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*The EU's Russia Sanctions:  
Geopolitical Changes Leading to a New  
Understanding of the EU's Common Foreign  
and Security Policy*

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# **The EU's Russia Sanctions: Geopolitical Changes Leading to a New Understanding of the EU's Common Foreign and Security Policy**

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## **Abstract**

The external relations law of the European Union (EU) is one of the areas most affected by recent geopolitical events. Russia's unlawful invasion of Ukraine is the most visible event in this regard. In response, the intergovernmental body of the EU, the Council of the EU, recently unanimously adopted thirteen sanction packages under Article 29 TEU. The Foreign Affairs Council (FAC) has never adopted so many sanction packages in such short order. While it was thought the EU could not act swiftly in Common Foreign and Security Policy (CFSP), the subsequent sanction packages have proven otherwise. This Working paper seeks to analyse the impact of the new Russian security threat on the EU's external relations law through two different lenses. First, has the invasion of Ukraine strengthened the EU's sanction competence under Article 29 TEU? Second, is unanimity on sanctions policy within the Member States desirable and achievable in the 21st century, and if not, are there other options available? The recently resurfaced academic debate about unanimity in CFSP provides ample background to investigate those questions. The Member States' divergent views highlight the precarious status in which the EU is manoeuvring regarding sanctions policy. Therefore, this Working paper analyses the challenges and changes the Russian invasion of Ukraine brought to the EU's CFSP in law-making and practice.

## **Keywords**

EU External Relations Law, EU Foreign Policy, EU Russia Sanctions, Geopolitics, Common Foreign and Security Policy

## 1. Introduction

“From day one, Europe has stood at Ukraine’s side. With weapons. With funds. With hospitality for refugees. And with the toughest sanctions the world has ever seen. Russia’s financial sector is on life-support. We have cut off three quarters of Russia’s banking sector from international markets. Nearly one thousand international companies have left the country. And I want to make it very clear, the sanctions are here to stay.”<sup>1</sup> – European Commission President Ursula von der Leyen in 2022

The war that erupted in Europe in 2022 changed many long-held beliefs of European law and politics. It propelled the European Union (EU) into dealing with war at its borders. As a result, the EU proclaimed to have become more geopolitical in its thinking and strategy<sup>2</sup>, as stressed by European Commission (Commission) President von der Leyen in her 2022 State of the European Union Address (SOTEU): “There is almost unanimous agreement that Russia’s invasion of Ukraine has catapulted the European Union toward greater geopolitical assertiveness and unity.”<sup>3</sup> The Russian war on Ukraine is a challenging moment for the European project and the EU’s Common Foreign and Security Policy (CFSP). The developments brought a new dynamic into this policy field, as Commission President von der Leyen highlighted in her 2022 SOTEU: “The war seems to have unlocked more progress on EU foreign and security policy in a few months than was achieved in previous decades.”<sup>4</sup> The present Working paper will critically analyse this progress.<sup>5</sup>

The Foreign Affairs Council (FAC) adopted thirteen sanction packages under Art. 29 of the Treaty on European Union (TEU) in response to the war. Never in the EU’s existence has the FAC adopted so many sanction packages in such short order. While it was thought the EU

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<sup>1</sup> Ursula von der Leyen, *State of the Union Address 2022* (European Commission Press Office 2022).

<sup>2</sup> See, for example, the statements by EU’s HR/VP in Borrell J, ‘Europe in the Interregnum: our Geopolitical Awakening after Ukraine (24 March 2022)’, European Union External Action Service.

<sup>3</sup> Ibid.

<sup>4</sup> Richard Youngs, ‘The Awakening of Geopolitical Europe (28 July 2022)’, Carnegie Europe.

<sup>5</sup> This working paper is also forthcoming in Kirst, N. (2025). The EU’s Russia Sanctions: Geopolitical Changes Leading to a New Understanding of the Common Foreign and Security Policy. In: Neuman, M., Wessel, R.A., de Zee, T. (eds) *A Geopolitical Europe in the Making? Global Europe: Legal and Policy Issues of the EU’s External Action*, vol 5. T.M.C. Asser Press, The Hague. [https://doi.org/10.1007/978-94-6265-666-6\\_2](https://doi.org/10.1007/978-94-6265-666-6_2).

could not act swiftly in CFSP, the subsequent sanction packages have proven otherwise.<sup>6</sup> The sanction packages against Russia have proven the EU's ability to act in the field of CFSP and surprised many of its allies with its swiftness. It also opened a debate about whether the EU's foreign policy machinery is up to date.<sup>7</sup>

This Working paper is structured around the research question of whether the new Russian security threat changed the EU's external relations law and practice, specifically regarding the EU's sanction policy. Therefore, it will analyse the current CFSP framework through the lens of the EU's sanction policy on Russia, questioning whether the recent geopolitical transformations warrant a change to the EU's CFSP framework. This theme leads to two sub-questions this Working paper seeks to answer. First, has the invasion of Ukraine strengthened the EU's sanction competence under Art. 29 TEU? Second, is unanimity on sanctions policy within the Member States achievable and desirable in the 21st century, and if not, are there other options available? The Working paper is structured as follows to answer those questions: First, the EU's shift from geoeconomic instruments to a stronger CFSP is used as the backdrop for analysing the sanction packages. Second, the sanction packages against Russia will be analysed, and disagreements among the Member States will be shown. Third, the current choke points of the EU's CFSP will be examined with a specific focus on unanimity requirements and the possibility of constructive abstention. Fourth, the possibilities for reform in the medium-term will be studied by looking at the relevant Treaty articles, explicitly focusing on the passerelle clause in the EU's CFSP framework.<sup>8</sup> Finally, a conclusion will summarise the findings and answer the research questions.

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<sup>6</sup> Following the Russian invasion of Ukraine in February 2022, the EU implemented an unprecedented set of sanctions against Russia. So far, the EU has adopted thirteen packages of sanctions against Russia in response to Russia's war on Ukraine. See 'Russia: two years after the full-scale invasion and war of aggression against Ukraine, EU adopts 13th package of individual and economic sanctions (23 February 2024)', Press Release 146/24 (Brussels, Belgium: Council of the EU Press Office).

<sup>7</sup> Szép, Viktor (2023), 'Making EU Foreign Policy More Effective: Qualified Majority Voting on the Horizon? (2 May 2023)', in Judy Dempsey (ed.), *Judy Dempsey's Strategic Europe* (Carnegie Europe).

<sup>8</sup> Passerelle is French for a 'small bridge' and means a clause in the EU Treaties that allows the alteration of a legislative procedure without a formal amendment of the Treaties. The use of a passerelle clause required unanimity of all Member States. Unlike formal treaty revision, their use does not require national ratification.

## 2. From Geoeconomic Instruments to a Stronger CFSP

In recent years, and even before the Russian war against Ukraine, the EU has seen its trade and foreign policy become politicised to keep in step with a new fragmented world order. This shift in trade and foreign policy has been noted by scholars for the last five to ten years. As Meunier and Nicolaidis stated, “[...] [the EU] has become able to change the global balance of power through trade and to use economic statecraft to compete on a level playing field when the breakdown of multilateralism has fragmented the world into regions and rival powers.”<sup>9</sup> With the Russian war in Ukraine we can see an exacerbation of this fragmentation and the rise of sanction policy as the EU’s response.

While foreign policy is mainly governed in Chapter 2 of the TEU, trade policy is governed mainly in Part V of the Treaty on the Functioning of the European Union (TFEU). The first is governed by unanimity voting in the Council of the EU (Council), and the latter is governed by qualified majority voting (QMV) in the Council. Regarding the EU’s foreign policy objectives, there is an overlap between trade and foreign policy, which has led to the situation that foreign policy instruments are increasingly implemented via the EU’s trade policy competence<sup>10</sup> The Commission has utilised this by proposing foreign policy instruments with a trade component, thereby circumventing the unanimity requirements of CFSP.<sup>11</sup> This section tracks the development of the externalisation of foreign policy to a trade legal basis.

Over the past few years, the EU has progressively implemented trade measures explicitly aimed at advancing broader foreign and security policy goals. Examples of such measures include the Anti-Coercion Instrument, the updated framework for Foreign Direct Investment

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<sup>9</sup> Sophie Meunier and Kalypso Nicolaidis, ‘The Geopoliticization of European Trade and Investment Policy’ Vol. 57 Journal of Common Market Studies pp. 103, p. 103.

<sup>10</sup> Wessel and Szep Conclusions (no. 8).

<sup>11</sup> See, for example, the following EU policy instruments adopted under the trade policy competence: ‘Regulation (EU) (2023/2675) on the protection of the Union and its Member States from economic coercion by third countries “Anti-Coercion Regulation”, in European Union (ed.), (Brussels, Belgium: Official Journal of the European Union), ‘Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union “Investment Screening Regulation”, in European Union (ed.), (Brussels, Belgium: Official Journal of the European Union (OJ)), and ‘Regulation (EU) (2019/125) concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment’, in European Union (ed.), (Brussels, Belgium: Official Journal of the European Union (OJ)).

Screening, the Anti-Torture Regulation, and Forced Labour Legislation.<sup>12</sup> External policy decisions have recently been adopted under the EU's trade policy competence.<sup>13</sup> This can be seen as a perilous development as it could lead to competence creep. Regarding sanctions, which often include a trade component, the EU's trade competence cannot be used as a legal basis. Sanctions are adopted by unanimity under the EU's CFSP. The question of unanimity on sanctions policy is a complex and debated issue. While unanimity has been the traditional approach to decision-making in certain EU policy areas, including CFSP and sanctions, it can present challenges in achieving swift and effective action in rapidly changing environments – such as the Russian invasion of Ukraine. Unanimity means that all Member States must agree on imposing sanctions, which can lead to political disagreements, delays, and even individual Member States blocking or watering down proposed measures. In situations where a unified and decisive response is needed, such as in cases of human rights abuses, security threats, or international crises, achieving unanimity can be difficult.

Recognising these challenges, the EU has explored alternative options to address decision-making on sanctions. One approach would be to use QMV in specific circumstances via the passerelle clause in Art. 31 TEU. QMV would allow sanctions to be adopted by a qualified majority of Member States rather than requiring unanimity.<sup>14</sup> This could streamline decision-making and enable more timely and effective responses. Already in 2018, under Commission President Jean-Claude Juncker, the Commission stated in a Communication to the Council that the shift to QMV would be desirable.

“[...] certain Common Foreign and Security Policy decisions should be taken by qualified majority. [...] To act on the global scene on the basis of robust and consistent positions; to react with speed and efficiency to pressing foreign policy challenges, both where a new position needs to be established and in the implementation of an agreed strategy; and to strengthen the resilience of the EU by

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<sup>12</sup> See Wessel RA and Szep V, *The implementation of Article 31 of the Treaty on European Union and the use of Qualified Majority Voting* (Policy Department for Citizens' Rights and Constitutional Affairs; Directorate-General for Internal Policies 2022), p. 82-83.

<sup>13</sup> See, for example, Weinhardt, Clara, Mau, Karsten, and Pohl, Jens Hillebrand (2022), 'Chapter 5: The EU as a Geoeconomic Actor? A Review of Recent European Trade and Investment Policies', in M. Babic (ed.), *The Political Economy of Geoeconomics: Europe in a Changing World* (International Political Economy Series).

<sup>14</sup> QMV in the Council of the EU requires the support of at least 55% of Member States, representing at least 65% of the total EU population, for a decision to be adopted. Decisions must meet most Member States and most of the EU population to pass.

shielding Member States from targeted pressure by third countries that try to divide the EU.”<sup>15</sup>

However, Member States never followed through on this Commission proposal. Nevertheless, this situation might change with a war raging in Europe. Recently, there have been discussions on potential reforms of the unanimity requirement in specific policy areas, including CFSP and sanctions.<sup>16</sup> Proposals have included moving towards QMV via a passerelle clause or introducing a system of constructive abstention,<sup>17</sup> where a Member State could choose to abstain rather than block a decision.<sup>18</sup> However, any changes to the decision-making process would require unanimous agreement among the Member States. Ultimately, the desirability and achievability of unanimity or alternative decision-making mechanisms for sanctions depend on the political dynamics, interests, and priorities of the Member States. Balancing the need for efficient decision-making with sovereignty demands and diverse perspectives within the EU is a complex task.<sup>19</sup>

The fact that the EU is increasingly looking at passerelle clauses can be understood as a symptom of a broader issue that institutional and Treaty reform seems unlikely in the next five to ten years. Therefore, the Commission and the European Parliament are increasingly looking at creative ways to streamline decision-making in the EU. CFSP is just one example of this phenomenon. Passerelle clauses are a kind of substitute for treaty change, which can help to address some of the EU’s geopolitical challenges in the 21<sup>st</sup> century. To better understand the need for change in the EU’s CFSP decision-making, the EU’s sanction policy against Russia provides a case study. The following section will therefore analyse the expansion of the EU’s sanction packages in two ways. First, it will look at the transformation

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<sup>15</sup> *Communication from the Commission to the European Council, the European Parliament and the Council: A Stronger Global Actor: A More Efficient Decision-Making for EU Common Foreign and Security Policy (12 September 2018)* (European Commission Press Office 2018).

<sup>16</sup> See, for example, Wessel, Ramses A., et al. (2021), 'The future of EU Foreign, Security and Defence Policy: Assessing legal options for improvement', *European Law Journal*, Vol. 26 (Kaleidoscope 1 - The Future of Europe: Taking Policy Reforms Seriously), pp. 371-90.

<sup>17</sup> See, for example, in Bouton, L, A Llorente-Saguer and F Malherbe (2015), 'DP10408 Get Rid of Unanimity: The Superiority of Majority Rule with Veto Power', CEPR Discussion Paper No. 10408. CEPR Press, Paris & London. <https://cepr.org/publications/dp10408>.

<sup>18</sup> NB: widespread use of constructive abstention could, however, lead to a multi-speed Europe regarding foreign and security policy and would, therefore, undermine the idea of a common foreign and security policy.

<sup>19</sup> The best example of the complexity of this task and the diverging views might be the ongoing discussions among the Member States on how the EU should react and position itself to the Israeli-Palestinian war that began in October 2023.

of geoeconomic sanctions into more robust foreign policy sanctions. Second, it will highlight the issues unanimity voting creates when adopting sanctions at the EU level. To this end, the EU's sanction packages during the first six months of the Russia-Ukraine war are analysed in detail. This sample was chosen because later sanction packages employ more of the same, i.e. trade sanctions, asset freezes, and visa bans. As Miadzvetskaya and Challet have shown in a case-study of the EU's Belarusian sanctions, the EU tends to broaden sanction listing criteria over time.<sup>20</sup> The authors noted that the same is the case in the EU's Russia sanctions, saying that "[t]he most obvious example of EU sanctions becoming more comprehensive, however, remains the restrictive measures against Russia. Following Russia's military aggression against Ukraine [...], the EU resorted to even broader listing criteria in order to increase the pressure on Russia."<sup>21</sup> Therefore, for the purpose of this study a focus on the initial sanctions is more fruitful than focussing on the later sanctions which merely broadened the existing ones.

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<sup>20</sup> Miadzvetskaya, Yuliya and Challet, Celia (2022), 'Are EU restrictive measures really targeted, temporary and preventive? The case of Belarus', *European and the World: A Law Review*.

<sup>21</sup> *Ibid*, p. 10.



### 3. The Sanction Packages against Russia

Overall, the EU has adopted thirteen sanction packages against Russia as of February 2024, intending to damage Russia's ability to wage war. This section will discuss the sanction packages as a case study to analyse the EU's unity on sanctions policy. The analysis will show that the EU moved from geoeconomic instruments towards a more assertive foreign policy by including more high-profile sanctions in the later packages and then, from the seventh sanction package onwards, how the sanction packages became merely a broadening of existing measures.

In a Working Paper, the Horizon Europe project ENGAGE assessed the effectiveness of the EU's sanction policy on Russia after the outbreak of the Russia-Ukraine war.<sup>22</sup> According to the study, the sanctions did not have an immediate effect. However, they effectively influenced Russia's ability to wage and sustain war.<sup>23</sup> The energy sanctions were most effective in this regard. Overall, the sanction regime was coherent despite single Member States blocking specific measures. The following case-study analyses the sanction packages adopted in the first six months of Russia's war on Ukraine in detail and then provides a more general commentary on the subsequent sanction packages.

#### 1.1 First Sanction Package (23 February 2022)

Immediately after Russia invaded Ukraine, the EU adopted its first sanction package on 23 February 2022.<sup>24</sup> The Council unanimously adopted a package of sanctions aiming to respond swiftly and show a readiness to react to Russia's unilateral breach of international law, the UN Charter, and the principle of self-determination.<sup>25</sup> The sanctions targeted the following areas: First, the Russian state and government, restricting their access to the EU's capital,

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<sup>22</sup> Szép, Viktor, et al. (2023), 'Case Studies of the EU's CFSP Activity', ENGAGE Europe Working Paper Series, No. 20, March 2023.

<sup>23</sup> Ibid.

<sup>24</sup> *EU adopts package of sanctions in response to Russian recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and sending of troops into the region ("First Sanction Package") (23 February 2022)* (Council of the EU 2022).

<sup>25</sup> The principle of self-determination is a fundamental concept in international law that asserts the right of peoples to determine their own political status and to pursue their own economic, social, and cultural development. The imperialistic Russian invasion of Ukraine undermined this principle.

financial markets, and services, to limit the financing of aggressive and escalatory policies. Second, the economic relations between the non-government-controlled regions of Donetsk and Luhansk and the EU, to ensure that those responsible for the illegal actions face economic consequences. Third and finally, individuals and organisations undermining or threatening Ukraine's territorial integrity and independence. Particularly, decision-makers and members of the Russian government; banks and businesspersons supporting financially or materially Russian operations; senior military officers, who played a role in the invasion and destabilisation actions; and individuals responsible for Russia's war of disinformation. The total number of individuals on the sanctions list was 555, along with 52 organisations.<sup>26</sup>

The first sanction package focussed on economic and financial sanctions against the Russian elite. The sanctions mainly targeted Russian individuals and corporations. Notably, the Council adopted those pre-drafted sanctions without a preceding European Council Summit. An emergency European Council Summit would follow swiftly afterwards on the following day.<sup>27</sup>

## **1.2 Second Sanction Package (25 February 2022)**

Following publication of the Conclusions of the extraordinary European Council Summit on 24 February 2022<sup>28</sup>, the Council adopted a package of individual and economic measures on 25 February.<sup>29</sup> The measures included financial sanctions targeting Russia's access to capital markets and critical state-owned companies. The energy sector was also targeted by prohibiting the sale of specific goods and technologies for refining oil. Additionally, the transport sector was targeted by banning the sale of aircraft and related equipment to Russian airlines. Finally, the technology sector was targeted by restricting exports of dual-use goods and technology. The EU also removed the privileged visa policy access for diplomats and businesspeople. The total number of individuals and organisations under sanctions rose to 654 individuals and 52 organisations.

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<sup>26</sup> Ibid.

<sup>27</sup> *Special meeting of the European Council (24 February 2022) – Conclusions* (European Council Press Service 2022).

<sup>28</sup> Ibid.

<sup>29</sup> *Russia's military aggression against Ukraine: EU imposes sanctions against President Putin and Foreign Minister Lavrov and adopts wide-ranging individual and economic sanctions ("Second Sanction Package")* (25 February 2022).

Following an extraordinary European Council Summit, the second sanction package showed a united EU response. It focused mainly on the energy, transport, and technology sectors. Moreover, it included further visa sanctions, making it harder for Russian diplomats and businesspeople to enter the EU. Thus, the EU followed the same strategy of a swift and targeted response from its first package.

### **1.3 Third Sanction Package (28 February and 2 March 2022)**

Not long afterwards, the European Council adopted the third sanction package. It came in two parts. First, a round of sanctions was adopted on 28 February 2022.<sup>30</sup> This was quickly followed by a round of sanctions adopted on 2 March 2022.<sup>31</sup> Notably, this package included sanctions on Belarus, which included trade restrictions and sanctions on Belarusian individuals.<sup>32</sup>

The Council unanimously adopted a series of restrictive measures. It excluded certain Russian banks from the international SWIFT system, prohibited investments in projects co-financed by the Russian Direct Investment Fund, and banned providing euro-denominated banknotes to Russia. State-owned media outlets Russia Today and Sputnik were no longer allowed to broadcast in the EU. Additional sanctions were imposed on Belarus, and restrictions were placed on transactions with the Russian Central Bank. Overflight of EU airspace and access to EU airports by Russian carriers was prohibited. The sanctions list rose to a total of 680 individuals and 53 organisations.

The third sanction package was a comprehensive package to target Russia. It was preceded by intensive discussions among the Member States on whether to exclude Russian banks from the SWIFT banking system.<sup>33</sup> Notably, with the third sanction package, the EU moved

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<sup>30</sup> *Russia's military aggression against Ukraine: Council imposes sanctions on 26 persons and one entity ("Third Sanction Package") (28 February 2022)* (Council of the EU 2022).

<sup>31</sup> *Russia's military aggression against Ukraine: EU bans certain Russian banks from SWIFT system and introduces further restrictions ("Third Sanction Package") (2 March 2022)* (Council of the EU 2022).

<sup>32</sup> *Belarus' role in the Russian military aggression of Ukraine: Council imposes sanctions on additional 22 individuals and further restrictions on trade ("Third Sanction Package") (2 March 2022)* (Council of the EU 2022).

<sup>33</sup> Barigazzi, Jacopo, Bayer, Lili, and Darmanin, Jules (2022), 'Pressure mounts on Germany to drop rejection of SWIFT ban for Russia (26 February 2022)', Politico Europe.

from purely economic sanctions to more robust instruments, such as prohibiting the operation of Russian-owned media outlets in the EU and depriving Russian carriers of overflight and access rights to EU airspace and airports. For the first time, it also included sanctions on Belarus, which openly supported the Russian invasion of Ukraine. The Council, particularly, sanctioned 22 high ranked Belarusian military personnel due to their role in the Russian aggression against Ukraine.

#### **1.4 Fourth Sanction Package (15 March 2022)**

The fourth sanction package followed an informal European Council Summit<sup>34</sup> and was adopted within the first thirty days of the war in Ukraine, on 15 March 2022.<sup>35</sup> It focused on sanctioning Russia at the international level and through international organisations. The most prominent example of this was the EU denying Russia the Most Favoured Nation (MFN) status at the World Trade Organisation (WTO).<sup>36</sup> Moreover, the Council revoked access to finance and expertise through the European Bank for Reconstruction and Development (EBRD).

In its fourth sanction package, the Council adopted several restrictive measures, including a complete prohibition on transactions with certain Russian state-owned enterprises, with some exceptions. Specifically, EU agencies were prohibited from providing financial rating services to Russian companies. Imports of iron and steel products under EU safeguard measures and new investments in the Russian energy sector were banned, except for nuclear energy and energy product transport. The export of luxury goods to Russia was also prohibited. Additionally, 15 more individuals and 9 more organisations were added to the list of sanctioned people and organisations, including more individuals linked to the Kremlin, companies in the military and defence sectors, and those involved in disinformation. After the

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<sup>34</sup> 'Informal meeting of the Heads of State or Government, Versailles Declaration (10 and 11 March 2022)', (Paris, France: European Council Press Office).

<sup>35</sup> *Fourth package of sanctions given Russia's military aggression against Ukraine: 15 additional individuals and 9 entities subject to EU restrictive measures ("Fourth Sanction Package") (15 March 2022)* (Council of the EU 2022).

<sup>36</sup> "On March 11, 2022, President Biden announced that the United States, acting in coordination with the European Union ("EU") and leaders of major economies belonging to the Group of Seven ("G7"), would begin taking steps to revoke most-favored-nation (or "MFN") trade status for Russia." in Aranoff, Shara, et al. (2022), 'Revocation of Russia's Most-Favored-Nation Trade Status: What Companies Need to Know', (Washington D.C., United States: Covington Public Policy Group).

fourth sanction package, the list of sanctioned entities included 877 individuals and 62 organisations.<sup>37</sup>

The fourth sanction package marked a further milestone as it targeted Russia internationally. In this way, the EU expanded its sanction policy to the international level in lockstep with the United States. It also showed that the EU could effectively adopt four sanction packages by unanimity in short order (in under thirty days).

### **1.5 Fifth Sanction Package (8 April 2022)**

The fifth sanction package followed on 8 April 2022.<sup>38</sup> It came after the horrific war crimes and atrocities in Bucha and other places were discovered.<sup>39</sup> This sanction package focussed on energy, with a ban on Russian coal. The requirement to phase out Russian coal supplies was challenging for some Member States.<sup>40</sup> However, the fifth sanction package eventually got unanimous approval in the Council.

In its fifth sanction package, the Council adopted various restrictive measures, including an import ban on all forms of Russian coal. Financial measures include a transaction ban, an asset freeze on four more Russian banks, and prohibitions on providing crypto-asset services and trust services to wealthy Russians. Targeted export bans covered quantum computing, semiconductors, machinery, transportation, and chemicals. Import bans were extended to include cement, rubber products, wood, spirits, and seafood. Russia was excluded from public contracts in the EU, and further restrictions were introduced on financial and non-financial support to Russian publicly owned or controlled organisations. The transport sector sanctions included a ban on Russian and Belarusian freight road operators in the EU, with exemptions for essential goods. Russian-flagged vessels were prohibited from entering EU ports except for specific purposes. This created some backlash by certain Member

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<sup>37</sup> Ibid.

<sup>38</sup> *EU adopts fifth round of sanctions against Russia over its military aggression against Ukraine (8 April 2022)* (Council Press Office 2022).

<sup>39</sup> Stashevskiy, Oleksandr and Qena, Nebi (2022), 'Ukraine accuses Russia of massacre, city strewn with bodies (3 April 2022)', Associated Press.

<sup>40</sup> "EU to add 4-month wind-down for current coal contracts; Initial plan was for three, but Germany pushed to extend" in Guarascio, Francesco (2022), 'EU's full ban on Russian coal to be pushed back to mid-August -sources (7 April 2022)', Reuters.

States. Specifically, Greece, Cyprus and Malta initially blocked sanctions against Russia-owned ships from EU ports.<sup>41</sup> Additionally, 217 individuals and 18 organisations were added to the list of asset freezes.<sup>42</sup>

The fifth sanction package focussed again on energy: the primary commodity traded between Russia and the EU. The fifth sanction package showed the first cracks in the EU response. Finding a united position on energy sanctions in the Council proved difficult as many Member States continue to rely on Russian oil and gas.<sup>43</sup> Therefore, the final agreement on energy sanctions entailed tolerating individual economic consequences for some Member States.

### **1.6 Sixth Sanction Package (3 June 2022)**

The sixth sanction package followed on 3 June 2022<sup>44</sup> after an extraordinary European Council Summit.<sup>45</sup> Once again, it focussed on energy and enabled the Commission to implement measures to phase out Russian oil in the EU. Again, this was met with resistance from some Member States that relied on Russian oil in their energy supply.<sup>46</sup>

In its sixth sanction package, the Council adopted a range of restrictive measures, including an immediate embargo on crude and refined oil imports from Russia, with a phased implementation that allowed for limited transactions in the short term. Financial and business services measures involved removing certain Russian and Belarusian banks from the SWIFT

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<sup>41</sup> Michalopoulos, Sarantis (2022), 'Greece, Cyprus and Malta block sanctions against Russia-owned ship (18 April 2022)', Euractiv.

<sup>42</sup> 'Fifth package of sanctions in view of Russia's military aggression against Ukraine: EU adopts restrictive measures against an additional 217 individuals and 18 entities (8 April 2022)', in Maria Daniela Lenzu (ed.), Press Release (366/22) (Brussels, Belgium: Council Press Office 2022).

<sup>43</sup> For difficulties on finding a common position in the Council see Guarascio, Francesco (2022), 'EU's full ban on Russian coal to be pushed back to mid-August -sources (7 April 2022)', Reuters; for the continued reliance on Russian energy by the Member States see Rij, Armida van (2024), 'The EU's continued dependency on Russian gas could jeopardize its foreign policy goals (17 June 2024)', Chatham House Expert Comment (London, United Kingdom: Chatham House).

<sup>44</sup> *Russia's aggression against Ukraine: EU adopts sixth package of sanctions (3 June 2022)* (Council Press Office 2022).

<sup>45</sup> 'Special meeting of the European Council (30 and 31 May 2022) – Conclusions', EUCO 21/22 (Brussels, Belgium: European Council Press Office).

<sup>46</sup> First, Germany and later specifically Hungary held up the Sixth Sanction Package see Barigazzi, Jacopo and Kijewski, Leonie (2022), 'EU's Russian oil ban stalls as Hungary holds up sanctions (8 May 2022)', Politico Europe and Moens, Barbara and Weise, Zia (2022), 'Orbán emerges as the loudest opponent of EU sanctions on Russian oil (7 April 2022)', Politico Europe.

system and imposing restrictions on providing services to the Russian government and other entities in Russia. Broadcasting activities of three Russian state outlets known for spreading disinformation were suspended, along with a prohibition on advertising on sanctioned outlets. Export restrictions included expanding the list of banned advanced technology items for export to Russia, adding individuals and entities associated with Russia's military-industrial complex, and widening the list of Belarusian organisations subject to restrictions.<sup>47</sup>

The sixth sanction package provided the background for some Member States blocking the EU's foreign policy efforts. Due to national interests diverging from the overall EU position, Hungary withheld support for the sixth sanction package for several weeks to negotiate an exemption. Subsequently, it blocked the agreement by opposing the inclusion of Orthodox Church Patriarch Kirill in the EU's list of sanctioned individuals.<sup>48</sup> This national solo effort seriously undermined the EU's foreign policy and showed the weaknesses of the current system. In response, Lithuanian Foreign Minister Gabrielius Landsbergis accused Hungary in May 2022 of "holding the EU hostage."<sup>49</sup> The issue lies in the voting mechanism in the EU's CFSP field, which is unanimity and thus allows single Member States to block the process.<sup>50</sup> During the sixth sanction package, this seriously undermined the EU's foreign policy efforts.

### **1.7 Seventh Sanction Package (21 July 2022)**

On 21 July 2022, the Council adopted a maintenance and alignment package in response to Russia's war on Ukraine.<sup>51</sup> The package included a decision to extend existing sanctions and to align the EU's restrictive measures with those imposed by the US and other allies. These measures aimed to maintain pressure on Russia and reinforce existing sanctions. The seventh sanction package, therefore, presents the first one in which the EU moved from establishing

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<sup>47</sup> Ibid (No 41).

<sup>48</sup> Kijewski, Leonie and Baragazzi, Jacopo (2022), 'Orbán wins again as furious EU envoys take church patriarch off Russian sanctions list (2 June 2022)', Politico Europe.

<sup>49</sup> Alice Tidey and Sandor Zsíros, 'Hungary keeping EU 'hostage' over Russian oil ban, Lithuanian minister claims (16 May 2022)' *Euronews* (Brussels, Belgium).

<sup>50</sup> The voting requirements for adopting sanctions will be discussed in-detail in the following section.

<sup>51</sup> Russia's aggression against Ukraine: EU adopts "maintenance and alignment" package (21 July 2022)', Press Release 710/22 (Brussels, Belgium: Council Press Office).

entirely new sanction categories to broadening existing ones. A trend which manifests itself in the following six sanction packages, which are not discussed in-detail here.<sup>52</sup>

The maintenance and alignment package introduced several new measures. These measures included prohibiting the purchase, import, or transfer of gold originating in Russia, extending export controls on dual-use and advanced technology items, expanding the port access ban, and clarifying existing measures in fields such as public procurement and aviation. Additionally, the Council extended exemptions for certain agricultural products and oil transport transactions to third countries to avoid negative impacts on global food and energy security. The package included listing additional individuals and entities for sanctions and strengthening reporting requirements to facilitate asset freezing.<sup>53</sup>

Notably, the EU adopted seven sanction packages in the first six months after the Russian invasion of Ukraine. This unprecedented activity highlights the seriousness of the EU's foreign policy resolve, and allowed the EU to show solidarity with the sanctions brought by the US and other allies. As seen in the example of the Hungarian blockage, the EU was at the whim of one Member State without any remedy, even though the behaviour by the Hungarian government went against the general principle of sincere cooperation with EU law.<sup>54</sup> This assessment warrants a deeper look at the EU's legal competencies in CFSP and how the system could be reformed, considering the new geopolitical situation in Europe.

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<sup>52</sup> The EU's approach to sanctions against Russia has evolved from targeted and sectoral measures to a more broad and comprehensive strategy. In later sanction packages, the EU has strengthened enforcement mechanisms to ensure sanctions are effective. Including closing loopholes that previously allowed sanctioned entities to continue operating through intermediaries or alternate channels. By merely broadening existing measures, the following sanction packages are less interesting for the purpose of this case-study.

<sup>53</sup> 'Russia's aggression against Ukraine: EU adopts "maintenance and alignment" package (21 July 2022)', Press Release 710/22 (Brussels, Belgium: Council Press Office 2022).

<sup>54</sup> The principle of sincere cooperation, enshrined in Article 4 (3) TEU, mandates that both the EU institutions and the Member States must assist each other in carrying out tasks that flow from the Treaties, ensuring the fulfilment of obligations arising from EU law. In arbitrarily blocking the EU's sanction policy, Hungary undermined the principle.



#### 4. The Issue of Unanimity and Constructive Abstentions

Under the current system of unanimous decision-making in CFSP and sanction policy, a single Member State can effectively veto or block the adoption of a proposed measure.<sup>55</sup> This section will analyse the unanimity issue in CFSP and highlight the possibility of constructive abstention.

The case study of the EU's sanction policy on Russia has shown that a unilateral holdout by a Member State poses challenges when a unified and decisive response is needed. It can lead to delays or prevent the EU from taking swift action, as has happened several times while adopting sanction packages on Russia. Hungary demanded the removal of three Russian oligarchs from the listing before allowing sanctions to be renewed, and blocked investigation into alleged Russian human rights violations.<sup>56</sup> This example of Hungary undermining the EU's sanction policy on Russia shows the current CFSP's weaknesses. Despite the importance of Member States' veto rights, the downside of these unanimity requirements was laid bare by the crisis in Ukraine.<sup>57</sup> Moreover, Member States used their veto more than thirty times between 2016 and 2022 to undermine certain aspects of the EU's CFSP.<sup>58</sup> A temporary veto can also mean that a specific foreign policy will be delayed or watered down due to the wishes of one Member State.

One possible solution to this issue is the concept of constructive abstention. Constructive abstention is a concept discussed in the context of EU decision-making, including in CFSP and sanctions policy.<sup>59</sup> It refers to a mechanism that allows a Member State to abstain from voting on a particular decision without blocking its adoption by the remaining Member States. During the EU's sanctioning spree against Russia, the concept has resurfaced at the Council. Prior to the onset of Russia's war in Ukraine, constructive abstention had been

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<sup>55</sup> Wessel and Szep p. 8.

<sup>56</sup> Koenig, Nicole (2022), 'Towards QMV in EU Foreign Policy: Different Paths at Multiple Speeds (14 October 2022)', Policy Brief (Berlin, Germany: Hertie School: Jacques Delors Centre).

<sup>57</sup> Szép, Viktor and Wessel, Ramses (2023), p. 6, (No 36).

<sup>58</sup> Viktor Szép, *Making EU Foreign Policy More Effective: Qualified Majority Voting on the Horizon?* (2 May 2023) (Carnegie Europe 2023).

<sup>59</sup> Bartoloni, Maria Eugenia (2022), 'Simple Abstention and Constructive Abstention in the Context of International Economic Sanctions: Two Too Similar Sides of the Same Coin?', *European Papers*, Vol. 7 (No. 3), pp. 1121-30.

invoked only once, in 2008.<sup>60</sup> However, since February 24, 2022, it has been employed again in the context of the European Peace Facility (EPF) by three Member States, as well as in the establishment of a Military Assistance Mission in support of Ukraine (EUMAM Ukraine), by one Member State.<sup>61</sup> The Russian war on Ukraine and the EU's reaction had brought constructive abstention back to the table. Scholars have highlighted that the EU's response to the Russian war on Ukraine has made constructive abstention a valuable option for neutral Member States such as Ireland, Austria, or Malta. Therefore, the EU's Russia policy can be seen as a test balloon on whether constructive abstention is feasible for use in CFSP.

Constructive abstention entails that the Member State that abstains will not actively undermine the EU position.<sup>62</sup> This is important and follows the principle of sincere cooperation enshrined in Art. 4 (3) TEU. As Koenig stated, “[c]onstructive abstention allows member states to adhere to national specificities (e.g., neutrality) without blocking the path for the others. It is, however, unhelpful if [...] members states explicitly seek to do so to protect national strategic or economic interests.”<sup>63</sup> If Member States trigger constructive abstention to protect their national interests, it has the potential to undermine the EU's foreign policy strategy. Constructive abstention offers an alternative by allowing Member States to abstain from voting on a proposed measure without blocking its adoption. However, a CFSP decision still requires unanimity by the remaining Member States, even if one or more Member States abstained. Constructive abstention is designed to allow Member States that are unwilling to commit to a CFSP action to avoid the necessity of blocking the decision by voting against it. This mechanism seeks to balance the majority position of the Member States with the reservations and concerns of dissenting members.<sup>64</sup>

Constructive abstention represents a potential compromise between unanimity and qualified majority voting (QMV). It aims to strike a balance between respecting the concerns and interests of individual Member States while ensuring that decision-making processes are efficient, effective, and coherent. However, there are also limits to constructive abstention. For example, if too many Member States abstain from a decision. Art. 31 (1) clarifies that if

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<sup>60</sup> The first case of constructive abstention in the Council was the abstention by Cyprus in 2008 to the Decision to establish an EU civilian rule of law mission ‘EULEX’ in Kosovo.

<sup>61</sup> See Wessel and Szep p. 9.

<sup>62</sup> Ibid.

<sup>63</sup> Koenig (No 52).

<sup>64</sup> See Maria Eugenia Bartoloni, p. 1124 (no 41).

abstentions with formal declarations are made by at least one-third of the Member States representing at least one-third of the Union's population, the decision will not be adopted.

## 5. Legal Competence, Implementation and the Passerelle Clause

The competence of the EU's CFSP sanction policy can be found in Chapter 2, Section 1 of the TEU, which are the common provisions of the EU's CFSP field. The legal basis the EU chooses to adopt for a specific foreign policy instrument indicates how it envisages the scope, target, and gravity of this instrument. This section analyses the EU's sanction competence under Art. 29 TEU, the implementation competence under Art. 215 TFEU and the possibility of reforming the decision-making process via the passerelle clause of Art. 31 TEU.

It is essential to recognise that the selected legal basis for a Council Decision largely reflects the way the Union has exercised its competences within the CFSP policy field. Moreover, the use of any legal basis is governed by the general principles and values of the EU, which extend to the realm of CFSP.<sup>65</sup> In the context of the Russian war on Ukraine, the most used foreign policy instruments are sanctions under Art. 29 TEU. Art. 29 TEU provides the legal basis for sanctions in EU law.<sup>66</sup> Under this article, the Council may adopt restrictive measures against governments of non-EU countries, non-state entities and individuals. Art. 31 (1) TEU defines that the Council shall act unanimously for decisions adopted under Art. 29 TEU. Therefore, decisions must be adopted unanimously under the legal basis of Art. 29 TEU following the voting procedure of Art. 31 (1) TEU. This could be seen during the EU's sanction spree against Russia. Wessel et al. have shown that Art. 29 TEU is the most used legal basis in CFSP, primarily for adopting sanctions.

Regarding the most employed legal bases, it is notable that close to half of all CFSP decisions exclusively rely on Article 29 TEU (47%). This provision grants the Union broad authority to formulate and adopt foreign policy positions, yet it is predominantly utilised for the imposition of sanctions in practical terms.<sup>67</sup> In the context of the EU's response to the Russian invasion of Ukraine, Sanctions are the dominating theme in the EU's foreign policy. Even before the Russian war on Ukraine, sanctions dominated the EU's CFSP field, as Wessel et al. showed: "[...] overall, sanctions decisions amount to more than 70% of all the

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<sup>65</sup> See Ramses A. Wessel et al., p. 374, (No 16).

<sup>66</sup> Art. 29 TEU states: "The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the Union positions".

<sup>67</sup> See Wessel et al. p. 375.

decisions, which clearly shows the focus of the formal CFSP decisions.”<sup>68</sup> This also implies that CFSP is primarily characterised by “punitive” rather than by “constructive” foreign policy decisions.<sup>69</sup> This can also be seen in the adoption of punitive sanction packages against Russia. This warrants a closer look at the legal basis for implementing sanctions (215 TFEU).

Sanctions multiply their impact if many states adopt them. Therefore, sanctions implemented commonly by all Member States are a powerful instrument. Implementing sanction decisions at the Council level takes place under Art. 215 TFEU. In contrast to the unanimous adoption of the decision, the implementation of the decision occurs via QMV. Art. 215 TFEU provides that the EU Council may adopt the necessary measures to implement decisions adopted under Art. 29 TEU to ensure they are applied uniformly in all Member States. As Wessel noted, “[...], Article 215(1) TFEU stipulates that the actual restrictive measures are adopted by QMV upon a joint proposal from the High Representative and the Commission after the “political” decision to adopt sanctions has been taken unanimously.”<sup>70</sup>

The implementation of sanctions is carried out through Regulations or Decisions. These legal instruments set out the specific details of the measures, including the scope, conditions, exemptions, and procedures for their application. They also define the obligations of Member States in implementing and enforcing the measures.<sup>71</sup> Wessel et al. have pointed out that there is some lack of clarity when it comes to the voting procedures under Art. 215 TFEU. The Council can vote by a “simple” majority on “procedural questions”. However, the criteria for defining what constitutes a procedural question, who determines whether an issue is of a procedural nature, and whether any matters currently requiring a unanimous vote could be reclassified as procedural and thereby moved to qualified majority voting (QMV), are not specified.<sup>72</sup> This can therefore be seen as a loophole in the EU’s framework for adopting sanctions.

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<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> For an in-depth study on the decentralised implementation and enforcement in the Member States see Portela, Clara and Olsen, Kim B. (2023), 'Implementation and monitoring of the EU sanctions' regimes, including recommendations to reinforce the EU's capacities to implement and monitor sanctions', in Directorate General for External Policies of the Union Policy Department for External Relations (ed.), (PE 702.603 - October 2023; Brussels, Belgium: European Parliament).

<sup>72</sup> See Wessel et al. p. 385.

However, while QMV is the norm for implementing sanctions, it remains the exception for adopting them. One way to change that would be to trigger the CFSP's passerelle clause, also known as the "bridging clause". The first passerelle clause under Art. 31 (2) TEU allows changing the decision-making procedure from unanimity to QMV in four specific cases, two of which include modifying existing sanctions regimes and appointing EU special representatives.<sup>73</sup>

The second passerelle clause, under Art. 31 (3), allows for far wider-ranging changes in the EU's CFSP field. It allows for changing the decision-making procedure in any area of CFSP to QMV after a unanimous European Council decision.<sup>74</sup> The purpose of the passerelle clause is to enhance the effectiveness and efficiency of decision-making in the CFSP by enabling a shift from unanimity, which can be challenging to achieve, to QMV, which allows for more streamlined decision-making. Art. 31 (3) could be used to allow sanctions to be adopted by QMV. This would represent a transfer of decision-making power from Member States to the EU level, facilitating more efficient decision-making and a more coordinated approach to CFSP within the EU.

To conclude, this section first analysed the legal basis for the EU's sanction competence under Art. 29 TEU, requiring unanimity in the Council. Second, it analysed the legal basis for implementing adopted sanctions via Art. 215 TFEU, requiring QMV in the Council. Third, it analysed the possibility of reforming the first step via the passerelle clause in Art. 31 TEU. This analysis has shown that reforming the decision-making process on sanctions would, however, require unanimity by the Member States in the European Council.

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<sup>73</sup> Art. 31 (2) TEU states the following: "By derogation from the provisions of paragraph 1, the Council shall act by qualified majority [...]." Then, highlighting four cases under which this may happen.

<sup>74</sup> Art. 31 (3) states, "The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2."

## 6. Conclusion

This Working paper analysed the changes and dynamics in CFSP due to the new geopolitical landscape in Europe after the Russian war on Ukraine. A German proverb states: you grow with your tasks, but sometimes they grow faster than you do. The Russian war on Ukraine and the thirteen sanction packages provide a practical example. The rapid deployment of thirteen sanction packages against Russia has undoubtedly strengthened the importance of the EU's foreign policy. However, a fundamental change in the EU's CFSP, which would enable the EU to become a more powerful geopolitical actor, is still outstanding – a change from unanimity to QMV. As Koenig noted, “[...], the pitfalls associated with unanimity emerged starkly with the response to the Russian invasion of Ukraine.”<sup>75</sup> How this shift to QMV can be achieved remains an open question – several possibilities have been discussed in this Working paper.

Koenig has argued that the Member States' positions on QMV in CFSP are slowly shifting, and more Member States would like to see a change in this policy field, stating that, “while we are still far from unanimity [on majority voting], the difference between 2019 and 2022 shows that positions on QMV are not set in stone. Central and Eastern European countries have seen the downsides of single vetoes delaying or watering down the EU's response to Russia.”<sup>76</sup> Notably, CEE Member States are known for their opposition to QMV, but the Russian war on Ukraine may have shifted the mood towards the gradual extension of QMV in CFSP. In the meantime, passerelle and enabling clauses provide a viable workaround.<sup>77</sup> In the long to medium term, the EU's sanction policy could be decided by QMV. The discussed Art. 31 TEU could provide an avenue for a staggered reform of the EU's CFSP field.<sup>78</sup>

However, some holdouts in the Member States still oppose such a push for ideological reasons. Most prominently, Hungary opposes QMV in CFSP for different reasons.<sup>79</sup> The current Hungarian government envisions a European Union with minimal foreign policy

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<sup>75</sup> Koenig (No 52).

<sup>76</sup> Ibid (No 52).

<sup>77</sup> Ibid (No 52).

<sup>78</sup> As also argued in Szép, Viktor and Wessel, Ramses A. (2023), 'Making Faster and Better Decisions in the EU Common Foreign and Security Policy', ENGAGE Europe, Policy Brief 2, July 2023.

<sup>79</sup> Liboreiro, Jorge and Zsiros, Sandor (2023), 'Hungary and Poland rally allies to defend veto power in EU foreign policy (23 May 2023)', Euronews.

competencies. Therefore, it seems that ideological reasons stand in the way of a reform of the EU's CFSP: Koenig notes that "[t]he bigger challenge will be to convince members such as Hungary and Poland that oppose the passage to QMV partly for ideological reasons."<sup>80</sup> The current division of competencies has created a CFSP field in which the EU is supposed to take joint action. However, it is hindered by the Member States' national interests. This will lead to even more medium- to long-term conflicts in the EU.

The division of competences between the EU and its Member States impedes the EU's effectiveness in areas where Member States traditionally assume more prominent roles, such as foreign policy. Additionally, the requirement for unanimity in CFSP presents a significant constraint, impacting not only the decisions of the Council and the European Council but also efforts at coordination with international organizations.<sup>81</sup> Ultimately, moving from unanimity to QMV is a question of giving up sovereignty. Are the Member States willing to give up sovereignty to have a stronger, more united, and more efficient EU foreign policy? Most of the internal challenges within CFSP ultimately converge on the concept of sovereignty. The reluctance of Member States to cede aspects of their sovereignty, thereby enabling the EU to more effectively formulate its foreign policy, should be recognized as the most significant obstacle to achieving a more geopolitical Union in the realm of foreign and security policy.<sup>82</sup>

To conclude, this Working paper has shown that the Russian war on Ukraine has tested the EU's capability to react in the CFSP field. Most notably, thirteen comprehensive sanction packages have been adopted in a very short time, all by unanimity voting in the Council. However, it has also highlighted the shortcomings of the EU's current CFSP framework. Most importantly, single Member States can block a decision on sanctions, thereby halting and undermining the whole foreign policy process. The coherence of the EU's foreign policy depends on the gravity of the issue, the mutuality of the interests of the Member States and the urgency to act. Several reform options to move from unanimity to QMV are on the table. If the EU seeks to become a more proactive geopolitical actor, the CFSP decision-making ought to be reformed. This would pave the way for an EU foreign policy fit for the geopolitical challenges of the 21st century.

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<sup>80</sup> Koenig (No 52).

<sup>81</sup> See Szép and others, p. 60.

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