rada of Ukraine on 16 September, provisional application of DCFTA was not enforced. Instead, as of 1 November, the EU and Ukraine apply political provisions (including sections on the respect of human rights, fundamental freedoms, and rule of law; political dialogue and reform; justice, freedom and security; economic and financial cooperation, etc.). The reason for postponement of the application of trade until 1 January 2016 was due to the objections which the Russian Federation had raised.

²¹ Olearchuk Roman, Ukraine’s Prime-Minister Mykola Azarov resigned, Financial Times, 28 January 2014, retrieved from <http://www.ft.com/intl/cms/s/0/de30824c-87f6-11e3-8afa-00144feab7de.html#axzz3ZS90GlzT>

²² European Council, Statement by President of the European Council Herman Van Rompuy at the occasion of the signing ceremony of the political provisions of the Association Agreement between the European Union and Ukraine, Brussels, 21 March 2014 EUCO 68/14, retrieved from http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/141733.pdf

²³ Council of the European Union, Council Conclusions on Ukraine, Foreign Affairs Council meeting, Brussels, 17 March 2014, retrieved from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/141601.pdf

²⁴ Council of the European Union, Technical preparations for signing the Association Agreement with Ukraine finalised, Luxembourg, 23 June 2014 11067/14 (OR. en) PRESSE 345,

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/143309.pdf

²⁵ European Union, External Action, EU forges closer ties with Ukraine, Georgia and Moldova, Brussels, 27 June 2014, retrieved from http://www.eas.europa.eu/top_stories/2014/270614_association_agreement_en.htm

This made the European Union extend unilateral trade preferences, which it granted to Ukraine in April 2014²⁶ until the end of 2015²⁷. According to the Commission, once the DCFTA is in force, it will save Ukrainian exporters almost €500 million annually.

Presently both sides continue consultations within trilateral ministerial meetings (26 August in Minsk, 11 July and 12 September in Brussels) at the expert level. According to high-ranking officials from the Commission at the EU, the Russian Federation has failed to provide any credible data of how EU-Ukraine DCFTA might damage Russia's economic interest. Therefore, it is quite apparent that Russia has been using its economic power for political blackmail. Disappointingly, the EU has been backtracking in attempts to accommodate Russia's demands despite the continuous reiteration that third countries should not have a say in EU's bilateral relations with its partners.

As regards the ratification process launched by the national parliaments at the eve of the Riga Summit of the Eastern Partnership, 18 out of 28 legislatures have completed the EU-Ukraine AA endorsement procedures. And eight others are currently at various stages of ratification. Among those that have not yet started are Austria, Cyprus, Greece, and Italy that traditionally take an opposing stance on Ukrainian matters and can therefore slow down the process particularly towards the end of its completion²⁸. The speed of AA ratification might be assessed in two ways: on the one hand, in comparison to a four-year term for the Partnership and Cooperation Agreement ratification, AA ratification moves relatively speedily. On the other hand, considering that the AA is a duly-elaborated framework document (much more technical than other European Agreements or Stabilisation and Association Agreements) which was negotiated for five years, and ready to be signed in 2011, the process is advancing quite slowly.

²⁶ Council of the European Union, European Parliament, REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 374/2014 on the reduction or elimination of customs duties on goods originating in Ukraine, Brussels, 23 October 2014, retrieved from <http://register.consilium.europa.eu/doc/srv?l=EN&f=PE%2093%202014%20INIT>

²⁷ Council of the European Union, Ukraine: unilateral trade measures extended, PRESS RELEASE ST 14689/14 PRESS 554 Brussels, 24 October 2014, retrieved from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/145390.pdf

²⁸ Institute of World Policy, Ratification of the Association Agreement (Infographic), 18 May 2015, retrieved from <http://iwp.org.ua/eng/public/1522.html>



RATIFICATION OF THE ASSOCIATION AGREEMENT BETWEEN UKRAINE AND THE EU

18 out of **28** EU MEMBER STATES HAVE COMPLETED THE PROCEDURE OF RATIFICATION OF THE ASSOCIATION AGREEMENT AND 6 STATES ARE GOING TO COMPLETE THE PROCESS OF RATIFICATION

DATA ON 14.05.2015



JEAN-CLAUDE JUNCKER,
the President of the European Commission:

The European Commission and European Council want that the Free Trade Agreement between the EU and Ukraine fully enter into force on January 1, 2016. We do not think that any postponements will be a good idea. (27.04.2015)



PAVLO KLIMKIN,
the Minister of Foreign Affairs of Ukraine:

Not a single word in the Agreement will be changed either today, or in the future. Consider that our priority of principle. (23.04.2015)

This infographic has been created on request of the IWP within the «Initiative for Development of Ukrainian Think Tanks» conducted by the International Renaissance Foundation (IRF) in association with the Think Tank Fund (ITF) and with financial support by the Swedish Embassy in Ukraine (SIDA).



INCREASED COOPERATION AND SUPPORT OF UKRAINE

In view of a worsening economic and security situation in Ukraine, the European Commission on behalf of the European Union, has rapidly stepped up its support to the Ukrainian economy. On 5 March 2014, the European Commission released a Memo indicating that over the course of the following years, Ukraine would receive up to €11 billion in assistance for economic and political reforms²⁹. It was mentioned, however, that in order to unlock the assistance, it was imperative for Ukraine to meet IMF requirements.

In an unprecedented decision on 9 April, the European Commission created a Support Group for Ukraine (the first time for any third country), whose main goal is to help Ukraine advance in elaboration and implementation of comprehensive reform programs³⁰. The Group is chaired by the Deputy Director General in the Trade Directorate-General and is composed of around 30 full-time officials in addition to national experts and to both temporary and contract agents. The departing point for the Group is the “European agenda for reform” document, which was elaborated in cooperation with Ukrainian authorities in order to coordinate EU short- and mid-term support actions. Following these arrangements, the first meeting between President Barosso and Prime Minister Yatsenyuk took place in Brussels on 13 May. Furthermore on 8 July, the “High level meeting on Ukraine: coordinating and implementing the international support” was held in Brussels.

To help Ukraine breach its short-term balance of payments and fiscal vulnerabilities, the EU has also dispersed over €3 billion through Ministry of Foreign Affairs programs (decisions made on 8 January and 21 April 2015).

Besides financial and economic assistance, the EU has also provided significant amounts of humanitarian aid. To date the figures reach €26 million for EU institutions alone and around €90 million if calculated collectively with bilateral support of MSs, 55 % of which were allocated to meet the needs of the Ukrainian population in areas affected by the conflict and not controlled by the government.

RUSSIAN OCCUPATION OF CRIMEA AND AGGRESSION IN EASTERN UKRAINE

When contemplating the events of the winter of 2014, it is imperative to mention that Russia took advantage of political turmoil in Kyiv by sending, on 27-28 February, pro-Russian militias to seize local authorities’ buildings in the Crimean capital, Simferopol, and unidentified gunmen (representing the Russian special forces and military intelligence³¹) in combat uniforms to take over further control³². The second extraordinary Council meeting summoned in response to Russia’s illegitimate moves on 3 March 2014, condemned the explicit violation of Ukrainian territorial integrity and sovereignty along with the Federation Council of Russia authorization to use armed force on Ukrainian territory given on 1 March.

²⁹ European Commission, European Commission's support to Ukraine, Brussels, 5 March 2014, retrieved from http://europa.eu/rapid/press-release_IP-14-219_en.htm

³⁰ European Commission, Support Group for Ukraine, Press Release, 9 April 2014, retrieved from http://europa.eu/rapid/press-release_IP-14-413_en.htm

³¹ Haukkala, op. cit., p. 34

³² BBC News, Ukraine crisis: Timeline, 13 November 2014, retrieved from <http://www.bbc.com/news/world-middle-east-26248275>

Statements issued following the extraordinary European Council meeting on 6 March³³ reiterated the unacceptability of the actions of the Russian Federation and condemned the Autonomous Republic of Crimea Supreme Court decision to hold a referendum on the future status of Crimea. The European Council followed up with the Council Conclusions of 3 March³⁴ and made the decision to suspend bilateral talks with the Russian Federation on the New Agreement, visa matters, and the G8 Summit in Sochi, which was set for June 2014. Additionally it has also indicated that should Russia fail to deescalate the conflict, the Commission and the EEAS would proceed with putting forward restrictive measures.

On 16 March a hastily prepared illegal referendum in Crimea was held to determine if Crimea should join the Russian Federation. The Pro-Russian majority of the Crimean peninsula overwhelmingly voted in favor of the referendum and the Russian Federation was quick to incorporate the area into its sovereignty. In Council Conclusions of 17 March³⁵, the EU condemned, in the strongest terms possible, the presence of armed soldiers at polling stations and went on to state that they did not recognize the outcome of the unlawful referendum. The Council also decided that due to a lack of progress on the Russian side, they would “introduce additional measures, including travel restrictions and an asset freeze against persons responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, including actions on the future status of any part of the territory which are contrary to the Ukrainian Constitution, and persons, and entities associated with them”³⁶.

On 20 March the European Council³⁷ condemned the illegal annexation of Crimea and tasked the Commission to assess its legal ramifications and to put forward proposals regarding financial, economic, and trade restrictions for immediate implementation. The EU officials had also decided to cancel the EU-Russia Summit and took note of the Member States’ suspension of regular bilateral summits. They also welcomed the deferral of negotiations over Russia’s accession to Organisation for Economic Co-operation and Development (OECD) and the International Energy Agency (IEA) as well as exclusion of Russia from the G8 Group and relocation of the Summit to The Hague.

For the first time ever, the European leaders mentioned in this Conclusions that the EU stood ready to draw up an EU mission should the OSCE fail to agree on the composition and mandate of a mission of its own. However, as it will become evident from the follow-up statements and conclusions, the EU had later on rejected the idea of moving forward with this proposal.

³³ European Council, Council of the European Union, Extraordinary meeting of EU Heads of State or Government on Ukraine, 6 March 2014, retrieved from <http://www.consilium.europa.eu/en/meetings/european-council/2014/03/06/>

³⁴ Council of the European Union, Council Conclusions on Ukraine, Foreign Affairs Council meeting, Brussels, 3 March 2014, retrieved from https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/141291.pdf

³⁵ Council of the European Union, Council Conclusions on Ukraine, Foreign Affairs Council meeting, Brussels, 17 March 2014, retrieved from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/141601.pdf

³⁶ Ibid

³⁷ European Council, Conclusions, EUCO 7/1/14 REV 1, Brussels, 21 March 2014, retrieved from https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/141749.pdf

Instead “in times of serious budgetary constraints, sanctions seem to have become the EU’s new default response”³⁸ to Russia’s destabilising moves in Crimea and Eastern Ukraine. However, despite a rather fast pace in elaborating and applying case-specific sanctions, the main challenge for the EU remains in keeping the sanctions effective and adequate to the objectives it has declared. “While [...] a symbolic use of sanctions obviously satisfies a political need, it can also be quite counterproductive. If sanctions regularly do not have the desired results, they signal not just moral condemnation but also the impotence of the organization doing the sanctioning and end up undermining the authority and credibility of the EU”³⁹. The Council adopting the decisions on applying sanctions needs to be very cautious not too damage the EU’s reputation on the one hand and going far enough to make Russia submit and retreat in face of pressure.

In the case of Ukraine, despite regular strengthening and prolongation of EU’s sanctions⁴⁰ against the Russian Federation, their real impact still remains questionable. Thus far, Russia has completely ignored any signaling attempts as a form of political pressure that the EU has tried to amount. Neither has it changed its course, nor has it limited its provocative behavior or entered any obligations to seize destabilization of the situation that it would adhere to. On the contrary, the day after the imposing of sanctions, its leadership signed the treaty annexing Crimea to the Russian Federation⁴¹. Both Minsk I and Minsk II agreements over conflict resolution in Eastern Ukraine had been violated in a similarly unscrupulous way.

The next step in applying restrictions was travel bans and asset freezes of a number of Russian individuals and entities that played a constrained role throughout the crisis; however this did not create any lasting damage or make a sustained impact. In choosing which individuals and entities to target, the Council had to consider the fact that its listings can be brought before the General Court of the EU. On prior occasions the Court had ruled that EU decisions on sanctions were breaching fundamental rights of individuals⁴² and thus, not allowed. It is much more difficult for the EU, than say the US, to put restrictive measures on the oligarchs backing the policies of President Putin unless there is clear evidence of their involvement in the violation of Ukrainian territorial integrity, sovereignty, and independence.

The situation with third-level economic sanctions, however, which were meant to coerce Russia to step down its aggression, is somewhat different. Russia is heavily dependent on its trade with the EU. 45% of its imports in goods and services originate from EU Member States. More than half of its budget is filled with revenues for gas and oil sold to the EU. Regarding the latter, however, Russia accounts for approximately 10% of the EU’s trade. Gas imports from Russia constitute roughly 30% of total gas supply, but this is only 6% of the overall EU energy mix⁴³. Thus, irrespective of some MSs larger dependency on Russian energy resources than on others,

³⁸Lehne, Stefan, “The Role of Sanctions in EU Foreign Policy”, Carnegie Endowment for International Peace, 14 December 2012, retrieved 10 November 2014, <http://carnegieendowment.org/2012/12/14/role-of-sanctions-in-eu-foreign-policy/etnv>

³⁹ Lehne, *op.cit*

⁴⁰ The European Council on 19 March 2015 agreed that the duration of the restrictive measures against the Russian Federation, adopted on 31 July 2014 and enhanced on 8 September 2014, should be clearly linked to the complete implementation of the Minsk agreements.

⁴¹ *Ibid*

⁴² See, for instance, Kadi case retrieved 10 November from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005J0402:EN:HTML>

⁴³ Ivan, *op cit*

in sum, the Russian Federation is much more dependent on its economic relations with the EU than vice versa. Under these circumstances, coercing Russia with economic punishments is supposed to yield the most dramatic result. The EU's increased confidence following the downing of the MH17 commercial airliner has still been met with a detrimental amount of precaution. There are two reasons for this: first, the EU cannot afford to undergo substantial economic losses because of its sanctions policy, and secondly, it has to bear in mind that Russia could retaliate at any given time. As a result, the EU has kept up its declaratory policy of supporting Ukrainian sovereignty, territorial integrity, and independence but put its words in practice only to a limited extent, which enables the EU to keep its balance sheet vis-à-vis Russia with positive-sum calculations.

EU MEDIATION AND FACILITATION OF CONFLICT RESOLUTION

Since the beginning of the societal unrest in Ukraine the EU first increased its diplomatic presence, then began to mediate between Ukrainian authorities and opposition, and then later between the new Ukrainian leadership and the Russian Federation.

In line with its commitment to “facilitate and engage in a meaningful dialogue involving Ukraine and Russia, including through the establishment of a multilateral mechanism, with a view to finding a political solution⁴⁴,” the European Union charged the HR/VP to mediate in Geneva talks on de-escalation of the crisis in Ukraine on 17 April 2014. In the Joint Statement of the European Union, the Russian Federation, the United States and Ukraine, three former participants agreed to support the OSCE Special Monitoring Mission including by providing monitors⁴⁵.

In a statement by the G7 leaders and the Presidents of the European Council and the European Commission adopted on 26 April, positive steps taken by Ukraine under the Geneva accord were praised while Russia was condemned in the strongest terms politically possible for neither supporting the accord, nor convicting the acts of pro-separatists seeking to destabilize Ukraine, nor calling on armed militants to peacefully leave the government buildings they had occupied⁴⁶.

Following negotiations in Minsk on 26 August and in accordance with the Minsk Protocol of 5 September and the Minsk Memorandum of 21 September, the Council agreed to commission the EEAS to carry out a comprehensive review of the implementation of the agreements reached⁴⁷. In its conclusions the EU stated that should both sides stick to the peace plan, sanctions could be reviewed and rescaled.

⁴⁴ European Council, Conclusions on Ukraine approved by the European Council, Brussels, 20 March 2014, retrieved from http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/141707.pdf

⁴⁵ European Union, External Action Joint Statement, Geneva Statement on Ukraine, 140417/01, Geneva, 17 April 2014, retrieved from http://eeas.europa.eu/statements/docs/2014/140417_01_en.pdf

⁴⁶ European Commission, G-7 Leaders Statement on Ukraine, Press Release, Brussels, 26 April 2014, retrieved from http://europa.eu/rapid/press-release_MEMO-14-318_en.htm

⁴⁷ European Union, External Action, Fact Sheet, EU-Ukraine relations, Brussels, 24 April 2015 150424/05, retrieved from http://www.eeas.europa.eu/statements/docs/2014/140514_02_en.pdf

During the first Council meeting under the chairmanship of the newly appointed HR/VP Federica Mogherini on 17 November 2014⁴⁸, Ukraine was again the centre of discussion among EU Foreign Ministers. Alarmed by the heavy shelling and reports of convoys in separatist held areas with substantial heavy weapons, tanks and troops without insignia from across the Russian border, the Council urged all parties to fully implement the Minsk Protocol and Memorandum without further delay.

Commissioner for European Neighborhood Policy & Enlargement Negotiations Johannes Hahn visited Ukraine for the first time on 27-28 November 2014⁴⁹ while HR/VP Federica Mogherini paid her first visit on 16 December in order to meet with key Ukrainian political figures⁵⁰.

On 21 January the Ministers of France, Germany, Russia and Ukraine met in Berlin to discuss the possible solutions to the conflict⁵¹. A few weeks later, on 11-12 February 2015 Chancellor Angela Merkel and President François Hollande met again in Minsk in order to facilitate the negotiations between President Poroshenko and President Putin. HR/VP Mogherini has praised these efforts as “going in the right direction”⁵² while at the same time showing a lack of personal commitment to the Ukrainian case (in the first half of 2015 she has twice cancelled her visits to Ukraine) despite a formal obligation to “conduct political dialogue with third parties on the Union’s behalf” (Art. 27(3)). Assessed together with a lack of follow-up steps despite a promise to do so in a view of persisting violation by Russia of Minsk I and II accords, the EU’s inconsistency in keeping its word exposes serious loopholes in the EU’s foreign policy.

EU ADVISORY MISSION

To void itself from the criticism of CFSP/CSDP inoperability, the Council decided to assist Ukraine in the field of civilian security sector reform, support of police, and rule of law. In this regard the Council tasked the EEAS to deploy an expert mission to prepare for appropriate assistance complementary with on-going efforts in order to elaborate a Political Framework for Crisis Approach (PFCA)⁵³.

The Council approved the Operational Plan of the EU Advisory Mission for Civilian Security Sector Reform (EUAM Ukraine) in response to its conclusions of 23 June⁵⁴. Since 1 December 2014 the Mission became operational. Its budget for the next year is €13 million. Despite the utility of the proposed support, it may appear to insiders that by taking this action the EU has

⁴⁸ Council of the European Union, Council Conclusions on Ukraine, Foreign Affairs Council meeting, Brussels, 17 November 2014, retrieved from

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/145789.pdf

⁴⁹ European Commission, EU will continue to support Ukraine, Statement, Brussels, 1 December 2014, retrieved from http://europa.eu/rapid/press-release_STATEMENT-14-2267_en.htm

⁵⁰ European Union, External Action, Fact Sheet, EU-Ukraine relations, Brussels, 24 April 2015 150424/05, retrieved from http://www.eeas.europa.eu/statements/docs/2014/140514_02_en.pdf

⁵¹ European Union, External Action, Statement by the Spokesperson on the latest developments regarding the situation in Eastern Ukraine, Brussels, 23 January 2015, 150123_03, retrieved from http://eeas.europa.eu/statements-eeas/2015/150123_03_en.htm

⁵² European Union, External Action, Statement by High Representative/Vice-President Federica Mogherini on the announcement by Chancellor Merkel and President Hollande, Brussels, 05 February 2015, 150205_01, retrieved from http://eeas.europa.eu/statements-eeas/2015/150205_01_en.htm

⁵³ Council of the European Union, Council Conclusions on Ukraine, Foreign Affairs Council meeting, Luxembourg, 14 April 2014, retrieved from

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142223.pdf

⁵⁴ *ibid*

entirely missed the point. It launched the CSDP mission to make its policy operational, but it miscalculated the most pressing issues on the ground. The biggest dividing line has shifted from internal Ukrainian conflict to a Ukrainian-Russian conflict that has profound, severe, and lasting worldwide implications. Therefore, while the necessity to address the integrity of services in charge of public order definitely exists, the more prominent challenge is to deal with the deteriorating security situation in Eastern Ukraine.

Meanwhile in almost all Council Conclusions⁵⁵, the Council on behalf of the EU emphasized its own commitments as well as the dedication of its Member States to provide both increased financial support and in kind support to the OSCE Special Monitoring Mission while recalling the importance of coordination and coherence with other EU efforts including the OSCE and other international actors⁵⁶.

EU STRATEGIC COMMUNICATION AND OTHER EMERGING ISSUES

For the first time EU's concern over the Russian propaganda campaign directed towards the EU, its eastern neighbours and Russia itself, was voiced in paragraph 27 of the European Parliament resolution of 15 January 2015⁵⁷. In its resolution the EP called on both the Commission and Commissioner Hanh to prepare and present to the Parliament within two months a communication strategy to counter Russian disinformation. Apparently the Enlargement Commissioner has yet to present this strategy.

In March the Council in its turn tasked the HR/VP to step up efforts, in cooperation with Member States and EU institutions, to further improve strategic communication in support of EU policies and to explore options for the establishment of a dedicated communication team to lead these actions⁵⁸. However, as one of the members of the European parliament commented; HR/VP Mogherini's proposals will hopefully be good, but fearfully, not really. The biggest challenge for the EU will be to catch up with Russia's information strategies, which they have been steadily investing in since early 2000, while the EU has little to no resources. The communication team, referenced above is, for example, is set to include only four people seconded by Member States. Thus, with launching a discourse on combatting Russian propaganda through its strategic communication, the EU has opened yet another Pandora's box, while disclosing the disunity of its institutions and internal processes.

⁵⁵ Council of the European Union, Council Conclusions on Ukraine, Foreign Affairs Council meeting, Luxembourg, 20 October 2014, retrieved from

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/145211.pdf

⁵⁶ Council of the European Union, Council Conclusions on Ukraine, Foreign Affairs Council meeting, Luxembourg, 23 June 2014, retrieved from

http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/143341.pdf

⁵⁷ Council of the European Union, Council Conclusions on Ukraine, Foreign Affairs Council meeting, 29 January 2015, retrieved from <http://www.consilium.europa.eu/en/press/press-releases/2015/01/council-conclusions-ukraine/>

⁵⁸ European Council, Council of the European Union, European Council Conclusions on external relations, 19 March 2015, retrieved from <http://www.consilium.europa.eu/en/press/press-releases/2015/03/conclusions-russia-ukraine-european-council-march-2015/>

CONCLUSION

Political last will of the former President of the European Council Herman van Rompuy to his successor and colleagues from the other EU institutions was to learn to “never waste a good crisis”⁵⁹. However, as with everything in the EU things are easier said than done.

As the findings of the current research expose, the EU acts in a truly coherent way in the areas where it has an exclusive competence such as allocation of financial aid or provision of humanitarian assistance. Since the emergence of Ukrainian crisis the Commission has systematically stepped up its support and even went as far as to unprecedentedly create the Support Group for Ukraine to streamline its efforts and oversee the way the reform process in Ukraine is going. Albeit, the reforms in some of the sectors are reported to move steadfast much better than in the others (with a notable progress in energy policy and judicial reform⁶⁰), the mere fact on the part of the EU of trying to tackle the issue in a systematic and cohesive manner are praiseworthy. Not least because in the reform process the most crucial role belongs to domestic actors and not external players.

Similarly commendable are the EU decisions to apply unilateral preferences until the provisional application of the DCFTA regulations start taking place. EU’s inconsistency as for giving in towards Russia’s demands regarding opening of the consultations over the AA implementation despite priory bold statements on acceptability of such a move are disappointing, albeit acknowledged to be a necessary move. The good thing is that the EU decided to vouch for Ukraine and insist on inadmissibility of any amendments demanded by the Russia Federation to the AA. The sad thing is that the EU’s calculation time and time again seem to be rather strategic than normative.

Throughout the Ukrainian crisis the EU and namely the Council (followed by the European Council) has showed a great degree of unity, which prior to the conflict was unheard of. Its vocal condemnations of the Russian aggression, however, have not found its proper reflection in the follow-up measures. The four-level sanctions have so far failed to deter Kremlin from further destabilising the situation in Eastern Ukraine and enrooting the governance of the Russian Federation in the Autonomous Republic of Crimea. EU’s most efficient tool capable to put an end to a conflict – launch of the CSDP/CFSP mission in the East or at least undercover approval for its Member States to provide the defensive weaponry – has always been out of scope of feasible measures. Yet, the core reason for that was neither EU’s lack of capabilities or resources (currently the EU runs 5 military missions and 11 civilian ones including two in Ukraine⁶¹), but rather a lack of political will and unity among foremost the Ministers for Foreign Affairs of the MSs as well as Heads of States and Governments. Such circumstance is quite telling as despite the HR/VP’s and European Council President’s responsibility to ensure EU’s unity and coherence, this requirements still remains unmet. While the general milieu and other crisis situations the EU is presently dealing with definitely have their role to play, personalities matter as well.

⁵⁹ Herrnan van Rompuy, Lecture on “Leadership in the European Union”, 27 April 2015, College of Europe

⁶⁰ Interview with the member of the Support Group taken on 5 June 2015

⁶¹ European Union, External Action, Ongoing missions and operations, retrieved from <http://www.eas.europa.eu/csdp/missions-and-operations/>

HR/VP Mogherini who is supposed to play a key role in facilitating the EU's elaboration of its comprehensive policies towards Ukraine seems less interested in the region. Commissioner Hanh have not so far proved himself an active supporter of Eastern partners, including Ukraine, although a step forward in the right direction was laid in this regard at the Eastern Partnership Riga Summit.

Deriving on the practices from previous crisis situations a logical step for the EU in tackling the issue would be an appointment of the Special Representative. His/her task would be to breach all the policies the EU is devising towards Ukraine and to bring its tools into coherence.

Another window of opportunity would be to add security dimension to the Eastern Partnership initiative trying to deal with the matter not only in Ukraine, but in a wider Eastern European and Southern Caucasian region as Georgia and Moldova are facing similar challenges to the ones Ukraine has been recently going through.

Last, but not least the EU could seize a chance and adopt its approach to separate countries in the region through the ENP review. It has now actively engaged the non-state actors in partner states into the process of elaborating recommendations. Hopefully, this time the concept of "joint ownership" will not remain a theory, but will instead be put into practice. Reliance on local experience and responsiveness to demands of the societies in the partner countries might prove to be a powerful instrument, capable of preventing the EU from getting lost in its internal bureaucracy and proving instead a common solution both internally and in cooperation with its neighbours, among them Ukraine.

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