

THE
EUROPEAN
UNION
IN THE FACE OF
RUSSIA'S
AGGRESSION
AGAINST
UKRAINE

Editor
JOLANTA SZYMAŃSKA

THE POLISH INSTITUTE OF INTERNATIONAL AFFAIRS

**THE EUROPEAN UNION
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AGAINST UKRAINE**

**JOLANTA SZYMAŃSKA
EDITOR**

WARSAW 2024

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Cover designer

Tomasz Białkowski

Proofreading

Brien Barnett

Technical editor

Dorota Dołęgowska

ISBN 978-83-67487-36-8 (pb)

e-ISBN 978-83-67487-48-1 (pdf)

Publisher

Polski Instytut Spraw Międzynarodowych,

ul. Warecka 1a, 00-950 Warszawa

www.pism.pl

Print

Centrum Poligrafii Sp. z o.o.

ul. Michała Spisaka 37

02-495 Warszawa

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Introduction

The aggressive face of Russian imperialism was evident years before Russia launched its full-scale invasion of Ukraine on 24 February 2022. Manifestations of it were the war in Georgia in 2008, the illegal annexation of Crimea, and the war in Donbas, which has been ongoing since 2014. However, it was only Russia's full-scale invasion in 2022 that awakened the European Union from its "strategic sleep",¹ negatively verifying the effectiveness of its previous Eastern policy.²

Developing a coherent EU response to Russian aggression has required abandoning the attachment in the policies of many Member States to a vision of partnership with Russia as a guarantor of stability in the eastern neighbourhood. It has also taken the extraordinary mobilisation of EU institutions and solidarity of the Member States. As a result, the EU has resorted to unprecedented measures. Its response has

¹ E. Kaca, A. Koziół, "Unexpected Metamorphosis: EU Embarks on an Ambitious Policy in its Eastern Neighbourhood, in: M. Terlikowski (ed.), *Point of no return—The transformation of the global order after the Russian invasion of Ukraine*, PISM Report, April 2023.

² For more about the EU's Eastern policy, see: O. Barbuska, *Polityka wschodnia Unii Europejskiej jako część składowa polityki zagranicznej UE*, ASPRA-JR Publishing House, Warszawa 2018; A. Cianciara, *Partnerstwo Wschodnie 2009-2014*, ISP PAN, Warszawa 2014.

been multidimensional, including military, financial, and humanitarian support for Ukraine, as well as sanctions against Russia. Although the war in Ukraine is still ongoing and the EU's response to Russian aggression remains continuous, more than a year and a half after the start of the invasion, it is already possible to review the catalogue of actions so far and assess them, at least initially.

The preparation of the EU's response to the conflict in its immediate neighbourhood was an opportunity to review many of its sectoral policies and reflect on their future shape. The European Union faced the challenge of greater involvement in the field of security. Changes in the international system, catalysed by the war, have renewed the discussion about EU strategic autonomy. The new security context has changed the Member States' thinking about the process of enlargement of the organisation, while Ukraine's European perspective has renewed the discussion about institutional reform of the EU and the shape of its budget. The need to become independent of Russian gas has verified the assumptions of EU energy policy. The masses of refugees inside Ukraine and in EU Member States have revived the discussion about the directions of EU development policy and the shape of European migration policy.

This publication addresses questions about the changes that Russian aggression against Ukraine has caused in individual areas of European Union functioning, the nature and durability of them, and their impact on the effectiveness of the EU's action in the international system. The book includes 10 chapters prepared by experts from the Polish Institute of International Affairs (PISM). They focus on the impact of the war in Ukraine on the European Union, including the concept of strategic autonomy, security and defence policy, sanctions policy, enlargement policy and institutional reform, economy, energy policy, development policy, migration and asylum policy, role in shaping international criminal law, as well as building resilience to challenges in the information sphere.

The publication has a universal character: it can be used by academics seeking reliable knowledge necessary to their study of the development of European integration processes, as well as—in connection with the pertinence of the issues raised in this book—by decision-makers and officials responsible for the preparation and implementation of EU policies. We hope that the papers contained in this publication will become starting points for discussion about the European Union and reform of the organisation in the face of Russian aggression against Ukraine.

Key Findings

- The pace and nature of the EU's response to Russia's full-scale invasion of Ukraine has been unprecedented, breaking the deadlock in military engagement in the Eastern Neighbourhood and the supply of offensive equipment to partners. This has led to a change in the perception of the EU's role as a security actor.
- Russia's invasion of Ukraine has mobilised the EU to accelerate its efforts to reduce dependence in strategic areas, in particular reliance on authoritarian states. However, Member States are divided in their assessment of the risks arising from the highly developed economic relationship with China, as well as, in their opinion, on the fair balance between the protection of the EU market and free trade.
- The war has shown that in order to effectively defend the international order, the EU needs the support of both its closest allies and the countries of the Global South, thus strengthening the supporters of the concept of open strategic autonomy of the EU.
- There is a strong consensus within the EU that strategic autonomy cannot be built in opposition to the United States and that the EU should increase its defence capabilities in close coordination with

NATO. Strengthening the EU's defence industry remains at the heart of the autonomy debate.

- In response to Russia's invasion of Ukraine, the EU adopted strong economic sanctions, covering more than half of its existing trade with Ukraine (worth around €140 billion), and financial sanctions, under which the EU froze around €24 billion in private assets and around €200 billion in public assets. Despite the serious economic consequences of the sanctions for the EU itself, the Member States' support for the existing restrictions has remained and is still considered to be the most important instrument for influencing Russia.
- The weakness of sanctions policy has been the way in which decisions were taken on the basis of unanimity among EU members, which has led to protracted negotiations, the application of numerous exceptions and transitional periods, which in turn has limited the impact of the restrictions on the Russian economy.
- The Russian invasion of Ukraine has not led to a breakthrough in the discussions on institutional reform of the Community. There are still serious differences of opinion between the proponents of change (who primarily want to replace unanimity in the votes of the Council of the EU with a qualified majority) and the supporters of the status quo.
- Russia's aggression against Ukraine marked a turning point in the history of the European Union's energy policy. The steps taken by the EU to support Ukraine had to *de facto* mean the end of energy ties with Russia, a revision of decision-making processes in terms of anti-crisis measures, and a change in political emphasis so that all energy policy demands serve to build the EU's resilience.
- The Russian invasion of 24 February 2022 triggered the biggest humanitarian crisis in Europe in decades and has posed a major challenge to the EU's development aid and migration policy. In response to the mass exodus from Ukraine, the EU activated

the Temporary Protection Directive, which has proven to be an effective anti-crisis tool, facilitating the reception and initial integration of arrivals in the EU, avoiding the overwhelming of Member States' asylum systems.

- The European Union has become an international leader in initiatives aimed at ensuring adequate documentation and prosecution of international crimes committed in Ukraine, and Poland has been one of the EU members most actively motivating it to act.
- In the face of the war in Ukraine, the EU has shown its effectiveness in the fight against Russian disinformation. Russia's propaganda and disinformation campaigns aimed at Western and Ukrainian audiences have in most cases failed to find supporters.

Prospects

- The EU's credibility as a security actor will largely depend on the development of a coherent policy towards Russia. Only a tough stance in relations with the Russian authorities can discourage them from further acts of imperial aggression and enable them to achieve lasting peace in Europe.
- The effective use of Common Security and Defence Policy (CSDP) instruments to assist Ukraine will prove to be an important incentive to deepen cooperation between the Member States in the future and will strengthen the EU's overall engagement in fragile regions of the world.
- The EU will further develop CSDP instruments, but they will be shaped complementary to NATO. It remains an open question whether increased defence spending in the EU will translate into strengthening EU industry in order to build the EU's strategic autonomy or, on the contrary, will deepen dependence in the military sector vis-à-vis non-EU countries.
- The challenge for the EU's sanctions policy towards Russia remains ensuring the effective implementation of the restrictions, taking into account, among others, the insufficient operational capacity of most EU Member States to detect sanctions violations and the

limited possibilities of the EU to influence third countries that allow them to be circumvented.

- The current international situation has led the Member States to perceive Ukraine's situation as exceptional, which increases its chances in the EU accession process (but does not mean that membership is guaranteed).
- One of the most important axes of the dispute over Ukraine's accession to the EU will be the issue of the pace of accession negotiations. At present, two camps are emerging: those who would like to accelerate this process in the name of anchoring Ukraine in European structures as soon as possible (at the cost of failing to meet all the accession criteria), and those who want to carry it out in the normal way, which, however, may significantly prolong the waiting time for accession.
- The lack of agreement on reform of EU institutions, above all around the abandonment of unanimity, may block Ukraine's accession and strengthen centrifugal tendencies in the Community. In this situation, France and Germany will try to strengthen their cooperation, for example in the field of foreign or industrial policy, in the form of a coalition of the willing.
- Granting Ukraine the status of candidate for EU membership will entail further integration of the Ukrainian market with the EU's internal market. This will be facilitated by the expansion of transport links between the EU and Ukraine and the growing presence of investors from the Member States in the country as a consequence of Ukraine's post-war reconstruction.
- In the short to medium term, the EU will remain a key donor of financial assistance to Ukraine. It will also play a key role in Ukraine's post-war reconstruction, both by providing part of the resources needed to finance it and by seeking to shape the general conditions for international assistance to Ukraine.

- The war in Ukraine will change the financing, organisation, and treatment of development aid in the EU's external relations—we can expect an increase in funds for EU development and humanitarian aid, the creation of new aid instruments and a strengthening of the role of aid as an important instrument of the EU's foreign policy.
- The Temporary Protection Directive, despite its positive effects in the face of mass refugees from Ukraine, will not become the basis for a new, permanent solidarity mechanism in the EU's asylum policy. In the discussion about its shape, the ideas put forward in response to the migration-management crisis of 2015-2016 are recurring.
- The EU's current initiatives in the area of the prosecution of international crimes and the development of international criminal law can be a signal that the EU intends to play a greater role in this area and even to lead the international arena. Closer cooperation between prosecutors and prosecution authorities in relation to international crimes could be a first step towards expanding cooperation in criminal matters in the EU in the longer term, but treaty changes would be necessary to make a real difference in this area.
- Russia will remain one of the main actors using Foreign Information Manipulation and Interference (FIMI) against the EU. In order to increase the effectiveness of the fight against Russian disinformation in the future, the EU is likely to place greater emphasis on disseminating knowledge about the threats posed by Russia's systematic information warfare among the societies of the Member States.

ELŻBIETA KACA, MELCHIOR SZCZEPANIK

The War in Ukraine and the Concept of EU Strategic Autonomy

Introduction

The Russian aggression against Ukraine has highlighted the risks posed by the Union's excessive economic dependence on non-democratic states and its limited defence capabilities. It renewed the debate among the Member States about the development of the Union's strategic autonomy, that is, its independent capacity to meet the challenges of the increasing rivalry between global powers and economic competition.¹

¹ In EU debates, the notions of "European sovereignty" and "strategic autonomy" are generally used interchangeably even though in some analyses, think-tankers and academics stress the differences between them. Many proponents of close cooperation with the U.S. are suspicious of the notion of "autonomy", considering it to imply a drive towards loosening Transatlantic cooperation. See: M. Lefebvre, "Europe as a power, European sovereignty, strategic autonomy: a debate that is moving towards an assertive Europe," *Schuman Papers* n°582, February 2021; N. von Ondarza, M. Overhaus, "Rethinking Strategic Sovereignty. Narratives and Priorities for Europe after Russia's Attack on Ukraine," *SWP Comment*, No. 31, April 2022.

From the 1990s until the outbreak of the COVID-19 pandemic in 2020, the concept of strategic autonomy was mainly related to the development of EU defence capabilities in view of a possible reduction in U.S. involvement in Europe.² It was promoted by France (supported, among others, by some southern EU states), which advocated the development of a Common Security and Defence Policy (CSDP) towards strengthening the EU defence industry and the EU ability to respond to crises in the neighbourhood, among other goals. The outbreak of war in Syria in 2011, Libya and Ukraine in 2014, the shift of U.S. engagement towards Asia initiated under President Barack Obama (2009-2016), the antagonistic U.S.-EU relationship of the subsequent presidency of Donald Trump (2017-2021), and Brexit (2016-2020) were the successive catalysts for the debate about building the Union's strategic autonomy. In 2013, the European Council recognised that, in order to act autonomously, the EU needed to develop its technological and industrial base in the defence sector.³ In its "Global Strategy" adopted in 2016, the EU stressed that the basis for autonomy is the development of defence cooperation and industry.⁴ The Member States defined EU strategic autonomy as the Union's ability to act independently when and where necessary and in cooperation with partners wherever possible. A key element of this autonomy was the development of CSDP.⁵ However, the strengthening of the EU's security and defence policy instruments based on this concept met resistance from EU members interested in deepening the

² N. Helwig, V. Sinkkonen, "Strategic Autonomy and the EU as a global actor: the evolution, debate and theory of a contested term," *European Foreign Affairs Review*, April 2022.

³ European Council, *European Council Conclusions*, 19-20 December 2013, p. 7, www.data.consilium.europa.eu.

⁴ EEAS, "Shared Vision, Common Action: A Stronger Europe A Global Strategy for the European Union's Foreign And Security Policy," June 2016, p. 11, www.eeas.europa.eu.

⁵ Council of the European Union, "Council Conclusions on the implementation of the EU Global Security and Defence Strategy," 14 November 2016, p. 2, www.consilium.europa.eu.

Union's cooperation with the U.S., including the Baltic states, Poland, the Netherlands, and Denmark. They concluded that developing defence capabilities in this direction would weaken relations with the U.S., compete with NATO, and lower the EU countries' commitment to the Alliance. As a result, the EU launched several instruments between 2017 and 2021 aimed at strengthening the European defence industrial base as well as missions and operations abroad, but they were limited in terms of mandate and budget. These included the PESCO (Permanent Structured Cooperation), the European Defence Fund, and the off-budget European Peace Facility. Between 2020 and 2021, the EU was also developing the "Strategic Compass", a document indicating its level of ambition and the way forward for international security until 2030. It was formally approved after the Russian full-scale invasion of Ukraine in March 2022. Despite the initial scepticism of some Member States, the EU, within the scope of the Strategic Compass, established a new rapid reaction force of up to 5,000 troops for various crises.⁶ Nevertheless, the Union's new arrangements adopted since 2017 have not improved the coherence of its defence policy.⁷ Many challenges remain, such as the numerous gaps in the development of the defence industry from years of underinvestment by most of the Member States, the wide variety of systems and weapons used by their militaries, as well as the reluctance of members to engage in intra-EU partnerships due to the primacy of national interests in defence policy.

The debate on strategic autonomy extended to economic issues. As the dominance of the United States (in the digital sector) and China (especially in green technologies) became increasingly manifest, European leaders recognised the need to catch up. In March 2020, the European Commission (EC) published an industrial strategy outlining

⁶ M. Terlikowski, "EU's Strategic Compass Main Assumptions Revealed," *PISM Commentary*, No. 85/2021, 17 November 2021, www.pism.pl.

⁷ European Defence Agency, "2022 coordinated annual review on defence report," November 2022, www.eda.europa.eu.

plans to strengthen this sector of the economy, as well as to expand the toolkit enabling the EU to defend itself against attempts by third countries to restrict free competition or use economic blackmail.⁸ The COVID-19 pandemic highlighted the drawbacks related to dependence on imports of, in particular, medicines and medical equipment, and to the existence of highly complex global value chains. The competition for vaccines, in turn, clearly demonstrated how technological and economic dominance can be used for political ends. The EU's ambition to achieve climate neutrality by 2050 has put raw materials used by the green-technology sector in the spotlight. In this domain, the Union is heavily dependent on imports and buys a great deal of valuable minerals from China.

While there is a consensus among the Member States on the need to strengthen European industrial capacity and reduce dependence on imports (or at least diversify supply) in strategic areas, differences of opinion are emerging on the details of implementing these plans. Northern European countries emphasise that strategic autonomy must remain “open”, meaning reducing dependencies does not mean moving towards autarky, and that strengthening trade relations with third countries will strengthen the EU's position. The centre-right and business organisations suggest slowing the pace of the green transition, arguing that it could lower the EU's competitiveness. Central and Southern European countries warn that modification of state aid rules allowing more public support for key industries could distort competition on the single market in favour of the richest members.

Efforts to Strengthen EU Defence Capabilities

In response to Russian aggression against Ukraine, the EU, in coordination with the G7 and others, provided unprecedented support

⁸ M. Szczepanik, “More Autonomous and Greener: A Strategy for EU Industry in the COVID-19 Era,” *PISM Strategic File*, No. 2 (92), November 2020, www.pism.pl.

to the Ukrainian authorities by delivering arms and supplies valued at about €15 billion by July 2023 (including bilateral assistance from Member States) and launched a mission to train 30,000 Ukrainian soldiers. The Union also increased its engagement in the field of international security through the establishment of four missions: in Armenia, Moldova, Mozambique, and Niger.⁹ The scale of these activities required a change in approach to the development of the EU's defence industry, which was not geared up to produce for war. In March 2022, at the informal European Council meeting in Versailles, EU leaders recognised that the Union must continue to build European sovereignty and capacity to act independently, including by increasing investment in defence and innovative technologies, for instance, through joint projects and procurement.¹⁰ A few months after the invasion, Member States pledged additional defence spending totalling around €200 billion.¹¹ At Versailles, the Member States simultaneously reaffirmed that the transatlantic relationship and EU-NATO cooperation are key to European security, and that improved Union security and defence capabilities will complement those of NATO, which remains the basis for the collective defence of its members. The war has highlighted to all Member States that the U.S., through its deterrent capability and the scale of its assistance to Ukraine (around \$30 billion in military aid and around \$15 billion in economic

⁹ For more on EU military aid to Ukraine and EU missions, see: A. Koziol, "EU Military Assistance to Ukraine and the Future of the Common Security and Defence Policy," in this volume, p. 31.

¹⁰ Council of the European Union, "Informal meeting of heads of state or government. Versailles Declaration. 10-11 March 2022," 11 March 2022, www.consilium.europa.eu/media/54787/20220311-versailles-declaration-pl.pdf.

¹¹ European Commission, "Joint communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the Defence Investment Gaps Analysis and Way Forward," High Representative of the Union for Foreign Affairs and Security Policy, 18 May 2022, p. 1, www.commission.europa.eu.

and humanitarian support as of February 2023),¹² is key to ensuring security in Europe.

In response to the Versailles Declaration, the EC presented an analysis of the gaps in the EU's defence capabilities in May 2022. Among other things, it assessed that, in the short term, EU states should first and foremost replenish their weapons stocks, replace equipment and systems left over from the Soviet era, and strengthen air and missile defence.¹³ It proposed to increase the scale of joint procurement, especially with regard to the completion of stockpiles. To this end, it set up a task force on joint defence procurement, involving, among others, representatives of the Member States. It identified priority procurement areas (e.g., anti-tank and missile systems, ammunition, and explosives) and analysed the possibilities for the European defence industry to supply these products. The EC also presented new instruments to improve the joint procurement system. In July 2022, the EC proposed a regulation to establish an act to strengthen the European defence industry through joint procurement (EDIRPA). An inter-institutional agreement was reached in June 2023 and the regulation entered into force in October 2023.¹⁴ A sticking point in the negotiations was the calibration of the percentage share of non-EU suppliers in tenders. In the European Parliament, MEPs from France demanded preferential treatment for EU companies, while MEPs from Estonia, Poland, Germany, and others argued that all possible suppliers from allied countries should be included.¹⁵ The agreement stipulates that the budget for joint procurement will be €300 million, at

¹² M. Piotrowski, "Congress Key to U.S. Support for Ukraine One Year After the Russian Invasion," *PISM Bulletin*, No. 14 (2133), 17 February 2023, www.pism.pl.

¹³ "Joint communication ...," *op. cit.*

¹⁴ Council of the European Union, "EU defence industry: Council and European Parliament agree on new rules to boost common procurement," 27 June 2023, www.consilium.europa.eu.

¹⁵ S. Lynch, E. Wax, J. Barigazzi, "France pushes protectionism in Ukraine defence plan," *Politico*, 13 March 2023, www.politico.eu.

least three Member States must participate in the joint tender, the EU will subsidise up to 20% of the value of the arms and military equipment purchased, and the cost of components from non-allied countries cannot exceed 35% of the tender value. In May 2023, the EC further proposed a regulation on the establishment of an act to support the production of ammunition, which entered into force in July 2023.¹⁶ Under it, the EU will set up a financial instrument that will support the production of ground-to-ground missiles and artillery ammunition through direct grants of up to 40% of the project value (in some cases 100%). It will also facilitate the acquisition of public and private funding by arms companies, including by creating a special fund. In total, the Union will allocate €500 million for the above purposes.

Building up EU strategic defence autonomy is constrained by many factors. It is doubtful that the Member States will reach the level of defence spending (€200 billion) declared after the Russian invasion, not least because of the economic downturn in the EU.¹⁷ The European Defence Agency estimates that EU defence spending will increase by €70 billion by 2025.¹⁸ The arms gap with the major powers, whose economic situation is better, will therefore remain large. In 2021, the total defence spending of the Member States was €214 billion, the U.S. €686 billion, and China €241 billion (Russia's spending was only €56 billion).¹⁹ The vast majority of the Member States allocate a small proportion of their defence spending to investment in the development of new military technologies, a factor that compounds the increasing dependence on non-EU countries in this sector. In 2015-2019, non-EU NATO countries,

¹⁶ *Regulation of the European Parliament and of the Council on supporting ammunition production (ASAP)*, European Union, 20 July 2023, www.eur-lex.europa.eu.

¹⁷ N. Tocci, "The paradox of Europe's defence moment," *Texas National Security Review*, Vol. 6, No. 1 (winter 2022/2023), www.tnsr.org.

¹⁸ "2022 Coordinated ...," *op. cit.*, p.2.

¹⁹ European Defence Agency, "Defence data 2020-2021. key findings and analysis," 2023, p. 5, www.eda.europa.eu.

in particular the United States, Canada, and Norway, remained the key suppliers of arms to the EU.²⁰ For some governments, purchases of U.S. defence equipment are also a way to strengthen bilateral relations with the U.S. and increase interoperability within NATO. While the adoption of new instruments to subsidise joint procurement is a step in the right direction, their small budgets may not encourage many Member States to participate in bureaucratic EU projects. The countries most often opt for joint projects in the arms sector when they coincide with national plans, benefit national industry, or consolidate strategic partnerships.²¹ Military procurement is still mainly carried out at the national level (around 80% in 2021) rather than in cooperation with European partners (19%), and it will be difficult to reverse this trend.²² Moreover, due to the need for rapid replenishment of arms stocks, some Member States are looking for competitive suppliers outside the EU, for example, in the U.S., South Korea, and Israel.²³ This carries the risk of further fragmentation of the EU defence industry and strengthening dependence on non-EU countries.

Reducing Dependency and Strengthening Economic Potential

As Russia withheld portions of the supply of energy exports to the EU in order to exert pressure on its members, both in 2021 and after the full-scale invasion of Ukraine, dangers related to dependence on an authoritarian state became crystal clear. Russia's actions, as well as the sanctions adopted by the Community and the voluntary abandonment of purchases by some EU importers, provoked an increase in the price of energy commodities, which in turn translated into strong inflationary

²⁰ M. Terlikowski, "European strategic autonomy and third countries: the Defence Industrial Dimension," Globsec Policy Institute, January 2021, p. 6, www.globsec.org.

²¹ "2022 coordinated ...," *op. cit.*, p. 4.

²² "Defence data ...," *op. cit.*

²³ "The paradox ...," *op. cit.*

pressure across the economy. In 2022, average annual inflation in the EU was 9.2%, and in most Central and Eastern European countries it was well over 10%. The EU managed to reduce energy imports from Russia, but deliveries from other suppliers were more expensive, resulting in a drastic change in the EU trade balance.²⁴ In 2022, the trade deficit was more than €400 billion, while in recent years the EU had a positive trade balance of €120–250 billion. High energy prices are a barrier to economic growth and, in the long term, threaten the EU's reindustrialisation ambitions. Most Member States abandoned plans to reduce public debt and increased budgetary spending to support businesses and citizens struggling with the rising cost of living and doing business.

The negative economic consequences of Russian aggression have given prominence to the EU's aspirations to reduce dependence especially on authoritarian states. In the aforementioned Versailles Declaration, EU Heads of State and Government announced, in addition to building European sovereignty, the reduction of dependencies (especially related to energy) and “designing a new growth and investment model for 2030”.²⁵ “Reindustrialising the EU and guaranteeing its open strategic autonomy” is one of the four priorities of the Spanish presidency of the Council of the EU in the second half of 2023.

Due to the nature of the EU's dependence on Russia, energy issues took centre stage. A few weeks after the invasion, the EC presented the REPowerEU plan, which aimed to reduce imports of Russian fossil fuels, primarily by accelerating the development of renewables and reducing energy demand.²⁶ As a result, the disbursement modalities of the EU's

²⁴ The EU was most successful with oil: in the first quarter of 2023, only 3.2% of imports came from Russia (pre-war, 26%). For pipeline gas, the reduction was not as significant: in the first quarter, Russian crude accounted for 17.4% of imports (pre-war 38.8%). Some European companies (e.g., Austria's OMV) do not intend to completely abandon imports from Russia.

²⁵ “Informal Meeting ...,” *op. cit.*, para 7.

²⁶ P. Dzierżanowski, Z. Nowak, “Business and Consumer Protection Must Evolve after Europe's Energy Crisis,” *PISM Bulletin*, No. 69 (2188), 6 June 2023, www.pism.pl.

Next Generation EU recovery fund were modified to give countries more freedom to make investments related to the energy crisis. In March 2023, the Commission presented a draft regulation to facilitate the planning and financing of renewable energy projects (Net-Zero Industry Act). It was accompanied by a regulation on critical raw materials. Its adoption is intended to expedite new investments in raw material extraction on EU territory, as well as to enable their recovery on a larger scale in line with the principles of a circular economy. The Union is also seeking to widen the circle of suppliers of critical raw materials, which would make it possible to reduce dependence on China and Russia.

The economic consequences of Russian aggression and the sanctions adopted by the EU spurred the Union to pay increasing attention to the issue of using economic advantages as a tool of political leverage.²⁷ The most striking illustration of this approach is the EC Communication on the “European Economic Security Strategy” published on 20 June 2023. Among other things, the Commission announced the creation of a list of technologies of fundamental importance for economic security and an assessment of the risks for each of them. It aims to increase business’ awareness of the risks of dependence on certain single contractors in the value chain. It plans to modify existing regulations to strengthen scrutiny of incoming foreign investments in the EU and the export of dual-use technologies. It is also considering introducing new regulations to control outgoing investments by European companies.

Significant progress had already been made on this issue before the publication of the Communication. In June 2023, negotiations were completed on a regulation that enables the Union to respond more quickly and effectively to economic blackmail. It includes a procedure for dealing with such cases and a broad catalogue of retaliatory measures (e.g., restriction of access to the single market). The introduction

²⁷ For a broader description of EU efforts to enhance economic security and related political disputes, see: M. Szczepanik, “EU Tackles Changes in Global Economic Competition,” *PISM Strategic File*, No. 10 (131), July 2023, www.pism.pl.

of the carbon-border-adjustment mechanism (CBAM) is in turn a manifestation of the growing determination to protect competition and to use the attractiveness of the single market as a tool to promote EU standards.

China's stance in the wake of Russia's war, which has been supportive of the aggressor and trumpeting the need for revision of the international order, has increased EU decision-makers' distrust of this power and fear of the political consequences of dependence on it. In discussions about the EU's strategy towards China, which combines elements of competition and cooperation, the theme of systemic rivalry has become more prominent. EC President Ursula von der Leyen formulated a negative diagnosis of the state of relations, accusing China of, among other things, restricting market access, and proposed derisking as a guiding principle for the future.²⁸ According to this approach, the Union should reduce over-dependencies in strategic areas where it can be used as a tool of leverage. Von der Leyen also stressed that China's attitude towards the war in Ukraine will be of cardinal importance for the development of relations with the EU. Her position reflects the growing willingness of EU leaders to respond in kind to China's confrontational actions. However, there are also clear differences among the Member States in their perceptions of the risks posed by relations with China. EU members who benefit from developed trade with the country are reluctant to curtail it or to take steps that might prompt Beijing to retaliate.²⁹

The Russian aggression has strengthened advocates of "open" strategic autonomy: strong economic and political relations with third countries are a prerequisite for both the diversification of critical raw

²⁸ European Commission, "Speech by President von der Leyen on EU-China relations to the Mercator Institute for China Studies and the European Policy Centre," 30 March 2023, www.ec.europa.eu.

²⁹ M. Przychodniak, "China Tempting EU Members and the Effect on Transatlantic Relations," *PISM Bulletin*, No. 91 (2210), 11 July 2023, www.pism.pl.

material supplies and effective pressure on the aggressor. G7 members are natural allies. The Union also seeks closer ties with the countries of the Global South, which are attractive economic partners—some have valuable deposits of critical raw materials and also represent promising markets for European products. These countries are trying to remain neutral in the face of the war in Ukraine and benefit from economic contacts with G7 members as well as with China and Russia. The Union must therefore suggest cooperation schemes that are competitive with the advantages offered by authoritarian powers. They must take into account the growing ambitions of developing countries, which do not want to be mere suppliers of raw materials to the EU, but to use their natural resources to develop their own industrial sector. Climate policy and environmental issues are often the bone of contention. The EU wants trade agreements to contain strong clauses on these matters, while most of its partners perceive efforts to protect the environment as an attempt to limit their development opportunities. An example of the difficulty in reconciling economic and environmental ambitions is the relationship with Latin America. Although the EU has signed memoranda of cooperation on critical raw materials with Argentina and Chile, a trade agreement with Mercosur has yet to be finalised.

Relations with the United States remain a strongly contested dimension of the strategic autonomy debate. Political rapprochement in the face of Russian aggression and coordination on military support, economic assistance and sanctions, among others, are conducive to a closer relationship, but the U.S.-adopted subsidy programme for the green technology sector has hit economic relations.³⁰ American ambitions to strengthen its own capabilities in this field are similar to the Community's plans, but the creation of a programme that only subsidises production on U.S. soil has shown European policymakers that the Union is treated as a competitor, not an ally.

³⁰ M. Skoczek-Wojciechowska, "EU Responds to Transatlantic Competition in Green Technologies," *PISM Bulletin*, No. 48 (2167), 21 April 2023, www.pism.pl.

Conclusions

Russia's full-scale invasion of Ukraine mobilised the EU to accelerate its work on reducing dependence in strategic areas and primarily on authoritarian states to pay more attention to the vulnerabilities of it and to enhance protection against economic blackmail. The events that unfolded after 24 February 2022 confirmed the arguments of the proponents of open strategic autonomy. To reduce these dependencies and strengthen its position in global economic competition, the EU must have an extensive network of trade and political relations that includes not only its closest allies but also those states that wish to avoid direct involvement in the geopolitical competition. This group of "neutrals" is actively courted by China and Russia, forcing the EU to make its own offer of cooperation more attractive.

Russia's aggressive policy has united the Member States around the overall goal of strengthening the Union, but it has not resolved all the controversies that have grown up around the concept of strategic autonomy in recent years. In some cases, the disputes have become sharper. The assessment of the Chinese threat divides the Member States, as does the concept of a fair balance between the protection of the EU market and free trade. While the desire to break relations with Russia has been a strong impetus to accelerate the development of renewable energy, in other fields, such as ecosystem restoration, the centre-right and the business community are using the war as a pretext to slow down the green transition.

In the area of defence, the new international situation in the wake of the Russian aggression against Ukraine has cemented the consensus within the EU that strategic autonomy cannot be built wholly separate from the U.S., whose military involvement in Europe remains crucial to its security. By providing unprecedented military assistance to Ukraine, the EU significantly strengthened its security role, but this was done in close coordination with the U.S. and NATO. The strengthening of the EU defence industry remained central to the debate on autonomy. The

budget of the financial instruments adopted by the EU to stimulate joint procurement is insufficient to bring about a qualitative change in this area. Most likely the Union, inspired, among others, by France, will further develop CSDP instruments, but they will be shaped complementarily to NATO. It remains an open question whether increased defence spending in the EU will translate in the coming years into a strengthening of the Union's defence industry or, on the contrary, a deepening of dependence in the military sector vis-à-vis non-EU countries.

ALEKSANDRA KOZIOŁ

EU Military Assistance to Ukraine and the Future of the Common Security and Defence Policy

Introduction

The year 2022 brought Europeans two radically different experiences: the full-scale Russian invasion of Ukraine on the one hand, and the 10th anniversary of the EU's Nobel Peace Prize on the other. The latter was celebrated rather modestly, as the Union's role in transforming Europe "from a continent of war to a continent of peace"¹ was called into question. In the first months of the wartime shock, efforts were concentrated on getting the necessary aid to Ukraine as quickly as possible. This was achieved not only through an unprecedented political and social mobilisation in the Member States but also through relevant instruments within the EU.

¹ The Nobel Prize, "Press release", 12 October 2012, www.nobelprize.org.

The Common Security and Defence Policy (CSDP) is in principle intergovernmental, and national security remains the exclusive competence of the Member States.² Cooperation may lead to the creation of a common defence in the future, but this requires a decision by the heads of state or government in the European Council. Until 2022, the Member States' had committed mainly to sharing resources for missions and operations, thus providing the EU with operational capabilities, and—in varying degrees, sometimes limited—to building up their own military capabilities. In this way, EU members have been fulfilling the main objectives of the treaties, even though most of them regard NATO as the main security organisation in Europe and the foundation of their defence.³

Despite objections to the transfer of security and defence competences to the supranational level, the Member States have gradually deepened cooperation, seeing in this process various benefits for themselves. Since the adoption of the Treaty of Lisbon, the development of the CSDP (see: Figure 1) has continued to leap and bound, influenced both by the domestic and international situation. It started to accelerate only in 2016, six years after the adoption of the Treaty and two years after Russia's illegal annexation of Crimea. At that time, the Member States gradually reached agreements on the new instruments, some of which—as it later turned out—were to play an important role in military assistance to Ukraine.

The basis for security and defence cooperation was sharing selected activities. By this the Member States tried not only to increase their interoperability within the EU but also to strengthen national defence industries. The Coordinated Annual Review on Defence (CARD), first launched in 2017, analysed their defence capabilities, identified gaps, and assessed the potential for cooperation. At the same time, most EU members (except Denmark, Malta, and the United Kingdom) engaged in Permanent Structured Cooperation (PESCO), which allows groups of interested states to initiate defence projects.

² Article 4(2) of the Treaty on European Union.

³ Article 42 of the Treaty on European Union.

The 2021–2027 budget outlook provided new financial incentives for joint CSDP actions. In the internal dimension, aimed at strengthening European industry, this was the European Defence Fund (EDF) with €8 billion in allocated funds, of which €2.7 billion is earmarked for research and €5.3 billion for projects, thus complementing national spending. Crucial in the external dimension was launching the European Peace Facility (EPF), with initial financial resources of €5 billion. This instrument, however, remains outside the EU budget due to its military and defence implications, as it is intended to finance actions under EU missions and operations.

Nevertheless, the commitment of states to European defence development has remained relatively low, and the way of shaping the external dimension of EU policy was selective over the years, with the main focus on the Mediterranean and Africa. Although in 2009 the EU had already initiated deepening cooperation with its eastern neighbours in the Eastern Partnership format, comprising Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine, it was undermined by different perceptions of eastern policy among the Member States. Some of them feared involvement in the security dimension in the region and did not want to bear the costs of a possible confrontation with Russia. This policy did not change until 2022.

Russia's full-scale invasion of Ukraine in February 2022 was such a shock to Europe that the previous policy of at least maintaining correct relations with Russia had to be changed. This was prompted not only by the aggressor's initial successes on the front line, which threatened the Union's borders, but also by the unprecedented scale of the crimes that Russian troops began to commit against the civilian population.⁴ The mobilisation of EU efforts in support of Ukraine happened at an extraordinary pace and took on an unprecedented character.

⁴ S. Zaręba, M. Piechowska, "The Bucha Massacre—Russian Crimes in the Kyiv Region", *PISM Spotlight*, No. 77/2022, 5 April 2022, www.pism.pl.

Figure 1. Evolution of the Common Security and Defence Policy



Source: Own elaboration based on: "EU cooperation on security and defence," www.consilium.europa.eu.

An Exceptional Commitment

As early as 28 February 2022, just four days after the Russian aggression and three days after receiving a request from the Ukrainian government, the Member State ministers meeting in the Council format approved a tranche of €500 million from the European Peace Facility (EPF) to provide equipment and supplies to the Ukrainian Armed Forces.⁵ The main objective was to support Ukraine in its fight for territorial integrity and sovereignty, as well as to protect the civilian population. Two assistance measures were approved under this tranche: €450 million to finance the delivery of military equipment and platforms, and €50 million to finance equipment and supplies such as personal protective equipment, first aid kits, and fuel. This was the first decision in the EU's history to allow the delivery of offensive weapons to a third country, although Austria, Ireland, and Malta—citing their neutrality—are only involved in the deliveries of so-called non-lethal aid. On the same day, the Council also decided to share with the Ukrainian side geospatial intelligence (GEOINT) from the EU Satellite Centre.⁶

Member States approved further EPF tranches in the following months (see: Figure 2), totalling €3.6 billion by February 2023. Then, launching what it called the three-track approach aimed at accelerating deliveries from own stocks (Track 1) and joint procurement (Track 2), in April and May, they approved two tranches from the EPF of €1 billion each for 1 million rounds of artillery ammunition for Ukraine. According to EU estimates, this brings the value of assistance to Ukraine to an estimated €15 billion, including direct state aid provided on a bilateral basis.⁷ Significantly, Ukraine received a tranche of EPF-funded

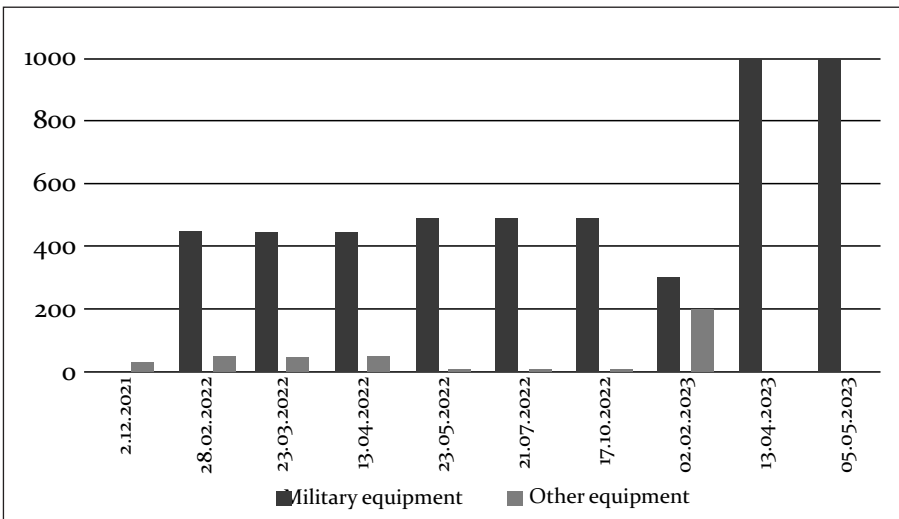
⁵ European Council / Council of the European Union, “EU adopts new set of measures to respond to Russia’s military aggression against Ukraine”, 28 February 2022, www.consilium.europa.eu.

⁶ EU Satellite Centre, “SatCen Annual Report 2022”, www.satcen.europa.eu.

⁷ European Commission, “EU assistance to Ukraine”, 22 June 2023, <https://eu-solidarity-ukraine.ec.europa.eu>; European Commission, “Questions and Answers—A new Ukraine Facility”, 20 June 2023, www.ec.europa.eu.

assistance at the end of 2021, but it was negligible and did not serve to strengthen its defence capabilities despite Russia occupying parts of the Donetsk and Luhansk regions since 2014. Its purpose was to improve the response of the Ukrainian Armed Forces in a crisis, including the supply of equipment for military medical, engineering, transport, and logistics services, as well as cyberdefence. This clearly indicates how Russia’s full-scale invasion of Ukraine led to a change in the Member States’ approach to military engagement in the Eastern neighbourhood.

Figure 2. Tranches from the EPF to Support the Armed Forces of Ukraine.



Source: Own elaboration based on Council decisions (CFSP) on an assistance measure under the European Peace Facility, <https://eur-lex.europa.eu/>.

In the following months of the war, Ukraine received from Western countries (both EU members and the U.S., the UK, Australia, and North Macedonia, among others) various types of military equipment—initially Soviet-era kinds, with an increasing number of Western-made

equipment over time.⁸ This resulted in increasing Ukraine's defence capability, but also the need for training of soldiers in its use. Some countries, such as the UK, set up training programmes for the Ukrainian Armed Forces.⁹ This led EU High Representative Josep Borrell to return to the idea of a military mission for Ukraine, which would allow the Member States to coordinate their training efforts—for example, France, Germany, Italy, Lithuania, Poland, Slovakia, and Slovenia, have so far organised them independently. As a result, in November 2022 the Council decided to launch the EU Military Assistance Mission in support of Ukraine (EUMAM Ukraine).¹⁰ Furthermore, Norway offered in October additional funding for training of around €14.5 million (increased in July 2023 by around €36.5 million), becoming the first third country to contribute financially to the EPF.¹¹ Due to the war and risks resulting from ongoing military actions for the participants, EUMAM was deployed on the territory of the Member States, with a multinational Combined Arms Training Command (CAT-C) established at the operational level in Poland and a multinational Special Training Command in Germany in coordination with the CAT-C. The initial target was for the Member States to train 15,000 Ukrainian soldiers in the use of Western military equipment and tactical operations by the end of 2023, but it was reached

⁸ M.A. Piotrowski, "Pomoc wojskowo-techniczna dla Ukrainy. Ocena potrzeb krótko- i średnioterminowych", *PISM Report*, December 2022, www.pism.pl.

⁹ UK government, "Defence Secretary Ben Wallace visits Armed Forces of Ukraine as training programme starts across the UK", 9 July 2022, www.gov.uk.

¹⁰ *EUMAM Ukraine complements the civilian mission EUAM Ukraine established by the Council Decision 2014/486/CFSP. Council Decision (CFSP) 2022/1968 of 17 October 2022 on a European Union Military Assistance Mission in support of Ukraine (EUMAM Ukraine)*, <https://eur-lex.europa.eu/>.

¹¹ European Council / Council of the European Union, "EU and Norway sign an agreement in support of EUMAM Ukraine", 6 December 2022; "Norway: second Norwegian financial contribution to the European Peace Facility", 25 July 2023, www.consilium.europa.eu.

already in June, and the number is expected to rise to 30,000 by the end of 2023.¹²

Short-Term Mobilisation and Planned Evolution

The extraordinary pace and scale of assistance to Ukraine, as well as the growing needs of other partners threatened by instability in Europe and Africa, verified the limits of the current security and defence policy. Above all, it became evident that, despite the creation of instruments of global engagement such as the EPF, there is no political consensus on specific objectives beyond general aspirations for peace and stability, let alone on priority directions for engagement. The logic of Member States' decision-making with regards to supporting partners and establishing new missions and operations was based on a case-by-case search for consensus in order to respond to crises that had already occurred, which led to the situation of delayed actions and difficulties in resolving ongoing conflicts.

Concerns about the EU's involvement in stabilising the Eastern neighbourhood were only addressed after the Russian full-scale invasion in February 2022. In a relatively short period, the Member States agreed to launch four new missions, two of which are designed to reinforce countries at risk of Russian interference: 1) a military training mission to Mozambique (EUTM Mozambique) in October 2021, 2) a military partnership mission to Niger (EUMPM Niger) in February 2023, 3) a civilian mission to Armenia (EUMA) in February 2023, and 4) a partnership mission to Moldova (EUPM Moldova) in May 2023.

At the same time, the EU stepped up its efforts to shape international security. This is notably evidenced by the doubling of the EPF budget, which in its original form was negotiated by the Member States under pandemic conditions. The Council approved an additional €2 billion

¹² European Council / Council of the European Union, "Foreign Affairs Council (Defence)", 23 May 2023, www.consilium.europa.eu.

in March and €3.5 billion in June 2023, bringing the total EPF budget to €12 billion in current prices.¹³ On the one hand, the increase was necessitated by the unexpectedly high level of support to Ukraine, so that by 2023 more than 90% of the amount foreseen for 2021-2027 had already been allocated. On the other hand, it was driven by the EU's global ambitions, in particular the need to maintain engagement in the Mediterranean and Africa, although in comparison to the €5.6 billion earmarked for the Ukrainian Armed Forces, the support to other countries has so far been relatively modest (see: Table 1). The second major development is the supply of offensive equipment, on which there was no general agreement among the Member States, mainly caused by the risk of weapons being seized or misused. Still, in June 2023, Niger was the first country besides Ukraine to receive this type of funding, €4.7 billion for air-to-ground munitions.

Table 1. Partners Supported by the EPF (Excluding Ukraine)

Beneficiary	Budget (mln euros)	Date	Type of Support
Balkan Medical Task Force	6	9.06.2022	Mobility assets (medical and terrain vehicles); role 2 hospitals; laboratory equipment and supplies; IT and communication equipment for Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia.
Benin	11.75	25.09.2023	Intelligence, surveillance and reconnaissance (ISR) aircraft; Unmanned Air Systems with spare parts and maintenance training.
Bosnia and Herzegovina	10	4.11.2021	Equipment for the Demining Battalion: 34 transportation vehicles; 34 medical vehicles; 150 metal detectors.

¹³ European Council / Council of the European Union, "European Peace Facility: Council agrees on second top-up of the overall financial ceiling by €3.5 billion", 26 June 2023, www.consilium.europa.eu.

Beneficiary	Budget (mln euros)	Date	Type of Support
Bosnia and Herzegovina	10	1.12.2022	Enhancing and upgrading the equipment of tactical support brigade by purchase of: field equipment; key tools for military engineering; CBRN materiel.
Democratic Republic of the Congo	20	20.07.2023	Individual defensive equipment for soldiers; collective defensive equipment for brigades, battalions, and companies; infrastructure at brigade headquarters level.
Georgia	12.75	2.12.2021	Medical equipment for role 2 medical treatment facilities; engineer equipment for engineer squads and platoons; ground mobility assets of civilian type (pick-up trucks) to improve crisis response of defence forces.
	20	1.12.2022	Military medical equipment; engineering equipment; mobility equipment; cyberdefence equipment to the units of the land forces.
	30	4.05.2023	Engineering equipment; artillery branch mobility equipment; medical equipment; cyberdefence equipment; logistics equipment for defence forces.
Ghana	8.25	10.07.2023	Intelligence and surveillance equipment; defensive electronic warfare systems; military engineering equipment; defensive riverine equipment; explosive ordnance disposal equipment. Transfer of 105 militarised seized by Operation EUNAVFOR MED IRINI on 18 July 2022.
Jordan	7	20.02.2023	Fully equipped mobile hospital (role 1) and ambulances with medevac capabilities; engineering field units; tactical equipment (Unmanned Air Systems (UAS) and Counter Unmanned Air Vehicles (C-UAV) systems), and support to develop a counter unmanned capability.
Lebanon	6	1.12.2022	Healthcare equipment to support the military medical services (central and regional centres); individual defensive equipment for the logistic brigade.

Beneficiary	Budget (mln euros)	Date	Type of Support
North Macedonia	9	16.03.2023	Logistics; medical equipment; communication and information systems; intelligence capacities; CBRN equipment; engineering; equipment for training for the armed forces.
Mali	24	2.12.2021	Support to the Non-Commissioned Officers' (NCO) Academy in Banankoro; renovating training infrastructure in Sévaré-Mopti; providing equipment not designed to deliver lethal force for three companies of the 23rd Regiment of the 2nd Military Region of Mali, according to the needs of the Unité légère de reconnaissance et d'intervention (ULRI).
Mauritania	12	1.12.2022	Riverine and technical equipment for the Bataillon des fusiliers marins; protective equipment kits including military uniforms for the Bataillon des fusiliers de l'air; intensive care equipment and surgical equipment for the medical centres in Military Regions 2 and 3.
Moldova	7	2.12.2021	Medical equipment for the Military Medical Service; explosive ordnance disposal equipment for the Engineer Battalion.
	40	30.06.2022	Defensive equipment, supplies and services, including equipment-related training of the land forces with regards to logistics, mobility, command and control, cyberdefence, unmanned aerial reconnaissance, and tactical communications.
	40	4.05.2023	Defensive equipment, supplies and services to the armed forces with regards to air surveillance, mobility and transportation, logistics, command and control, cyberdefence.
Mozambique	4	30.07.2021	Defensive individual and collective equipment for military units.
	40	19.11.2021	Defensive individual equipment for soldiers and collective equipment at the company level; ground and amphibious mobility assets; technical devices; a field hospital for military units.

Beneficiary	Budget (mln euros)	Date	Type of Support
Mozambique	45	21.04.2022	Defensive individual and collective equipment; ground mobility assets; a field hospital to the units of the Mozambican armed forces to be trained by the EU Training Mission in Mozambique (EUTM Mozambique).
	15	8.09.2022	Support of the Southern African Development Community (SADC) mission to Mozambique (SAMIM) with collective equipment at company level: camp fortifications and storage containers, medical equipment, vehicles and boats, technological devices.
	20	1.12.2022	Coverage of costs associated with the deployment of units of the Rwanda Defence Force in the northern province of Cabo Delgado.
Niger	25	18.07.2022	Financial support for the establishment of an Armed Forces Technician Training Centre to increase the capacities in the area of logistics support and the construction of a forward operating base in the Tillabéri region.
	40	7.03.2023	Support in the creation of a signal and command support battalion in the Tillabéri region by the provision of ground mobility assets (signal, rapid response, and hard-skin vehicles), surveillance equipment (ground surveillance radar and surveillance Unmanned Air Vehicles, UAVs), IT and communication equipment and systems, countermeasures equipment (Counter Improvised Explosive Devices (counter-IED) equipment and Counter Unmanned Air Vehicles (counter-UAV) systems); the provision of the infrastructure such as warehouses, a command building, and barracks.
	4.7 as well as 0.297	8.06.2023	Offensive equipment for air forces (air-to-ground ammunition for helicopters MI-35 and MI-171); activities aimed to ensure adequate use, maintenance, storage and monitoring; upgrade of the ordnance depot of Air Base 101 located in Niamey.

Beneficiary	Budget (mln euros)	Date	Type of Support
African Union	65	22.07.2021	Defensive equipment for the AU Mission in Somalia (AMISOM) and Somali National Army.
	120	6.07.2022	Allowances of the African soldiers deployed by the military component of the African Union Mission in Somalia/African Union Transition Mission in Somalia (AMISOM/ATMIS).
African Union / Somalia	85 / 25	2.03.2023	Allowances of the African soldiers deployed by ATMIS. / Defensive equipment and infrastructure works for Somali National Army.

Source: Own elaboration based on Council decisions (CFSP) on an assistance measure under the European Peace Facility, <https://eur-lex.europa.eu>.

In contrast, the attitude of the Member States towards increasing the production capacity of the European defence industry proved to be a major challenge—supporting Ukraine (or replenishing own stocks) in line with the three-track approach requires at least a partial adoption of the wartime production logic and the prioritisation of specific orders. While to date 220,000 rounds of artillery ammunition of various calibres and 1,300 missiles were delivered (Track 1), by May 2023 only eight of the 24 countries participating in the European Defence Agency (EDA) Collaborative Procurement of Ammunition project¹⁴ (Track 2) confirmed their intention to purchase 155 mm ammunition. At the same

¹⁴ Austria, Belgium, Denmark, Croatia, Cyprus, Czechia, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and Norway are participating in the EDA Collaborative Procurement of Ammunition project. Of the EU Member States, only Bulgaria, Denmark, and Ireland remain outside the project. European Defence Agency, “EDA brings together 25 countries for Common Procurement of Ammunition”, 20 March 2023, www.eda.europa.eu.

time, complementary projects emerged under so-called lead nations schemes, led by France and Germany.¹⁵

The difficulties are linked to the general state of the European defence industry, as already indicated by the May 2022 defence investment gap analysis. They stem from years of low national defence spending, the fragmentation and tailoring of defence production to the needs of individual states, and specific challenges in the short term (replenishing stockpiles, replacing Soviet-made equipment, reinforcing air and missile defence systems) and in the long term (development of elements such as MALE drones, armoured vehicles, space and cyber defence, and maritime capabilities).¹⁶ To address the most urgent challenges, exacerbated by the Russian full-scale invasion of Ukraine, in May 2023 the European Commission proposed an act to support ammunition production (Track 3), which envisages an additional €500 million in subsidies to the European defence industry, and already in July the European Parliament and the Council adopted regulation on this matter (ASAP).¹⁷ Moreover, an act to strengthen the European defence industry through joint procurement (EDIRPA),¹⁸ which will promote joint procurement between the Member States, is currently being negotiated.

¹⁵ European Council / Council of the European Union, “Foreign Affairs Council (Defence)”, 23 March 2023, www.consilium.europa.eu.

¹⁶ *Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the Defence Investment Gaps Analysis and Way Forward*, <https://eur-lex.europa.eu>.

¹⁷ *Regulation (EU) 2023/1525 of the European Parliament and of the Council of 20 July 2023 on supporting ammunition production (ASAP)*, <https://eur-lex.europa.eu>.

¹⁸ *Proposal for a Regulation of the European Parliament and of the Council on establishing the European defence industry Reinforcement through common Procurement Act*, <https://eur-lex.europa.eu>.

Conclusions

The development of cooperation within the EU is usually seen as lengthy and bureaucratic. When, in 2022, the Member States concluded the process of negotiating the Strategic Compass, the priorities for joint security and defence action up to 10 years ahead, they had to adapt quickly to the new conditions created by Russia's full-scale invasion of Ukraine. Although the document itself did not undergo any far-reaching changes, the agreement to label Russia as a threat initiated a process of gradual change in the approach to the role of the CSDP.

In particular, joint initiatives such as the EPF and foreign missions have not only proved effective but also provided an important incentive for the Member States to increase their commitment to international security. Mobilisation in support of Ukraine broke down major barriers—military assistance to Eastern neighbours and the supply of offensive military equipment to partners. The important role of CSDP instruments in action in both areas may provide an argument for further deepening cooperation at the EU level in the future.¹⁹ At the same time, it is uncertain to what extent security issues will remain at the centre of the Member States' attention in the event of a Ukrainian victory in the war (or a stalemate in the conflict). The lack of a long-term vision for relations with Russia is also worrying—a clear definition of priorities would reduce uncertainty for other EU partners in the region, such as Moldova²⁰ or Armenia.²¹ Indeed, the fact that only civilian missions have been launched in these countries (unlike in Mozambique and Niger)

¹⁹ See: K. Schilde, "Weaponising Europe? Rule-makers and rule-takers in the EU regulatory security state", *Journal of European Public Policy*, 2023, Vol. 30, No. 7, pp. 1255-1280, DOI: 10.1080/13501763.2023.2174582.

²⁰ A. Koziół, J. Pieńkowski, "EU Starts New Partnership Mission and Continues Support for Moldova's Security", *PISM Bulletin*, No. 77 (2196), 21 June 2023, www.pism.pl.

²¹ W. Wojtasiewicz, "Nagorno-Karabakh Republic will Vanish", *PISM Spotlight*, No. 39/2023, 29 September 2023, www.pism.pl.

reflects their reluctance to engage in military cooperation with the EU, which could become a trigger for Russian interference.

Developing a coherent approach among the Member States to internal CSDP processes is more difficult. It is true that work on regulating support for the European defence industry has accelerated—according to unofficial estimates, companies in Europe are capable of producing 230,000 rounds of ammunition, which is as much as Ukraine uses in just over a month.²² Nevertheless, some countries are sceptical about the idea of joint procurement and investment in defence companies and, discouraged by the long wait, are opting to buy equipment from other partners, such as the U.S. and South Korea. If this approach persists, the process of gaining independence from non-European suppliers will be hampered and EDF-funded cooperation will neither deepen nor increase innovation in the domestic defence industry. Some Member States may also be wary of developing joint capabilities²³ if they do not have the freedom to decide on their use when a conflict occurs. Despite these reservations, cooperation is deepening under PESCO, which was expanded in May 2023 by 11 new projects. In addition, EU allies such as Canada, Norway, the U.S. and the UK have joined the military mobility project, which is crucial for the rapid deployment of equipment and troops in Europe in the event of an armed conflict.²⁴ Denmark, which in a historic referendum in June 2022 (prompted by Russia’s full-scale invasion of Ukraine) rejected its opt-out clause and decided to join the

²² T. Schultz, “Ammunition for Ukraine: Can the EU fast-track bullets?”, *Deutsche Welle*, 21 February 2023, www.dw.com.

²³ See: D. Zandee, A. Stoetman, “Specialising in European defence. To choose or not to choose?”, *Clingendael Report*, July 2022, www.clingendael.org.

²⁴ A. Koziół, “EU Smoothly Developing Military Mobility in Europe”, *PISM Bulletin*, No. 45 (2164), 18 April 2023, www.pism.pl.

CSDP after 30 years, has also expressed a willingness to participate in the project.²⁵

Although the Member States are learning lessons from the Russian war against Ukraine, they are developing many CSDP initiatives in a pre-established way. In the last two years, the EU has adopted or updated strategies on maritime, space, and cybersecurity. An ambitious approach in these areas is essential not only to identify threats quickly but also to maintain autonomy in responding to them. Despite initial concerns about an excessive focus on assistance to Ukraine, the EU is calling for comprehensive capacity-building to respond to current security challenges, both domestic and international. At present, however, the key to a strong CSDP is a coherent policy towards Russia. It is up to the Member States to develop a common vision of a secure Europe, where no state pursues its imperial ambitions with bloodshed, and where the EU becomes a credible security actor both for its citizens and for its partners in the world.

²⁵ European Council / Council of the European Union, “EU defence cooperation: Council welcomes Denmark into PESCO and launches the 5th wave of new PESCO projects”, 23 May 2023, www.consilium.europa.eu.

ELŻBIETA KACA

EU Sanctions Against Russia: Challenges and Implications for the Future of Sanctions Policy

Introduction

Russia's full-scale invasion of Ukraine has prompted EU Member States to adopt unprecedented restrictive measures—sanctions. Although the EU had already introduced restrictions against Russia in 2014 in response to its annexation of Crimea and the instigation of the war in Donbas, they were limited in scope at the time. They affected trade and the financial sector to a negligible extent.¹

The European Union, in the scope of its Common Foreign and Security Policy (CFSP), has applied sanctions against third-country governments, non-state actors, and natural and legal persons since the

¹ E. Kaca, A. Koziół, “Unexpected metamorphosis: EU Embarks on an Ambitious Policy in its Eastern neighbourhood,” M. Terlikowski (ed.), *Point of no return? The transformation of the Global Order after Russia's invasion of Ukraine*, PISM Report, April 2023.

1990s. Their aim is to bring about a change in the action of the entity concerned, for example when there are violations of human rights or international law, a regression of democracy or significant security threats, including terrorism. Prior to the Russian aggression, the EU most commonly used asset-freezing of legal and natural persons and, for the latter, a ban on entry into the Union. To a lesser extent, it used arms embargoes and sectoral sanctions, including restrictions on economic cooperation, for example, in trade, investment, or finance. The Member States adopt sanctions by unanimity and proposals for them, depending on the type of restriction, are made by the High Representative of the Union for Foreign Affairs and Security Policy and/or the European Commission (EC). The EU currently has some 30 autonomous sanctions regimes against states, as well as four “horizontal” regimes on human rights violations, terrorism, cyberattacks, and proliferation and use of chemical weapons. Member States implement the restrictions based on their jurisdictions and the EC monitors their actions.

The use of EU sanctions has many limitations. In the past, it was a problem to adopt restrictions that would involve economic and political costs for the Union. The problem was the requirement of unanimity and the risk of one country vetoing a decision. For example, an oil embargo was only applied to Syria and Iran. Negotiating the restrictions was also lengthy, and in some cases even taking several months. Although in September 2018 the EC put forward a proposal to introduce qualified-majority voting on, among other things, sanctions, most of the Member States were against such changes at the time.² Prior to the Russian invasion of Ukraine in 2022, most EU members also did not prioritise the detection and prosecution of violations of EU sanctions and did not have sufficient operational capacity in this area, including facing a shortage of specialists. The EC did not have an effective system for monitoring the implementation of sanctions. Only in the case of the Iran sanctions

² E. Kaca, “The Introduction of Qualified-Majority Voting in EU Foreign Policy: Member State Perspective,” *PISM Bulletin*, No. 162 (1233), 4 December 2018, www.pism.pl.

was there a group of experts set up at the Union level to monitor their implementation. The Member States remained reluctant to strengthen the EC's competences in this area, as most of them perceived sanctions as part of their foreign policymaking.

Scope of EU Sanctions³

In reaction to Russia's full-scale invasion of Ukraine and its recognition (several days before the aggression) of the independence of the so-called Donetsk People's Republic and Lugansk People's Republic, the EU, in coordination with the G7, adopted 11 sanctions packages from 23 February 2022. They also partly concerned Belarus, which supports the Russian invasion. Sanctions are the EU's most important instrument of influence over Russia. They aim to reduce its ability to finance the war and to burden Russian elites with economic and political costs, and weaken the country's economic base.

Since the start of the aggression in 2014, the EU has adopted unprecedented financial restrictions. It has frozen assets, meaning financial and economic resources, including real estate belonging to 1,361 individuals and 196 entities, for a total of 1,551 and 244, respectively, since 2014. The sanctions target, among others, Russian politicians, officials, military officers, propagandists, and dozens of oligarchs (individuals are additionally banned from entering the EU). They also cover selected financial institutions, political parties, paramilitary organisations, media spreading propaganda, and many private and state-owned companies, mainly in the arms and technology sectors. The Member States froze private assets (belonging mainly to oligarchs) worth around €24 billion. They also blocked assets of the Central Bank

³ Based on: E. Kaca, M. Szczepanik, "Poland's Policy in the European Union," *Yearbook of Polish Foreign Policy 2022* (in preparation), and information on the website of the European Commission: "EU sanctions against Russia following the invasion of Ukraine," www.eu-solidarity-ukraine.ec.europa.eu, and "EU restrictive measures against Belarus," www.consilium.europa.eu.

of Russia (CBR) worth around €200 billion, banning EU operators from any financial transactions with the entity. In the case of 10 Russian banks, including the largest of them, Sberbank and VTB, the EU also banned the provision of specialised encrypted communications services used to exchange financial data. This relates mainly to the most popular SWIFT system based in Belgium. The ban did not extend to the entire banking sector, as some countries, such as Austria, Germany, and Hungary, wanted to make payments for Russian energy resources through Russian banks, such as Gazprombank. The EU restricted access to the capital market for Russian private and state-owned entities, as well as banned the export of banknotes to Russia and the sale of securities in the country in official EU currencies and the provision of business services in a number of areas, such as accounting and legal advice.

The EU introduced significant trade sanctions. Export restrictions affected goods worth €48 billion (54% of EU exports to Russia before the invasion) and imports worth €91.2 billion (58% of pre-war imports). The most important restrictions affected the energy sector, especially oil, due to the scale of dependence on Russian supplies. In 2021, the EU imported oil and oil products from Russia worth €71 billion. In June 2022, it banned the purchase, import, and transfer of oil and selected oil products from Russia that were transported to the EU by sea. The embargo covered 90% of existing imports of these raw materials. However, the legislation provided for rather long transition periods (provisions coming into force in December 2022 and February 2023) and many exceptions, for example, the supplies to Bulgaria and Croatia and crude oil transported by pipeline were not covered by the embargo (except Poland and Germany).⁴ In its agreement with the G7, the EU also adopted regulations allowing EU entities to provide services related to Russian oil trade with third countries with a price ceiling up to \$60 per barrel of oil transported by sea and \$45 of \$100 for refined products

⁴ P. Kugiel, Z. Nowak, "Sanctions on Russian Oil Exports Require Further Refining," *PISM Bulletin*, No. 29 (2148), 17 March 2023, www.pism.pl.

depending on their type. The EU also banned, among other things, the import of Russian coal, the reservation of gas-storage capacity in the Union by Russian citizens and entities, new investments in the Russian energy sector (with the exception, for example, of civil nuclear energy and certain raw materials in mining), and the export of certain refinery technologies to Russia. Despite talks, the Member States did not reach a compromise on the introduction of trade restrictions in nuclear energy and gas due to the economic links of some of them with Russia in these sectors.

Other trade restrictions concerned the EU expanding significantly the list of dual-use goods and products deemed essential for the development of Russia's defence sector and industry, which were prohibited to export, for example, drones, their software and motors, semiconductors and advanced electronics, aviation fuel, navigation equipment, industrial machinery, and quantum computers. Moreover, the EU has banned exports of, among others, aircraft, their parts and equipment, luxury goods, and imports of steel, steel and rubber products, gold, iron, wood, cement, and paper. To limit the possibilities of circumventing these restrictions, the EU closed its airspace to Russian carriers and its ports to Russian-flagged ships, and banned Russian and Belarusian transport companies from entering the EU. It has also banned the transit of dual-use and high-tech goods, firearms, and aviation-related materials, among others, through Russian territory.

In the media sphere, the EU has banned Union operators from broadcasting more than a dozen Russian stations used to deliberately spread disinformation, including Sputnik and RT and its subsidiaries.⁵ The ban applies to all means of transmission and distribution within the EU, including cable, satellite, internet television, platforms and websites, and applications. Although RT France filed an appeal, claiming, among other things, violations of freedom of expression, the EU General Court

⁵ E. Kaca, "Countering Russian Disinformation about Ukraine in the EU," *PISM Bulletin*, No. 145 (2062), 5 September 2022, www.pism.pl.

(formerly the Court of First Instance) rejected it in July 2022, confirming the validity of the restrictions. Under the Audiovisual Media Services Directive, some EU countries, including Estonia, Lithuania, Latvia, and Poland, have also restricted the activities of other Russian media outlets.

In response to Belarus' support of the Russian aggression, the EU also applied sanctions against the country (already subject to restrictions for the regime's repression of the population). The EU froze the assets of its central bank and excluded five Belarusian banks from the SWIFT system, as well as banned the supply of euro-denominated banknotes to Belarus and restricted capital flows to the country. It introduced major trade restrictions, including a ban on imports of goods used in the production or manufacture of tobacco products, as well as blocked mineral fuels, bituminous substances and gaseous hydrocarbon products, potassium chloride products, wood, cement, iron, steel, and rubber. The EU has banned the sale and transfer of firearms and their components and ammunition. It has also imposed further restrictions on the export of dual-use goods and technologies, and those contributing to the development of Belarus' military capabilities (e.g., in aviation and the space sector), as well as restrictions on the provision of related services. It placed 22 senior military officers under individual sanctions.

The EU adopted several measures to limit Russia's circumvention of sanctions through third-country companies. While keeping opposition to the introduction of extraterritorial sanctions, the EU adopted restrictions on dozen of foreign individuals and entities (from Armenia, China, Iran, Syria, Uzbekistan, the United Arab Emirates, among others) directly supporting the Russian military-industrial complex in the aggression against Ukraine, for example, for supplying drones or electronic components. In addition, it introduced the possibility of halting exports of dual-use goods or those contributing to Russia's military, technological, or industrial capabilities to countries that are used to circumvent EU sanctions, as well as the possibility of halting the provision of related services. Furthermore, it banned vessels from

entering EU ports that are suspected of violating the oil embargo and the price cap using such practices as oil transfers at sea or tampering with the navigation tracking system of their route.

Consequences for EU Sanctions Policy⁶

The Political and Economic Dimension

A challenge to adopting successive sanctions packages was the EU's method of decision-making based on the requirement of unanimity of the Member States. Due to time pressure, among other things, the EC took a leadership role and negotiated compromise solutions with individual states separately. This facilitated further discussions among EU members, for example, in the Committee of Permanent Representatives (Coreper II) or the European Council, and accelerated the adoption of the first packages immediately after the invasion. In the case of the oil embargo and subsequent sanctions, however, negotiations extended to several weeks. Due to the unanimity requirement, the restrictions against Russia provided for numerous country-specific exceptions, transition periods, and their scope was limited in many sectors, for example, only some banks were excluded from the SWIFT system, and the restrictions were not introduced immediately. As a result, this weakened the impact of the sanctions on the Russian economy.⁷ Problems with the adoption of sanctions by Member States on a unanimous basis were among the factors that led to the return of the debate, prodded by the German authorities, on the introduction of qualified-majority voting in EU foreign policy. The adoption of this solution remains an open question. Indeed, Germany has linked the issue of internal EU reform, including

⁶ Based on, among others, interviews with three officials from the EC, the European External Action Service, and the Ministry of Foreign Affairs of the Republic of Poland, carried out in 2022–2023.

⁷ P. Dzierżanowski, "Reviewing the Russian Economy a Year After the Invasion of Ukraine," *PISM Bulletin*, No. 31 (2150), 22 March 2023, www.pism.pl.

the abandonment of unanimity in EU foreign policy, to its support for EU enlargement to the east.⁸ In June 2022, the European Council granted candidate status to Ukraine and Moldova, although it indicated that the accession process would take into account the EU's capacity to absorb new members.⁹

The sanctions have had a major impact on the EU's economic situation. Restrictions in the field of energy, as well as the rapid and voluntary withdrawal of individual countries and private companies from Russian supplies, were among the factors exacerbating the energy crisis that the EU faced from 2021 onwards.¹⁰ They contributed to further increases in commodity prices and their considerable fluctuation, although the markets' violent reactions to the course of the war in Ukraine were also an important factor. All this resulted in high inflation across the EU in 2022, which hovered around 10% at its peak (September to November) and even 20-25% in some countries, such as the Baltic states and Hungary.¹¹ This had severe consequences for EU businesses and consumers, with Member States increasing public spending to protect consumers from rising energy prices (estimated to have spent around €650 billion as of September 2021), and the EC launching a number of Community initiatives, mainly on ensuring the availability of gas for consumers.¹² As a result of these measures, as well as the fall in gas demand in the first half of 2023, energy prices came down and

⁸ For more, see: M. Szczepanik, T. Zając, "Opening the the Door to Ukraine and Impact on the Debate on Institutional Reform of the Community," in this volume, p. 63.

⁹ European Council / Council of the European Union, "European Council Meeting (23 and 24 June)—Conclusions," EUCO 24/22, 24 June 2022, www.consilium.europa.eu.

¹⁰ P. Dzierżanowski, Z. Nowak, "Business and Consumer Protection Must Evolve after Europe's Energy Crisis," *PISM Bulletin*, No. 69 (2188), 6 June 2023, www.pism.pl.

¹¹ Eurostat, "Inflation database for the EU and Member States," www.ec.europa.eu/eurostat.

¹² *Ibidem*.

EU inflation stabilised in May-June at 5-6%.¹³ Although the majority of EU citizens felt the impact of the war on their economic situation and private lives, public support in the EU for sanctions against Russia remained high. At the beginning of 2023, three quarters of EU citizens expressed approval for the application of such restrictions, although opinions varied across countries, for example, in Poland, Sweden, and Denmark, more than 90% of the public supported sanctions, while less than half did so in Slovakia and Bulgaria.¹⁴ In light of such public sentiment and the stabilising economic situation in the EU, Member State support for the existing sanctions has continued. The restrictions have been regularly extended, and on 23 June 2023, the EU adopted the 11th package.

Implementation of Sanctions

The EU's adoption of sanctions against Russia has exposed a number of problems in their implementation by the Member States.¹⁵ In 2022, only some EU members took steps to improve the system, including Poland and Lithuania.¹⁶ Member States' practices in applying sanctions, including granting exemptions from restrictions and prosecuting violations, vary, allowing Russian companies to circumvent them in less-restrictive jurisdictions. For example, they apply multiple definitions of violations of EU sanctions, under either criminal or administrative law, and different maximum financial penalties. In 2021, depending on the scale of the breach, fines ranged from €1,200 to €5 million for private

¹³ European Central Bank, "Economic Bulletin, Issue 3 and 4," www.ecb.europa.eu.

¹⁴ European Commission, "The EU's response to the war in Ukraine," Standard Eurobarometer 98 Winter 2022-2023, www.ec.europa.eu.

¹⁵ E. Kaca, "Sanctions Against Russia: EU Seeks Coordination to Limit Circumvention," *PISM Bulletin*, No. 161 (2078), 19 October 2022, www.pism.pl.

¹⁶ See publications under the project "European Sanctions and Illicit Finance Monitoring and Analysis Network (Euro SIFMANet)," Centre for Financial Crime and Security Studies, RUSI, www.rusi.org.

individuals, and from €133,000 to €37.5 million for legal entities. Many EU countries also have failed to correctly implement EU anti-money laundering legislation. As a result, despite the mandatory description of ownership structure, company registers in the EU are often opaque, making it difficult to detect assets and document that they belong to sanctioned persons and entities.

To address these challenges, the EC proposed in May 2022 a Directive on the definition of offences and penalties for breaches of EU sanctions, which has been under negotiation at the EU level since December 2022. It adds violations of EU sanctions to the category of cross-border crimes, requiring, as in the case of terrorism, trafficking in human beings and organised crime, a common way to combat them. It also classifies sanctions violations as criminal offences and harmonises the system of penalties. The EU is also negotiating the revision of the Anti-Money Laundering Directive, which clarifies the conditions for keeping registers and extends the obligation to show beneficial owners to foreign companies operating in the EU. The Union is also negotiating the provisions of the so-called ATAD 3 Directive, which are intended to facilitate, among other things, the detection of shell companies from tax havens. Moreover, the EC, which is responsible for monitoring the implementation of sanctions by EU members, has strengthened coordination in this area. In March 2022, it set up a special task force (the so-called Freeze&Seize) composed of EC officials, representatives of the Member States, Eurojust, and Europol, among others, that exchanges information on Russian assets. It also has set up a high-level group on EU sanctions with Member State and business representatives to discuss, among other things, best practices in their implementation.¹⁷ Despite the EC's discussions, most Member States do not want to further strengthen its role in monitoring

¹⁷ European Commission, "EU sanctions: Commission to discuss sanctions application with Member States representatives, businesses, operators, and international partners in two high-level meetings," Directorate-General for Financial Stability, Financial Services and Capital Markets Union, 23 February 2023, <https://finance.ec.europa.eu>.

the implementation of sanctions. Although the Commission's capacity in this regard remains limited, as around 70 people deal with the issue of restrictions (compared to around 700 in the U.S.), EU countries do not want to establish a corresponding agency similar to the U.S. solutions. Most of them consider the issue of sanctions as an area of their sovereign foreign policymaking competence. Some, however, see the need to transfer decisions on exemptions of companies from sanctions to the Community level. Indeed, the different practices of EU states in this field might result in distortions in EU competitiveness policy.

The effectiveness of the EU sanctions was also hampered by the fact that a number of UN countries, mainly from the Global South, did not join the sanctions, as they took a neutral stance on the war.¹⁸ For a dozen of these countries, the EC noted a significant increase in imports of dual-use items and technologies from the EU, followed by an increase in their sales to Russia. Another common practice, however, in line with sanctions rules, was to buy Russian oil (e.g., by Indian companies), refine it locally and then export the processed products to the EU and the U.S. The growing Russian disinformation made it more difficult for the EU to encourage countries in the Global South to support the EU restrictions on Russia. It blamed Western sanctions for allegedly reducing the supply of agricultural products and fertilisers from Russia and Ukraine to developing countries, even though such products are excluded from the scope of the sanctions.

In response, the EU has strengthened diplomacy towards countries that have not joined the sanctions, as well as cooperation with allies. In December 2022, the EU created the position of International Special Envoy for Sanctions Implementation, which was taken up in January 2023 by long-standing EC and European External Action Service official David O'Sullivan. His mandate is to hold high-level talks with third-country

¹⁸ P. Kugiel, "Emancipation of the Global South," in: M. Terlikowski (ed.), *op. cit.*, pp. 37-40.

authorities to ensure the implementation of EU sanctions.¹⁹ The priority is to counter the circumvention of restrictions on dual-use products and advanced technologies for the development of Russian military capabilities. The EU, in coordination with the G7 and Ukraine, has compiled a list of some 140 products that Russia imports from Western countries via third-country companies, which are used for, among other things, missile and drone production.²⁰ In the first half of 2023, the special envoy visited Armenia, Georgia, Kazakhstan, Kyrgyzstan, Serbia, Turkey, Uzbekistan, and the United Arab Emirates (along with his U.S. and UK counterparts), among other states. In most of these countries, assurances were obtained that they will not allow the transit of such goods to Russia. Due to, among other things, the divergent positions of the Member States and the limited leverage of the EU, the envoy did not take diplomatic action towards China or India. In addition, he runs a Sanctions Coordinators' Forum (EU and G7 countries, Australia, New Zealand, Norway, Switzerland, Ukraine) where practical issues of implementing Western restrictions are discussed.²¹ The EU additionally coordinates activities and exchanges information on Russian assets with the so-called Russian Elites, Plenipotentiaries, and Oligarchs (REPO) team, set up by the G7 countries and Australia.

Conclusions

In response to the Russian invasion of Ukraine, the EU adopted strong economic sanctions that covered more than half of its existing trade with the country, worth around €140 billion, and financial sanctions under which the EU froze around €24 billion in private assets and

¹⁹ European Commission, "EU Appoints David O'Sullivan as International Special Envoy for the Implementation of EU Sanctions," 13 December 2022, www.ireland.representation.ec.europa.eu.

²⁰ European Commission, "Economically critical goods list," <https://finance.ec.europa.eu>.

²¹ European Commission, "Statement by EU Sanctions Envoy David O'Sullivan on the first Sanctions Coordinators Forum," 23 February 2023, <https://finance.ec.europa.eu>.

around €200 billion in public assets. The most significant restrictions were adopted in the first half of 2022. Due to economic problems in the EU, exacerbated by, among other things, high energy and food costs in the autumn of 2022, the subsequent packages of sanctions were mainly additions to the existing ones and focused on sealing them. Despite the serious economic consequences of sanctions for the EU, Member State support for existing restrictions has persisted and they are still considered the most important instrument of influence on Russia. To this end, it has been crucial to take countermeasures to avoid economic collapse and minimise costs on the EU side. However, the majority of the Member States remain reluctant to adopt new economic sanctions that would mean further financial losses, for example, in the field of gas or nuclear energy.

A key weakness in EU sanctions policy once again proved to be the method of unanimous decision-making, which led to prolonged negotiations, numerous exceptions and transition periods, which in effect limited the impact of the restrictions on the Russian economy. Ensuring effective implementation of sanctions also remains a challenge for the future. Given the resistance of some Member States to the idea of strengthening the EC's role in overseeing their activities in this area, the EC has taken a number of soft initiatives to improve coordination of the implementation of sanctions packages. These are based on the voluntary involvement of the Member States, which generally weakens their impact. A positive development was the proposal of a Directive to harmonise practices in the field of sanctions enforcement, but due to protracted negotiations over many months, there is a risk of softening its provisions. Insufficient operational capacity to detect such violations remains an unresolved problem in most Member States. In external relations, the adoption of sanctions has forced the EU to strengthen its diplomatic action towards countries that have not joined them. The solutions applied, including the activity of the special envoy, increase EU pressure on those states that are interested in maintaining good

economic and political relations with the Union. The effectiveness of the envoy's mandate will depend on the agreement of EU members to apply possible penalties (in the form of blocking exports from the EU of certain products) for enabling the circumvention of EU sanctions.

MELCHIOR SZCZEPANIK, TOMASZ ZAJĄC

The EU's Opening of the Door to Ukraine and Impact on the Debate on Institutional Reform of the Community

Introduction

On 28 February 2022, Ukraine applied for membership in the European Union and was granted candidate status less than four months later along with Moldova, which followed its example and also applied for membership. Ukraine's accession bid has given a new dynamic to the "dormant" enlargement process, mobilising its supporters both in the EU and in the candidate states in the Balkans, which have made very little progress towards membership in recent years. The accession of the new states has become more feasible within a decade or so. The prospect of a Union with more than 30 members has influenced the debate on the reform of Community institutions.

In the years leading up to Russia's full-scale invasion of Ukraine, discussions about the future of the integration process revealed major

differences between the Member States.¹ In the autumn of 2017, French President Emmanuel Macron called for closer integration in several policy areas such as the economy (especially among eurozone members), defence, and migration. He urged the most determined states to create a strongly integrated EU core (a vanguard). He also declared his readiness to launch a debate on treaty change. Macron's proposals provoked many reservations from other Member States. Northern European countries were cautious about the call for greater coordination of economic and fiscal policies, fearing that it would lead to transfers to the economically disadvantaged South. Central Europe, on the other hand, criticised the concept of a multi-speed Europe. Few countries declared themselves ready to discuss treaty modifications. The initiative to abandon the principle of unanimity in certain areas of the EU's external relations put forward by the European Commission (EC) in 2018 also failed.

In spring of 2019, Macron launched the idea of the Conference on the Future of Europe (CoFoE, Conference) as a mechanism to facilitate the crystallisation of a civic vision for the development of the EU and a forum for the exchange of views between citizens and politicians.² Due to the outbreak of the COVID-19 pandemic and disagreements between EU institutions on the details of the Conference's functioning, its deliberations started a year later than planned, in May 2021, and ended after the invasion of Ukraine.

Instead, Member States managed to agree on reforming their enlargement policies. The criteria for applying for EU membership had remained unchanged since 2013 with the last admission of a new country—Croatia. The new rules envisage, among other things, a gradual and reversible accession process in which closed negotiating chapters could

¹ M. Makowska, M. Szczepanik, J. Szymańska, "Future of Europe: No Common Vision on the Horizon," *PISM Policy Paper*, No. 2 (172), May 2019, www.pism.pl.

² J. Szymańska, "Conference on the Future of Europe: Delayed Start of the New Edition," *PISM Bulletin*, No. 88 (1784), 27 April 2021, www.pism.pl.

be reopened if problems in a particular area arise again.³ Ukraine will be subject to this revised procedure, which could make it more difficult for it to gain membership than for its predecessors.

The Impact of Russian Aggression on Ukraine's Integration with the EU

At the time of the full-scale invasion, the EU and Ukraine had close relations. Among other things, the country is a member of the Eastern Partnership (EaP), a platform initiated by Poland and Sweden in May 2009 that also includes Armenia, Azerbaijan, Belarus (its membership was suspended in 2021), Georgia, and Moldova. The aim of the EaP is to implement the eastern dimension of the EU's neighbourhood policy, which encompasses cooperation between the EU and participating countries. Prior to the Russian invasion, the EU had introduced a number of concrete measures to integrate Ukraine more deeply, including establishing a Deep and Comprehensive Free Trade Area between Ukraine and the EU, which began operating in 2016, and the abolition of visas for Ukrainians in 2017.

In February 2022, President Volodymyr Zelensky submitted an application for EU membership, which quickly found support in the European Parliament (EP)⁴ and the Commission president⁵ also responded positively. Strong support for granting Ukraine candidate status was expressed by eight countries: the three Baltic States, Bulgaria, Czechia, Italy, Poland, and Slovakia.⁶ France and Germany initially

³ M. Szczepanik, "Changes to EU Enlargement Policy," *PISM Bulletin*, No. 42 (1472), 11 March 2020, www.pism.pl.

⁴ In a resolution on Russian aggression against Ukraine, adopted on 1 March 2022, the EP called on EU institutions "to work towards granting EU candidate status to Ukraine".

⁵ When Ursula von der Leyen was providing the president of Ukraine with the questionnaire that serves as the basis for assessing the application for candidate status, she expressed her belief that "it will not be, as usual, a matter of years, but rather a matter of weeks". See: "EU chief offers Kyiv fast track to bloc membership," *Deutsche Welle*, 8 April 2022, www.dw.com.

⁶ "Who wants Ukraine to be granted EU candidate status?," *Euractiv*, 27 May 2022, <https://euractiv.com>.

focused on emphasising the lengthiness of the entire accession process.⁷ Scepticism was expressed, however, by Belgium, Denmark,⁸ Austria,⁹ and the Netherlands,¹⁰ among others. These countries argued that candidate status should be granted only after the end of the conflict and that it should be related to progress in reforming the state, rather than as a kind of “reward”. They also stated that they considered that an enlargement process accelerated in this way would send a negative signal to the Western Balkan countries, which have had to wait much longer for this status.¹¹

In June 2023, the EC gave a positive opinion of Ukraine’s application, and the European Council (EUCO) granted it candidate status at its summit on 24 June. The circumstances behind this decision were Ukraine’s heroic resistance, information about Russian crimes, and the fact that candidate status at this point is mainly symbolic. The EUCO’s decision reflected the belief that, in the current international situation, it would be a clear signal of disagreement with Russia’s attempt to build spheres of influence and an expression of EU support for the Ukrainians’ European aspirations, including appreciation of the sacrifices they have made in connection with that ideal.¹² Denying candidate status also would be a problem in terms of public perception, especially for the blocking countries. To ease the minds of sceptics, the summit’s conclusions stressed that the development of the accession process would depend on Ukraine’s fulfilment of the conditions set by the Commission, and

⁷ “L’Ukraine dénonce « un traitement de seconde zone » concernant sa candidature d’adhésion à l’Union européenne,” *Le Monde*, 19 May 2022, www.lemonde.fr.

⁸ M. Roszak, “Integracja w cieniu wojny. PE oczekuje rozpoczęcia negocjacji akcesyjnych z Ukrainą jeszcze w tym roku,” *Dziennik Gazeta Prawna*, 13 April 2023, www.gazetaprawna.pl.

⁹ T. Żornaczuk, “Demand the impossible: How Ukraine became a candidate for EU membership,” *Europeum*, 10 February 2023, www.europeum.org.

¹⁰ K. Nieczytor, K. Całus, “Początek długiej drogi. Ukraina i Mołdawia kandydatami do UE,” *Analizy OSW*, 24 June 2022, www.osw.waw.pl.

¹¹ “Demand the impossible ...,” *op. cit.*

¹² “Początek długiej drogi ...,” *op. cit.*

that progress on the path to joining the EU also would be assessed by taking into account “the EU’s capacity to absorb new members”.¹³

After being granted candidate status, the EC presented Ukraine with recommendations for reform in seven areas. Presenting a verbal assessment of their implementation (in June 2023), the EC said that Ukraine has so far fulfilled two of the seven criteria presented. Changes in the judiciary and media law were evaluated positively and changes regarding the Constitutional Court were described as “good progress”. As for recommendations in other areas, including the nation’s anti-corruption framework and laws restricting money laundering and on de-oligarchisation, the Commission said that “some progress” had been made.¹⁴ As for the implementation of recommendations that have yet to be adequately fulfilled, the EC proposes to follow the guidelines of the European Commission for Democracy through Law (Venice Commission).

According to the Commission’s plan, the next stage, involving a written summary of the implementation of the EC’s recommendations, would take place in October 2023. In the event of a positive assessment, the Member States are to vote on starting accession negotiations, most likely at one of the last European Council summits in 2023.

High representatives of the Ukrainian government declared their desire to gain EU membership as soon as possible: Prime Minister Denys Shmyhal in January 2023 spoke of a “very ambitious plan to join the EU within the next two years”.¹⁵ Although such voices should be seen rather as an attempt to put pressure on the EU and speed up the whole process, the question of the pace of Ukraine’s admission to the EU will be an important axis of contention between the Member States.

¹³ European Council, “European Council meeting –Conclusions,” 24 June 2022, Point 14, www.consilium.europa.eu.

¹⁴ T. Bielecki, “Ukraina bliżej rozpoczęcia negocjacji akcesyjnych z UE,” *Wyborcza.pl*, 21 June 2023, www.wyborcza.pl.

¹⁵ S. Lynch, “Ukraine wants to join EU within two years, PM says,” *Politico*, 30 January 2023, www.politico.eu.

Historical data indicate that the accession process takes an average of nine years (from the moment of application for membership), of which it took three and a half years just to achieve candidate status (which Ukraine has already achieved).¹⁶ Although these figures should not be automatically applied to the situation of current candidate states, they indicate a realistic time horizon necessary to carry out this complex political and administrative process. However, it is worth noting that the situation of Ukraine is unique in this regard as there is very strong determination in Ukrainian society and among its political elite to ensure that the country obtains membership in the Union as soon as possible.¹⁷ The geopolitical situation also makes rooting Ukraine in European structures one of the most important foreign policy goals of EU countries. There are also precedents for the admission of countries that did not meet all the conditions set for them when they joined the Community, notably Romania and Bulgaria, which did not implement recommendations on judicial reforms, fighting corruption, and in the latter's case, on countering organised crime.¹⁸

The treaties are silent on the timing of the accession process and they do not provide for any accelerated mode of enlargement, but neither do they set minimum thresholds in this regard. The course of it will therefore depend on the political will and determination of both the Ukrainian and EU sides. Within the EU, there is a group of countries that supports a fast track of admission for Ukraine, and it includes Poland and Italy. Other Member States, however, remain more sceptical, noting the time-consuming nature of the reforms required by the EU (the French

¹⁶ R. Leppert, "How exactly do countries join the EU?," Pew Research Center, 26 July 2022, www.pewresearch.org.

¹⁷ As of January 2023, 92% of Ukrainians would like their country to be a member of the EU by 2030; NDI, "Opportunities and Challenges Facing Ukraine's Democratic Transition," 22 February 2023, www.ndi.org.

¹⁸ V. Anghel, J. Džankić, "Wartime EU: consequences of the Russia—Ukraine war on the enlargement process," *Journal of European Integration*, Vol. 45, No 3, 2023, p. 490.

president even mentioned that the entire process could take decades). In the case of Ukraine, the potentially long wait for membership is further exacerbated by the war with Russia. Ukraine needs not only as much financial assistance as possible (in 2022, losses from Russian aggression since 2014 were estimated at \$1 trillion¹⁹) but also to anchor itself in Euro-Atlantic structures as soon as possible to give it more protection. These circumstances are an important element in the arguments of supporters of accelerated integration of Ukraine.

Institutional Consequences of Enlargement

As with the run-up to the “Big Bang” enlargement of 2004, some analysts and politicians are concerned that an increase in the number of members could negatively affect decision-making and hamper the work of EU institutions. Although in the majority of policy areas the Member States can resort to qualified-majority voting if they fail to reach consensus, some decisions require unanimous agreement of the members, namely the adoption of the multiannual budget, the opening of accession negotiations with candidates for membership, and the amendment of treaties. Unanimity is also necessary for decisions pertaining to common foreign policy and taxation. On these issues, reaching agreement often requires time-consuming negotiations, especially when one member decides to withhold consent in order to force concessions from partners on other issues. There is a widespread perception among European political elites that should the number of members increase, the likelihood of this type of abuse in areas requiring unanimity would increase as well.

In a Union of more than 30 members, it would be more difficult to have a rational division of responsibilities in the European Commission. Although the Lisbon Treaty allows for a departure from the principle of “one country, one commissioner” and the introduction of a rotation

¹⁹ D. Szeligowski, “The Economic Impact of the Russian Invasion on Ukraine,” *PISM Spotlight*, No. 74, 31 March 2022, www.pism.pl.

system, the Member States have chosen not to apply this provision, at least for now. This is already creating problems in terms of the distribution of tasks within the EC, with some duplication of responsibilities the price of retaining 27 commissioner posts. In the current term of office, Commission vice-presidents are responsible for broad thematic areas (e.g., the Green Deal) and to some extent coordinate the work of several rank-and-file Commissioners.

Enlargement would also imply significant changes in the composition of the European Parliament (EP). On the assumption that there would be seven new members—the five Western Balkan countries plus Ukraine and Moldova—they would have around 120 seats in the chamber. This would entail a reduction in the number of seats for most of the current Member States because under the EU treaty, the number of MEPs cannot exceed 751 (currently 705).²⁰

Developments in the Debate on Institutional Reforms Since 24 February 2022

In the spring of 2022, at the final stage of the Conference on the Future of Europe, proponents of institutional reform often invoked the geopolitical upheaval in Europe to emphasise the need for adjustments and to draw attention to the Conference’s demands in this matter.²¹ The final document did not explicitly call for the amendment of the Treaties, but noted several times that it might be required to fully implement citizens’ demands. With regard to decision-making, the Conference stated that “unanimous voting makes it very difficult to reach agreement” and suggested that “all matters decided by way of unanimity should be decided by way of qualified-majority (voting).”²²

²⁰ There would be no change in the number of MEPs from Cyprus, Latvia, or Malta—these countries have six elected MEPs, the lowest possible number under the Treaty rules.

²¹ The Conference Conclusions were approved at the end of April 2022.

²² Conference on the Future of Europe, “Report on the final outcome,” The Plenary proposals, May 2022, Proposal 39, para 1. Voting issues were also raised elsewhere (Proposal 21, para. 1), in which the Conference suggested that in the area of the Common

Representatives of the EP's largest political groups, who had sought to emphasise institutional demands in the Conference's conclusions, invoked its recommendations to promote the idea of amending the Treaties. In 2022, Parliament adopted two resolutions on institutional reforms. In the first, summarising the work of the CoFoE, MEPs stated that reform of the Treaties was necessary to fully implement its demands. In the following one, Parliament, in accordance with Article 48 TEU, called on the Council to establish a convention to prepare treaty amendments.²³ This resolution was supported by 63% of MEPs, including a majority of lawmakers from the four largest factions: the Christian Democrats, Social Democrats, Centrists, and Greens. The few members of these factions who voted against or abstained were MEPs from the Nordic countries, the Netherlands, Malta, Czechia, and Romania. In the parliamentary debate, many MEPs cited the difficult negotiations of the sanctions against Russia to justify the need to abandon unanimity and introduce qualified-majority voting.²⁴ Hungary was criticised for seeking to delay the adoption of sanctions and limit their reach. MEPs argued that maintaining unanimity could prevent the Union from reacting quickly in international crises. Parliament called for the replacement of unanimity by qualified-majority voting for the adoption of sanctions and the implementation of *passerelle* clauses.²⁵ It also wants to extend the Union's competences in health, energy, and

Foreign and Security Policy, issues that are currently decided by way of unanimity be changed to qualified-majority voting.

²³ European Parliament, *European Parliament resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties*, para. 5, www.europarl.europa.eu.

²⁴ This theme appeared in the speeches of Members presenting the position of the Social Democratic, Centrist and Green factions, see: "Call for a Convention for the revision of the Treaties (debate)," European Parliament, 9 June 2022, www.europarl.europa.eu.

²⁵ The *passerelle* clause, described in Article 48(7) TEU, allows the voting rules to be changed from unanimity to qualified-majority in selected areas. However, this requires the unanimous agreement of the Member States.

defence policy, to increase Parliament's role in the budgetary procedure, and to modify the Article 7 procedure on the protection of the Union's fundamental values.

Parliament's proposals received a positive response from some Member States. The French president came out in favour of opening discussions on revising the treaties and establishing a convention. The EC president, Ursula von der Leyen, pointed out that if the Union is to act quickly, unanimity no longer makes sense in some areas.²⁶ Six members (Germany, Spain, Italy, and the Benelux countries) in a common position declared their readiness to discuss treaty changes.²⁷

The activism of reform advocates was met with a reaction from supporters of the status quo. The "Group of 13" Central and Northern European countries published a position paper arguing that a decision to convene a convention would be premature and risk distracting attention from pressing geopolitical challenges.²⁸ The paper also stressed that the Union's achievements in recent years have shown that it is operating effectively on the basis of the existing treaties.

In view of the strong internal divisions, the Council delayed taking a position on the EP's request for a Convention. Following a meeting of the General Affairs Council in September 2022, ministers declared that the priority for the Member States was to take action on those demands of the Conference that could be implemented within the existing legal framework. The Council claimed that it needed more time to address

²⁶ European Union, "Speech by president von der Leyen at the Conference on the Future of Europe closing event," 9 May 2022, www.europa.eu

²⁷ Tweede Kamer (upper chamber of the Netherlands' parliament), "Non-paper submitted by Germany, Belgium, Italy, Luxembourg, the Netherlands, and Spain on implementing the proposals of the Plenary of the Conference on the Future of Europe," 13 May 2022, www.tweedekamer.nl.

²⁸ Signatories included Bulgaria, Croatia, Czechia, Denmark, Estonia, Finland, Latvia, Lithuania, Malta, Poland, Romania, Slovenia and Sweden; "Non-paper on the outcome of and the follow-up to the Conference on the Future of Europe," *Europa Nu*, 9 May 2022, www.europa-nu.nl.

the proposals for institutional changes. In December 2022, Mikuláš Bek, the Czech minister for European Affairs (the country holding the Presidency of the Council of the EU), informed that the majority of countries were reluctant to discuss treaty changes.

Faced with the very doubtful prospect of reaching an agreement on the modification of the Treaties, the proponents of change have focused instead on the demand for the elimination of unanimity, which can be achieved on the basis of the TEU using the *passerelle* clause.²⁹ Although on this issue the agreement of all Member States is required, a compromise is more likely to be reached because the abolishment of unanimity in foreign affairs is supported by some states that are sceptical of opening discussions on the modification of primary law.

In May 2023, Finland and Slovenia—countries that expressed reservations about treaty change—together with France, Germany, Italy, and the Benelux countries formed the “Group of Friends on Qualified-Majority Voting in the EU Common Foreign and Security Policy”. The foreign ministers of these countries argued that “against the backdrop of Russia’s war of aggression against Ukraine and growing international challenges, [...] EU foreign policy needs modified procedures and processes to strengthen the Union as a foreign policy actor”.³⁰ They announced that they would push for improved decision-making, building on treaty provisions. In response to this publication, support for unanimity was expressed by Austria and Poland. The statement of the Polish Ministry of Foreign Affairs emphasised not only the defence of the principle of unanimity but also efforts to “extend the consensus formula where the legal provisions allow the application of the qualified-majority rule”.³¹

²⁹ See footnote 25.

³⁰ Auswärtiges Amt (German Federal Foreign Office), “Joint Statement of the Foreign Ministries on the Launch of the Group of Friends on Qualified Majority Voting in EU Common Foreign and Security Policy,” 4 May 2023, www.auswaertiges-amt.de.

³¹ MFA of the Republic of Poland, “Statement of the Ministry of Foreign Affairs on the principles of decision-making in matters concerning the EU’s Common Foreign and

France and Germany are trying, partly through joint initiatives, to keep the issue of institutional reform among the EU's priorities. Speaking to the EP in May 2023, German Chancellor Olaf Scholz stressed that internal EU reforms are necessary for enlargement to take place and that "democracy does not require unanimity". A group of experts from both countries who were invited by ministers for European affairs to prepare a report with options for EU actions argued that the Union "is not ready yet to welcome new members, neither institutionally nor policy-wise".³² They recommended treaty change that would eliminate unanimity for all policy-related decisions and strengthen the EU's capacity to react to crises, including the right to issue common debt. In view of the divergences between the Member States regarding further integration, the experts advocated greater differentiation that would enable the most determined countries to cooperate more closely, while others could either remain at the current level of integration or opt for associate membership and participate only in the single market.³³

Conclusions and Outlook

Ukraine has been actively integrating into EU structures for more than a decade and is currently participating in many EU projects. The full-scale aggression has changed the security context in Europe, making EU decision-makers aware of the threat Russia poses to European peace, and has consequently intensified the process of Ukraine's integration

Security Policy and Common Security and Defence Policy," 7 May 2023, www.gov.pl/web/dyplomacja; see also: A. Brzozowski, "Nine EU member states renew push to change foreign policy decision-making," *Euractiv*, 4 May 2023, www.euractiv.com.

³² Report of the Franco-German Working Group in EU Institutional Reform, "Sailing on the High Seas: Reforming and Enlarging the EU in the 21st Century," 18 September 2023, p. 5.

³³ For more on the report, see: J. Szymańska, T. Zając, "Franco-German Group of Experts Deliver Report on EU Reforms," *PISM Bulletin*, No. 138 (2257), 2 October 2023, www.pism.pl.

into the EU. The granting of candidate status to Ukraine also indicates a change in the thinking of the Member States about the enlargement process. The current international situation makes the Member States see Ukraine's situation as unique, which increases its chances in the accession process. Indeed, Ukraine's admission to the Union has become an important element of the Union's foreign policy, which seeks to prevent Russia from creating a sphere of influence. However, this does not mean that Ukraine's admission to the EU is guaranteed.

Two camps are forming among the Member States regarding Ukraine's future accession. The first unites supporters of fast-track negotiations, even at the expense of omitting the requirement for rigorous fulfilment of all membership criteria, while the second unites those states that emphasise the need for comprehensive and reliable verification of accession conditions.

While accelerated membership would boost the morale of Ukrainians and could facilitate the reconstruction of the state, strengthening its credibility as a state in the eyes of investors, in the longer term, shortcomings in reform could harm both the EU and the Ukrainian people, for example, in a situation of an authoritarian turn that would not be stopped by a sufficiently strong institutional system. The process of changing the state's institutions (especially under conditions of ongoing war) is further complicated, and it will be very difficult to reform them to the extent that they meet EU standards, which is the primary goal of the enlargement process.

Prolonged negotiations, in turn, may trigger "accession fatigue", which has resulted in regression of the Union's desired reforms³⁴ and may foster various types of nationalist-authoritarian tendencies. Because of these concerns, many Member State leaders are reluctant to give a specific timetable for enlargement so as not to create unrealistic expectations on the part of the authorities in Kyiv.

³⁴ "Wartime EU ...," *op. cit.*, p. 491.

The prospect of unblocking the enlargement process and creating a Union of more than 30 countries has influenced the debate on institutional reform, mobilising supporters of treaty change. However, their endeavours have met with strong opposition from supporters of the status quo, who argue that a larger Union can function efficiently on the basis of the existing treaties. The discussion revolves primarily around the abandonment of unanimity, with other issues, such as extending the EU's competences in healthcare or defence, in the background. Both sides assert that the Union's actions in response to Russia's attack against Ukraine corroborate their arguments: some argue that the Union needs to adapt its decision-making processes in order to be able to act faster in times of crisis, while others point out that the principle of unanimity has not paralysed the Community at a difficult moment. The divergences between the Member States mean that an agreement around treaty changes is unattainable today. As a result, the Council is unlikely to refer to the EP's request to establish a convention before the European elections scheduled for June 2024, in the hope that the next parliament will abandon this demand. The establishment of a convention and the intensification of discussions on institutional reform could add to tensions between members, and the failure of this exercise—a probable turn of events—would be a highly symbolic blow for the Union. It is likely, however, that in the next parliament the supporters of reform will remain in majority and demand that the Council take a position on the issue.

The compromise could be to use a *passerelle* clause to gradually eliminate unanimity. This would satisfy the most important demand of reform advocates without modifying the treaties. For now, the chances of building a compromise around this decision are limited, but if Ukraine's accession negotiations progress smoothly, the pressure on the status quo camp, which includes the most resolute proponents of Ukraine's membership, will grow.

PIOTR DZIERŻANOWSKI, DANIEL SZELIGOWSKI

**EU Economic Assistance to Ukraine
—Economic Relations
and the Challenges of Reconstruction**

Introduction

The war in Ukraine and the geopolitical changes it has caused are an unprecedented challenge for the EU in the areas of security and economic cooperation, both due to the scale of the difficulties and their nature. Although wars have occurred in the EU's neighbourhood (e.g., in the former Yugoslavia or the civil war in Syria), none has affected the EU as directly as Ukraine. The country with a population of about 36 million and an area of more than 600,000 km², making it the second-largest European country after Russia, shares a 1,400 km land border with the EU. Moreover, this war is waged by a revisionist nuclear power set on destroying Ukraine's statehood, rather than being a border or civil war. The nature of the political relationship between the EU and Ukraine, which has for years declared its desire to join the Union and for almost a decade has been engaging in formal economic integration, is

also peculiar. The Russian-Ukrainian war is therefore a completely new type of challenge for the EU, as its interests this time are not limited to ensuring the security of its borders or providing humanitarian aid, but also to preparations for further integration. The EU has experience with both providing aid in a war context and preparing for accession, but this is the first (and perhaps the last) time that both processes are being conducted in parallel.

The story of EU-Ukraine economic integration began long before the outbreak of the full-scale war in 2022. The political dialogue dates back to the 1990s and talks on the creation of a free trade area to at least 2007. Ukraine was also already included in the Eastern Partnership before 2022. EU assistance in the context of the war started in 2014 following the illegal annexation of Crimea and the war triggered by Russia in eastern Ukraine. Already after the Revolution of Dignity, the Association Agreement between the European Union and Ukraine was signed, including a chapter on the Deep and Comprehensive Free Trade Area,¹ which entered into force on 1 September 2017 (although elements had already been applied earlier). Between the Revolution of Dignity and the escalation of Russian aggression against Ukraine in 2022, the Ukraine-EU economic relationship included both market integration and aid components.

As part of economic integration, Ukrainian companies have been given priority access to the EU market and EU companies have been given easier access to the Ukrainian market. This has led to a noticeable increase in trade in both directions.² In 2021, the EU was Ukraine's largest trading partner, with almost 40% of its foreign trade, and Ukraine was the EU's 15th-largest trading partner. On the basis of the Association Agreement, Ukraine is pursuing legislative reforms in competition law,

¹ *Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, Official Journal of the European Union, L 161, 29 May 2014.*

² Based on Eurostat data.

technical barriers to trade, sanitary and phytosanitary rules, customs rules and the protection of intellectual property rights. The convergence of the legal systems of the EU and Ukraine should be seen, on the one hand, as necessary for both sides to benefit from the free trade area, but on the other hand, as an important and necessary step towards Ukraine's full integration into the EU single market.

In addition to economic integration, the EU was also involved in supporting broader reforms and assisting the transformation of the Ukrainian economy by providing financial and technical assistance. Priority areas have been the fight against corruption, the judicial system, systemic and electoral issues, improvement of the investment climate and energy efficiency, streamlining of public administration and decentralisation,³ to which more than €15 billion has been allocated in the form of loans and grants. Support is provided both in the form of programmes (e.g., EUACI, focusing on the fight against corruption, or EU4PAR, helping to implement public administration reforms) and advisory missions (e.g., EUAM Ukraine supporting civilian security sector reform). The EU also supported projects not directly related to economic cooperation and the reform of state structures necessary for it. Ukraine has received support for civil society, education, or environmental protection, and Ukrainian students and researchers can participate in the Erasmus+ programme. Since 2014, Ukraine has also been a beneficiary of macroeconomic support programmes, with funds going towards, among other things, economic reforms and stabilisation of the economy, particularly important in the context of a full-scale war.

Although Ukraine only gained EU candidate status after the outbreak of a full-scale war, close contacts were established in the wake of the Revolution of Dignity and an unambiguously pro-European turn in foreign policy. However, without officially being a candidate, Ukraine did not benefit from pre-accession support. Nevertheless, the experiences

³ *EEAS*, "Facts and Figures About EU-Ukraine Relations," www.eeas.europa.eu/sites/default/files/eap_summit_factsheet_ukraine_en_2.pdf.

of cooperation remain valuable, as they formed the basis for the rapid organisation of support in the situation of a full-scale war and will accelerate Ukraine's further integration into the EU, whatever its model may be.

EU Assistance to Ukraine after the Russian Invasion of 24 February 2022

The consequences of the Russian aggression of 2022 for the EU's economic relations with Ukraine primarily concern two spheres. The first is the economic assistance provided by the EU to finance Ukraine's immediate needs, and the second, not yet of profound practical consequence but of crucial importance for post-war relations, is the inclusion of Ukraine in EU programmes and the granting of candidate status.

Economic assistance is provided under the Team Europe formula, that is, cooperation between EU institutions and Member State authorities. According to current data from the European Commission (EC),⁴ the total amount of economic aid pledged by the EU (i.e., excluding military support) is almost €38 billion. The largest share goes to macroeconomic and budgetary support, around €25 billion, mainly in the form of concessional loans. Macroeconomic support instruments are a continuation of support provided before 2022, including in the aftermath of the 2014 Russian aggression, the COVID-19 pandemic or tensions between Ukraine and Russia just prior to the invasion. An element of this type of assistance is funding for structural adjustment to EU standards. The Memorandum of Understanding⁵ includes conditions/recommendations for policies introduced in key areas (macroeconomic stability, state governance reforms, rule of law, energy) and rules for reporting on their implementation, which clearly indicates the EU's

⁴ European Commission, "EU assistance to Ukraine," https://eu-solidarity-ukraine.ec.europa.eu/eu-assistance-ukraine_en.

⁵ A Memorandum of Understanding (MoU) is a non-binding instrument in international law, but often used in international trade practice.

commitment to reforming the Ukrainian state and preparing for deeper cooperation. EU financial institutions (the European Bank for Reconstruction and Development, the European Investment Bank) are also supporting Ukraine by guaranteeing its debts, which increases its borrowing capacity. The EU is also providing humanitarian aid to Ukraine in the form of financial transfers and in-kind assistance. Aid is directed to Ukrainian citizens, both refugees and those who have remained in the country, and institutional recipients (e.g., hospitals or schools).

EU candidate status is crucial for Ukraine's integration into the single market. Ukraine obtained it in record time, within three months of applying, while other countries such as Serbia, North Macedonia, and Montenegro waited several years. However, Ukraine and the EU are also taking other steps to integrate their economies. In order to prevent short-term negative effects of the invasion and to ensure the stability of Ukraine's power supply, Ukraine's power grid has been synchronised with the European grid.⁶ At the beginning of June 2023, Ukraine signed an agreement allowing it to obtain funding from the Connecting Europe Facility for investments in the energy, transport, and digital transformation sectors, which was described in an official communication from EU authorities as "further integration into the EU common market".⁷ The EU is also assisting with the supply of natural gas to Ukraine using reverse flow.

The EU integrates Ukraine into the common market for trade in goods as well. Following the outbreak of war in 2022, tariffs on imports of Ukrainian goods into the EU were suspended.⁸ Since February 2023,

⁶ European Commission, "Statement by Commissioner for Energy Kadri Simson on Synchronisation of the Continental European Electricity Grid with Ukraine and Moldova," <https://ec.europa.eu>.

⁷ European Commission, "European Commission further integrates Ukraine into EU Single Market through the Connecting Europe Facility for infrastructure funding," Mobility and Transport, <https://transport.ec.europa.eu>.

⁸ Both agricultural crops (subject to price conditions or import quotas) and industrial products (within the Deep and Comprehensive Free Trade Area).

Ukraine benefits from the Single Market Programme, an integrated programme to strengthen the Single Market both in terms of its governance and improving access to finance for small and medium-sized enterprises.

Since the outbreak of full-scale war, Ukraine has been supported by the EU in two dimensions. The first is classical international aid, including humanitarian aid. Assisting Ukraine in the wartime is clearly in the interest of the EU, which, as a primarily economic organisation, is better placed to provide this type of support than military aid. These actions are short-term and depend on the political situation—once the war is over, they will take other forms as Ukraine’s needs and EU interests change. The second dimension of support—integrating Ukraine into EU programmes and supporting the structural adjustment of its economy and public sector to EU standards—is currently of less practical importance, but clearly indicates the political will for further integration on both sides.

The EU and the Problem of Post-War Reconstruction in Ukraine

In addition to immediate macro-financial assistance necessary to counter the Russian invasion, the EU intends to become actively involved in rebuilding Ukraine from the war damage. The plan presented back in May 2022 by the European Commission⁹ envisages Ukraine working closely with international donors in this regard. They would take on the effort of managing and largely financing the reconstruction, the plan for which would be prepared in advance by the Ukrainian side. In this context, the EC has pledged to help to expand the Ukrainian administrative capacity necessary to develop and then implement such a plan, as well as technical support. The Ukrainian authorities in July

⁹ European Commission, “Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Ukraine Relief and Reconstruction,” COM(2022) 233 final, Brussels, 18 May 2022.

2022, at the first international conference for the reconstruction of Ukraine, held in the Swiss city of Lugano, presented a comprehensive reconstruction programme worth \$750 billion,¹⁰ involving not only the physical reconstruction of the destroyed infrastructure but also a thorough rebuilding of the national economy. Representatives of countries and financial institutions supporting Ukraine, including all EU Member States and the EC, gathered at the conference, adopted the Ukrainian plan as a starting point for further discussion, while pointing out that Ukraine's future reconstruction will be linked to its European integration and aspirations for EU membership.¹¹

In view of the granting of candidate status to Ukraine in June 2022 and the resulting need to further align the Ukrainian state with the membership requirements, the EU has taken a leading role in coordinating the country's post-war reconstruction. The secretariat of the Donor Coordination Platform, established in January 2023 under the auspices of the G7, is based at the EC headquarters in Brussels and is co-chaired on behalf of the EU by the EC Director-General for Neighbourhood and Enlargement.¹² The platform's mandate is to ensure synergies between key donor countries and international financial institutions in supporting the Ukrainian authorities in economic stabilisation, post-war reconstruction, and reform, although in the short term it will primarily focus on maintaining Ukraine's financial stability and supporting the most urgent reconstruction needs, such as social housing and critical infrastructure, as well as demining.

The EU also intends to finance part of Ukraine's post-war reconstruction. On the eve of the second international conference on the topic, organised in London in June 2023, the EC presented a proposal for a new financial instrument dedicated exclusively to Ukrainian

¹⁰ National Recovery Council (Ukraine), "Ukraine's National Recovery Plan," July 2022.

¹¹ Ukraine Recovery Conference, "Lugano Declaration," Lugano, 4–5 July 2022.

¹² See: www.coordinationplatformukraine.com.

reconstruction and economic modernisation.¹³ It envisages medium-term support of up to €50 billion for Ukraine for the period 2024–2027, implemented in cooperation with Member States under the Team Europe formula, as well as with other international financial institutions, but in coordination with the G7-established donor platform. The new instrument will cover three pillars of assistance. First, financial support in the form of loans and grants to finance the Ukrainian reform and reconstruction plan prepared in consultation with the EC. The plan is to envisage Ukraine’s gradual adoption of EU regulations, preparing the country for EU membership. Its implementation will be combined with regular quarterly disbursements by the EC of tranches of assistance, analogous to European funds. Second, support will be given for the creation by Ukraine of a favourable business environment for investors, with a view to attracting foreign investment for reconstruction. Third, technical assistance and advice needed to implement the reconstruction plan will be provided.

The EC’s vision for Ukraine’s post-war reconstruction, which was presented along with the proposal for a new financial instrument, envisages a thorough socio-economic transformation of the country towards an inclusive economy based on green technologies and digitalisation. The reconstruction should contribute to poverty and social inequality reductions while fostering further decentralisation. For this reason, reconstruction is to take place with the involvement of regional and local authorities, in cooperation with partner cities and regions from the Member States. A key role is to be played by private players—business and investors, especially foreign, who, according to the EU, should take on a significant part of the financial burden of reconstruction, given that they will also reap the reward.

¹³ European Commission, “Proposal for a Regulation of the European Parliament and of the Council on establishing the Ukraine Facility,” COM(2023) 338 final, 2023/0200 (COD), Brussels, 20 June 2023.

Challenges for the Future Reconstruction of Ukraine

A prerequisite and, at the same time, the greatest challenge for rebuilding Ukraine from the devastation of war will be to ensure its stability and security after the active phase of hostilities has ended. This includes both external security—post-war guarantees for Ukraine that minimise the risk of a renewed Russian attack—as well as internal security, in particular ensuring economic and social stability and public order under conditions of demobilisation from the army of thousands of people involved in the defence of the state. The EU will not play a major role in providing security guarantees to Ukraine, although some Member States are likely to do so. Instead, the EU will provide further financial support, enabling, for example, social and psychological assistance to thousands of veterans who will then be able to find employment, including in reconstruction. EU involvement will also be important in the context of developing instruments to limit the risk of foreign investors becoming involved in the reconstruction of Ukraine, such as war and political risk insurance, or policies for logistics companies or workers posted on Ukrainian territory.

Financing post-war reconstruction, estimated in March 2023 to cost more than \$410 billion according to the World Bank, will remain a significant challenge.¹⁴ The Ukrainian proposal presented in Lugano envisaged that two-thirds of the reconstruction costs would be covered by public funds from donor countries, with only one-third of it from private capital in the form of foreign investment. However, it is unlikely that donor countries will be able to generate such significant funds for reconstruction, as financial conditions in the market tightened following the COVID-19 pandemic. The possibility of earmarking blocked Russian central bank reserves for Ukraine's reconstruction is also questionable, as it would require both the political will of the Member States and

¹⁴ World Bank, "Ukraine Rapid Damage and Needs Assessment: February 2022–February 2023," Washington D.C., 2023.

the development of appropriate legal mechanisms.¹⁵ Public funds from donors will play a key role in the initial reconstruction period when the priority will be to restore public infrastructure and critical facilities as quickly as possible. In the long term, however, Ukraine's reconstruction and modernisation will depend largely on the probable involvement of foreign investors to stimulate technology transfer and the search for profit.

Despite the establishment of an international coordination platform, cooperation between major donors may also prove challenging because of differing visions of post-war reconstruction and competing economic interests. Even the negotiations on the establishment of the platform revealed divergences between the EU and the U.S. over the preferred model for managing reconstruction and how large the platform's secretariat should be and who should participate in it. In particular, the development of common aid conditionality could prove problematic in the future, which would undermine the effectiveness of the EU's own conditionality policy and result in competition between donors for economic influence in Ukraine or the duplication of efforts. It is also unclear how the platform will enable the involvement of non-G7 donors in the coordination of support to Ukraine, especially its Central European neighbours, such as Poland, which also show ambitions to play a significant role in reconstruction and, due to their geographical location, will be indispensable in the supply of materials and components.

The success of post-war reconstruction will depend as much on the readiness of Ukraine itself. Unlike many other cases of post-war reconstruction, Ukraine has not seen the breakdown of state structures as a result of the war, and the authorities have retained the capacity to administer the vast majority of its territory, which will greatly facilitate the implementation of the reconstruction plan. The enormous scale of

¹⁵ European Commission, "Ukraine: Commission presents options to make sure that Russia pays for its crimes," Press Release, IP/22/7311, Brussels, 30 November 2022.

the undertaking will, however, require a further expansion of Ukrainian administrative capacity and to absorb resources, especially at the regional and local level, in addition to the creation of a friendly and transparent regulatory environment to attract foreign investors to the market and involve them in the reconstruction process.

Conclusions

The Russian invasion contributed to a further deepening of economic relations between Ukraine and the European Union. Financial support from the EU and its Member States and an even wider opening of the single market to Ukrainian goods have significantly contributed to sustaining the functioning of the state, allowing it to finance defence activities. With Ukraine's aspirations to join the EU and be granted candidate status, mutual economic relations will become even closer, leading to further integration of the Ukrainian economy into the EU single market. This will be fostered, on the one hand, by Ukraine's expansion of transport links, driven by the need to diversify trade routes in the wake of the Russian blockade of the Black Sea, while, on the other, the growing presence of investors from EU countries in Ukraine, who will be involved in the country's post-war reconstruction.

Although the success of Ukraine's reconstruction will depend particularly on the involvement of foreign investors, their wider appearance on the Ukrainian market may also lead to tensions, especially if they take over Ukrainian state assets at preferential prices or excessively transfer profits abroad. This will prompt the Ukrainian authorities to control or restrict capital flows, but during future accession talks it may also become a subject of negotiation when establishing potential transition periods for the introduction of full freedom of movement of capital and people.

Regardless of military developments, the EU will remain a key donor of financial assistance to Ukraine in the short to medium term, although it is possible that the nature of this assistance will change. As Ukraine's

indebtedness gradually increases as a result of its borrowing to cover current budget and warfare expenses, its authorities will seek to ensure that a greater proportion of support than before takes the form of non-repayable grants. One way of meeting the Ukrainian expectations will be for the EU to use pre-accession funds to modernise the country's economy or strengthen the state institutions that will be responsible for managing the post-war reconstruction process.

The EU will play a key role in Ukraine's post-war reconstruction, not only by providing a part of the funds necessary to finance it but also by seeking to shape the overall terms of assistance through an international donor platform. In this way, the EU will try to harmonise reconstruction with the requirements of Union membership in order to avoid donors applying mutually exclusive aid conditions. However, an overemphasis on alignment with membership conditions could lead to disputes between Ukraine and foreign donors if the consequence is delays in the physical reconstruction of infrastructure damaged by the Russian invasion.

ZUZANNA NOWAK

EU Energy Policy in the Face of Russia's Aggression Against Ukraine and the Prospects for Enhancing EU Energy Independence

Introduction

The Russian invasion of Ukraine undoubtedly marked a turning point in the history of the European Union's energy policy. At the time of the escalation, Europe was already mired in the biggest energy crisis since the 1970s, covering virtually the entire energy market and felt in every Member State. It was largely triggered by external factors, such as the reduction in LNG supply on the global market caused by infrastructure shutdowns among exporters (e.g., Norway and the U.S.) and the post-pandemic increase in fuel demand from global competitors (e.g., China and Japan).

Factors specific to the EU itself, such as the inflexible structure of the European electricity market, planning of an energy transition based on gas imports, and internal divisions between the Member States both in terms of policy and physical flows, also played a role in the energy crisis.

These problems stemmed from the fact that, under the Treaty provisions, energy policy is a shared competence. On the one hand, the European Commission (EC) has been trying to communitise energy issues since 1996, including by coordinating and supporting the development of the internal market with regulations, enhancing solidarity between the Member States within the political framework of the Energy Union, and aligning the EU's energy objectives with climate goals within the European Green Deal strategy. On the other hand, each Member State retains the right "to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply" (Article 194(2) of the Treaty on the Functioning of the EU). Given the diversity of national energy preferences in terms of ideology and technology, taxation arrangements, norms and standards, suppliers, etc., the process of shaping EU energy policy, as well as the adoption of legislative acts, especially under the ordinary legislative procedure, is therefore usually long and cumbersome in practice. For example, the negotiations on the Renewable Energy Sources (RES) Directive took almost two years, and of all 21 initiatives of the "Fit for 55" package being implemented from 2021, the EC has managed to finalise only nine so far.

The main problem of EU energy policy on the eve of the invasion, however, was the European Union's overdependence on Russian energy supplies. This issue had been talked about at least since the first gas crises between 2006 and 2009 when a dispute between Russia and Ukraine led to the interruption of supplies to some European countries. The annexation of Crimea by Russia was a further trigger for deepening reflections on the EU's independence from Russian energy resources. However, initiatives stemming from these discussions in the EU forum, such as efforts to create and protect the gas market under the Third Energy Package, test the resilience of the European energy system, or create the Energy Union, did not yield the expected results, although undoubtedly they have made the European gas market more transparent,

liquid, and diversified. Russian manipulation and abuses have been challenged and repeatedly proven before arbitration tribunals, and in their wake Gazprom has been forced to make concessions, change its pricing policy, or withdraw its claims. This gave many countries the illusion of the effectiveness of European energy market mechanisms and Russia's acceptance of EU legal standards. What was overlooked, especially by western EU countries, were the geopolitical aspects, inextricably linked to oil and gas trade in the global market and Russia's perception of the balance of power in the world. As a result, as late as the end of 2021, Russia was still in a dominant position in the EU, supplying around 45% of the gas and over 20% of the oil imported into the EU, as well as controlling 10% of the capacity of European gas-storage facilities. It was also preparing, together with Germany, to open the Nord Stream 2 pipeline and further deepen the EU's dependence. At the time, it seemed inconceivable that the demand to move away from the use of Russian energy resources would be realised, as any moves against Russia's interests could mean violent retaliatory reactions, including "turning off the tap".

In view of the deepening energy crisis in the EU at the end of 2021, Russia could have supported Europe by, for example, increasing the gas supply. Instead, by manipulating the supply of this raw material, it chose to ostentatiously test the limits of the resilience of the EU energy sector and the strength of European solidarity. In doing so, it confirmed the fears—raised for years by the countries of Central and Eastern Europe—about the true objectives of the geopolitical game being played with energy resources. Russia's stark exposure of the weaknesses of the European energy market, however, was not enough to lead to the EU's emancipation from Eastern influence. Although political events cascaded in late 2021 and early 2022 and tensions in the world were rising, it was only Russia's naked aggression against Ukraine that ended European leniency. The steps taken by the EU to support Ukraine had in parallel to be the de facto end of energy ties with the aggressor,

a revision of decision-making processes in terms of anti-crisis measures, and a change of political emphasis so that all energy policy demands served to build EU resilience.

From Weakness to Firmness

After years of submissiveness and weakness towards its main gas supplier, Russia's launch of a full-scale attack on Ukraine and the need for the EU to take the latter's side in the conflict in solidarity, the Union gained the ultimate reason and legitimacy to stand firm against Russian influence over its energy sector. Given the importance of revenues from the trade in energy raw materials to Russia's budget (EU oil and gas trade accounted for around 40% of federal budget revenues), and the consequent conduct of hostilities in Ukraine, a consensus emerged within the EU not to "sponsor" Russia's war, tantamount to ceasing to purchase raw materials from Russia, severing energy trade ties with it and ultimately becoming independent of its influence.

This firm approach was reflected in successively announced sanctions.¹ In just the second package of restrictions, adopted on 25 February 2022, the EU targeted the Russian oil industry and banned the sale, supply, transfer or export to Russia of certain goods and technologies for use in oil refining.² In March, at their Versailles summit,³ EU leaders agreed among the priority actions to reduce energy dependence on Russia. That same month, a Commission communication pointed to the need to end the EU's dependence on Russian hydrocarbons, with a deadline of 2027. The fourth sanctions package of 15 March included a ban on new

¹ Z. Nowak, M. Skoczek-Wojciechowska, "Kto kogo trzyma w szachu? Gazowe starcie UE i Rosji," *Polski Przegląd Dyplomatyczny*, 2023, No. 1.

² Council Regulation (EU) 2022/328 of 25 February 2022 amending Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's destabilising actions in Ukraine, <https://eur-lex.europa.eu>.

³ European Commission, "Declaration of Versailles," 10–11 March 2022, www.consilium.europa.eu/media/54773/20220311-versailles-declaration-en.pdf.

investments in the Russian energy sector.⁴ The fifth package, adopted on 8 April, introduced a ban on imports of coal and other solid fossil fuels,⁵ while the sixth (3 June) and eighth (6 October) packages concerned bans on imports of crude oil and refined petroleum products from Russia. Gas issues were only included in the 10th package of 25 February 2023 (banning Russian citizens and entities from reserving gas storage capacity in the Union).⁶ Although the EU did not impose direct sanctions on gas imports (as the UK and the U.S. did) due to the high dependence and objections of some Member States, Russia's own actions (cutting off supplies to Poland, Bulgaria, Finland, the Netherlands, Denmark and Sweden, and reducing shipments to Germany), the as-yet-unexplained explosion of the Nord Stream pipelines, and the self-restraint of consumption and imports in the Member States, Russia's share in the structure of European gas imports has declined to just a few percent.⁷

While it is difficult to quantify the real outcome of European sanctions targeting the Russian energy sector and their translation into Russia's ability to conduct hostilities, it is worth emphasising that the firmness with which the EU acted against Russia was unprecedented. Moreover, it has also resulted in decisive and accelerated energy integration with Ukraine, including by synchronising it with the ENTSO-E European electricity grid.

⁴ European Council, "Calendar—EU sanctions against Russia over Ukraine," www.consilium.europa.eu.

⁵ European Commission, "Ukraine: EU agrees fifth package of sanctions against Russia," 8 April 2022, <https://ec.europa.eu>.

⁶ European Commission, "EU agrees tenth package of sanctions against Russia," 25 February 2023, <https://ec.europa.eu>.

⁷ M. Skoczek-Wojciechowska, "EU Still Receiving Russian LNG," *PISM Bulletin*, No. 15 (2134), 20 February 2023, www.pism.pl.

From Hesitation to Action

Against the backdrop of Russia's invasion of Ukraine and the resulting energy market disruptions and worsening energy crisis, the EU was forced to quickly change its ways and review its regulatory framework and mechanisms of action. The first short-term solutions were, of course, implemented by Member State governments to cover current demand for raw materials and energy (e.g., diversification, new investments, changes in the energy mix) and to mitigate the impact of the crisis on vulnerable consumers (e.g., VAT reductions on energy, subsidies and cash transfers).⁸ However, given the need for not only rapid but also effective anti-crisis action and greater political impact in the face of Russian aggression, a consensus has emerged within the EU to increase the intensity of Commission action and to better coordinate the moves of individual Member States at the EU level.

Most of the Commission's initiatives were related to ensuring continuity of gas supply for European consumers. On 18 May 2022, the EC presented details of the REPowerEU plan, which aimed to make the EU independent from Russian raw materials as soon as possible in order to increase energy security, as well as to cut off Russia's revenues from hydrocarbons trade.⁹ It also authorised the implementation of fiscal measures and the use of funds from the auctioning of CO₂ permits, among other sources, to support the diversification of gas supplies. The EC also proposed new rules for gas storage in the EU, solidarity measures in the event of extreme gas crises, price safety caps for gas and a new benchmark for LNG prices, the creation of a common gas purchasing platform and ways to reduce gas and electricity demand. The Council, in turn, established emergency market measures including reductions

⁸ P. Dzierżanowski, Z. Nowak, "Business and Consumer Protection Must Evolve after Europe's Energy Crisis," *PISM Bulletin*, No. 69 (2188), 6 June 2023, www.pism.pl.

⁹ Z. Nowak, "The EU and RES: From Fighting Climate Change to Fighting Russia," *PISM Bulletin*, No. 141 (2058), 31 August 2022, www.pism.pl.

in electricity consumption, income ceilings for certain electricity generators, and a solidarity levy for the fossil fuel sector.

In the circumstances of the war in Ukraine, decisions on the functioning of the European energy market were adopted at record speed, although not without negotiation. The Commission's proposed revisions to the energy package were remarkably quickly supported by Parliament and the Council, and to further streamline the decision-making processes—especially before the winter season 2022/2023—the Commission presented its legislative proposals in the form of Council regulations, which de facto excluded Parliament from the whole process.¹⁰

From Crisis to Opportunity

The EU's energy policy is based on three priorities: energy security, competitiveness, and sustainability, the weight of which changes depending on circumstances. With the presentation of the European Commission's Green Deal in December 2019, which set the goal of reducing net greenhouse gas emissions by at least 55% by 2030 (compared to 1990 levels) and achieving climate neutrality by 2050, the EU's energy trilemma was dominated by the fight against climate change. This was to be supported, among other things, by the use of gas as a transition fuel (burning gas is 50% less carbon-intensive than burning coal), the low prices of which were to result from, among other things, stable, long-term agreements with partners. In this context, Russia appeared to be the solution to the European decarbonisation problem (rather than part of it), which was strongly lobbied for by some Member States, including Germany. The COVID-19 pandemic, which triggered an economic downturn in the EU and the need to reallocate EU funds for post-pandemic reconstruction, also failed to shake the EC's determination to pursue the energy transition priority. Although the European Green Deal

¹⁰ European Parliament, "Thematic notes on the European Union. Energy policy: general principles," www.europarl.europa.eu.

included a significant security and foreign policy component, especially in terms of climate diplomacy,¹¹ the “geopolitical Commission” that Ursula von der Leyen announced in her inaugural speech in November 2019 was to work mainly through peaceful leadership and incentives for positive change. “In a troubled world where too many powers only speak the language of confrontation and unilateralism”, the EC president said in announcing the investments, “in alliances and coalitions to advance our values. [...] through open and fair trade [...] [and] cooperation because strong partners make Europe strong too”.¹²

The war in Ukraine and the abrupt severance of energy ties with Russia have caused the EU to take a fresh look at its energy policy priorities. Ensuring basic security of supply of raw materials and electricity has, of course, been at the centre of the EC’s and Member States’ short-term efforts. However, instead of focusing solely on this aspect and suspending its pro-climate efforts for the duration of the anti-crisis measures, the EU not only maintained its transformational ambitions, but even accelerated the development of RES and expanded its energy policy activities. In the face of new geopolitical challenges, the struggle for energy resilience, understood as the internal capacity to protect against any external threats to the energy system, has become a particular objective of European policy.¹³

The energy crisis and the war in Ukraine were thus presented in the March 2022 EC Communication as an “opportunity to leap-frog carbon-intensive development”, which requires, among other things, an update of the EU’s external energy strategy in terms of the implementation of

¹¹ S. Kolarz, Z. Nowak, “With Charisma, Stick, and Carrot: Reviewing the Effectiveness of EU Climate Diplomacy,” *PISM Strategic File*, No. 4 (125), February 2023, www.pism.pl.

¹² European Commission, “Speech by President-elect von der Leyen in the European Parliament Plenary on the occasion of the presentation of her College of Commissioners and their programme,” Press Service, 27 November 2019, <https://ec.europa.eu>.

¹³ Z. Nowak, “Goodbye Russia! The Emancipation of European Energy,” in: M. Terlikowski (ed.), *The point of no return? The transformation of the global order after the Russian invasion of Ukraine*, *PISM Report*, April 2023, www.pism.pl.

the REPowerEU.¹⁴ In addition to internal measures such as increasing the 2030 headline target for renewables (from 32% to 42.5%) and reducing EU gas demand (from August 2022 to January 2023 by 19%, or around 41.5 billion cubic metres),¹⁵ EU energy diplomacy was strengthened. In its framework, the EC mainly conducted Community outreach and negotiations with gas partners. As a result, the EU received record large supplies of LNG. These came especially from the U.S. (as a result of a bilateral agreement worked out by the EC¹⁶), but to secure future LNG supplies, the EC also held talks with other exporters: Canada, Egypt, Israel, and West African countries, as well as LNG importers, including Japan and South Korea. EU support was also offered by pipeline gas exporter Norway, and preliminary talks were also held with Algeria and Azerbaijan. The EC's external energy activities also included other initiatives strengthening the EU, such as supporting the development of the hydrogen market (e.g., through an agreement with Japan), reducing methane leaks (e.g., through support for the coalition at COP27), seeking to stabilise the oil market (e.g., through negotiations with OPEC), or diversifying the supply of nuclear fuel (especially for VVER-type reactors of Russian design). As important as the elimination of Russian influence from the European market is, it has become equally important for the EU to avoid new harmful dependencies, especially on China, when pursuing its transformation objectives and building a European industrial competitive advantage. To this end, the EC has stepped up efforts to diversify the supply chains of specialty minerals and rare earth elements, which are used in RES and electromobility technologies, among others. Based on the premise that

¹⁴ *Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions—The EU's external energy commitments in a changing world*, European Commission, 18 May 2022, <https://eur-lex.europa.eu>.

¹⁵ European Council, "Reducing gas demand in the EU," www.consilium.europa.eu.

¹⁶ European Commission, "Joint Statement between the European Commission and the United States on European Energy Security," 25 March 2022, <https://ec.europa.eu>.

a secure neighbourhood is a guarantee of one's own resilience, the EC, together with the Member States, has been active and at the same time acting in solidarity with Ukraine, striving to ensure the functioning of the energy system and nuclear safety there, while assessing the possibility of implementing the post-war REPowerEU assumptions in Ukraine.

The war in Ukraine has shown that the struggle for energy security and the idea of the energy transition not only are not mutually exclusive but also are compatible when placed within the broader framework of building EU strategic autonomy and energy resilience. Under these circumstances, the European Commission has been particularly proactive in mobilising EU countries for strategic interaction and in building new, prudent partnerships with third countries. This has given the EU's energy policy a geopolitical dimension that has been missing for years.

Conclusions—from Idealism to Realism

Crises have several times now proved to be an engine of development for European integration, although they have not always led to an actual strengthening of the Community. The multifaceted energy crisis in the EU, coupled with Russia's aggression against Ukraine, also largely fits this pattern, except for some nuance, which should be highlighted. The key change affecting the future of European energy policy has been the move to sever energy ties with the aggressor. Rather than revolutionising the approach to energy cooperation in the EU, however, the aftermath of this decision has sharpened existing trends and tested the validity and effectiveness of the existing mechanisms of action.

First, it has become apparent that the EU already has at its disposal a whole range of tools—political, institutional, and regulatory—to conduct energy policy in a crisis-management environment. The sanctions implementation mechanisms that have been built up over the years, defined decision-making procedures or external partnerships in regional and sectoral policies, have allowed the EU to focus on directly

addressing the energy problems associated with the shift away from Russian raw materials.

Second, the EU's energy policy proved to be based on solid foundations such as solidarity, subsidiarity, and the energy transition. By testing these values, the war in Ukraine highlighted the conceptual shortcomings of geopolitics and led to a reorientation of EU energy priorities towards building broad-based resilience.

Third, although as a Community the EU has shown unprecedented decisiveness, speed of decision-making, and proactivity, one cannot help but mention the traditional breakthroughs in the coherence of Member State action. The pro-Russian preferences of Hungary¹⁷ (e.g., gas policy and the undermining of sanctions), German industrial selfishness (the issue of subsidies destabilising competitiveness within the EU), or the energy proximity of France and Russia (increasing LNG imports), among others, have been exposed. However, it should be emphasised in this context that it is Poland that remains the largest importer of Russian LPG in the EU. However, the war in Ukraine has shown that divisions within the EU are not able to block key actions of the whole Community.

The European Union furthermore was fortunate in its misfortune. Thanks to the exceptionally mild and warm winter, the countermeasures taken could have yielded better results. The EU managed to avoid economic collapse and violent political consequences and to preserve its ability to help Ukraine. From a market perspective, the situation looks temporarily stabilised—energy prices in the EU have returned to pre-crisis levels. However, the EU energy crisis is still ongoing, the effects of the war in Ukraine will continue to be felt by the European economy for a long time to come, and the global order has been permanently disrupted. In view of the unpredictability of the threats, the only right path for the EU is to continue to build resilience against any possible energy crisis.

¹⁷ V. Józwiak, "Hungary Maintains Course on Russia One Year after the Invasion of Ukraine," *PISM Bulletin*, No. 38 (2157), 4 April 2023, www.pism.pl.

PATRYK KUGIEL

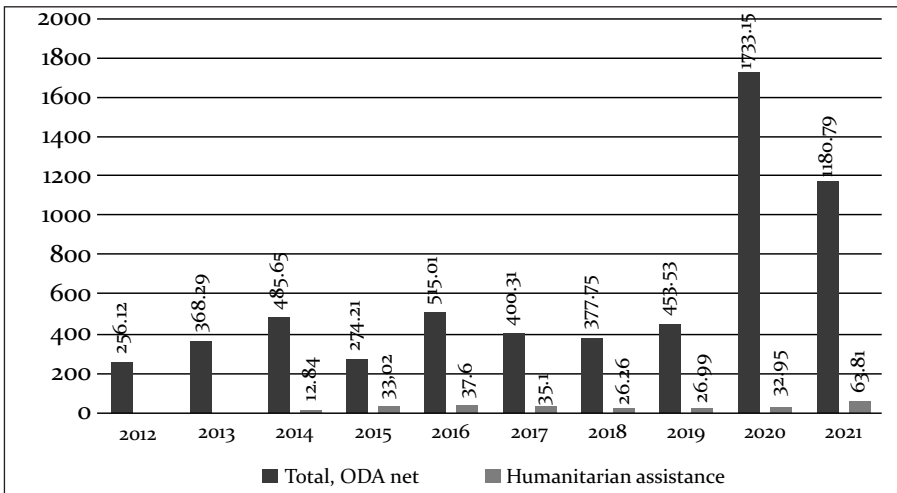
EU Aid to Ukraine and Challenges of EU Development Cooperation Policy

Introduction

Russia's aggression against Ukraine on 24 February 2022 triggered the largest humanitarian crisis in Europe in decades and posed a serious challenge to the EU's development and humanitarian assistance policy. In the following months, Ukraine became the largest recipient of Official Development Assistance (ODA) from EU institutions, and the EU, the main donor of civilian support for this country. The unprecedented scale of assistance to date and Ukraine's continued reconstruction needs have placed a huge burden on the EU's aid budget and the entire support system. This raised doubts about the availability of assistance to other parts of the world and strengthened the need for changes in the development cooperation system. The war in Ukraine may ultimately turn out to be a key factor influencing the amount of EU ODA, the reform of the aid system and a shift in the way development policy is treated in the EU's external relations.

Over the last decade, Ukraine has been one of the main recipients of ODA provided by EU institutions. This country received funds amounting to several hundred million euros annually, clearly increasing only from 2020 due to additional support intended to counteract the negative effects of the COVID-19 pandemic (Figure 1). In addition to development aid, in 2014 the EU began to provide limited humanitarian assistance in response to the crisis caused by Russia’s occupation of the eastern regions of Ukraine. The multiannual financial perspective (MFF) for 2021-2027 allocated for Ukraine—under the new NDICI development assistance instrument—€640 million for the first four years (2021–2024) for five priority areas.¹

Figure 1. Official Development Assistance from EU institutions to Ukraine in 2011-2021 (USD million, aid delivered)



Source: Own compilation based on data from the OECD.stat database, “Aid (ODA) disbursements to countries and regions [DAC2a]”.

¹ European Commission, “Multi-annual Indicative Programme (MIP) 2021-2027 for Ukraine,” Neighbourhood, Development and International Cooperation Instrument. Multi-annual Indicative Programme (2021-2027), Brussels, 9 June 2021.

Aid for Ukraine

The outbreak of full-scale war in 2022 caused both Ukraine's needs and the involvement of EU institutions in providing assistance to increase dramatically. According to preliminary OECD data for 2022, the value of aid qualified as ODA from EU institutions to Ukraine increased tenfold, from \$1.18 billion in 2021 to \$11.42 billion (equivalent to €10.4 billion) in 2022.² EU funds consisted of €7.2 billion in macro-financial assistance, €1.8 billion in loans, and €1.4 billion in grants.³ Thanks to this, the Ukrainian authorities were able to pay salaries and pensions and maintain basic public services, such as hospitals, schools, and shelters for refugees. Important components of aid in the form of grants were budget support (€620 million) and an emergency aid package (€330 million) to cover the current needs of displaced people, including shelter and repair of damaged infrastructure, especially the heating system, water supply, and sewage system. This also resulted in the adaptation of ongoing projects worth €190 million to war conditions.

In 2022, the value of European Commission (EC) humanitarian aid to Ukraine amounted to €485 million, and an additional €200 million was promised in 2023.⁴ These funds were mostly used to provide shelter to internally displaced persons (28.9%), transferring cash to them for current needs (cash assistance, 24%), healthcare support (11.3%), ensuring safety (10.7%), and food and meeting main needs (7.2%).⁵ Through the EU Civil Protection Mechanism, the Union additionally supported the provision of in-kind assistance and rescue operations by Member

² OECD, "ODA Levels in 2022—preliminary data. Detailed summary," OECD Development Co-operation Directorate, Paris, 12 April 2023, www.oecd.org

³ European Commission, "Factsheet: EU Solidarity with Ukraine," July 2023.

⁴ European Commission, "European Civil Protection and Humanitarian Aid Operations: Ukraine", https://civil-protection-humanitarian-aid.ec.europa.eu/where/europe/ukraine_en.

⁵ *Ibidem*.

States worth €759 million.⁶ According to the German Kiel Institute for the World Economy, which regularly analyses international aid for Ukraine, from February 2022 to the end of May 2023, the commitments of EU institutions in the field of humanitarian aid amounted to €2.1 billion, which made the EU the second-largest source of humanitarian support after the U.S. (€3.6 billion), and ahead of Germany (€1.9 billion), Japan (€1 billion), and Austria (€0.8 billion).⁷

By July 2023, the total value of financial assistance from EU institutions for Ukraine was already €31 billion. The additional amount came mainly from the promised macro-financial assistance of €18 billion (€1.5 billion per month) for 2023. The value of European Union civil aid under the banner of Team Europe—the EU together with its Member States (€7.8 billion)—amounted to almost €38 billion in total. An additional €20 billion was provided by the EU and Member States in military aid. Adding about €17 billion that the EC allowed Member States to use from the remains of the Cohesion Fund from 2014-2020 to help refugees, the total EU support amounted to €76 billion.⁸

The importance of the European Commission's involvement and the scale of assistance are best seen when compared with the activities of other Ukrainian partners. According to data from Kiel WE, the total financial assistance from EU institutions at the end of May 2023 (including development and humanitarian aid, but also other forms not qualified as ODA) was to be worth €27.3 billion, which made the EU the largest donor, ahead of the U.S. (€24.3 billion), Japan (€5.6 billion), the UK (€3.9 billion), and Germany (€1.3 billion).⁹ Adding military aid (€5.6 billion), the value of support promised by EU institutions to

⁶ “Factsheet ...,” *op. cit.*

⁷ “Government support to Ukraine: Type of assistance, € billion, Update July 6, 2023: Data since Jan. 24, 2022, and through May 31, 2023,” in: C. Trebesch et. al., *The Ukraine Support Tracker*, Kiel Institute, www.ifw-kiel.de.

⁸ “Factsheet ...,” *op. cit.*

⁹ “Government support to Ukraine,” *op. cit.*

Ukraine at that time amounted to €35.1 billion, and including Member States, the entire EU aid amounted to €68.4 billion and was only slightly lower than support (mostly military) from the U.S. at €70.7 billion. On top of that, the European Commission also promises strong support for the recovery and reconstruction of Ukraine after the war. This means the EU's continued financial commitment for years to come.

Challenges for EU Development Assistance

The Growing Value of Aid

The ongoing war and the high costs of Ukraine's reconstruction pose numerous financial, organisational, and political challenges for the EU aid system. First, the European Union's unprecedented commitment to financial assistance to Ukraine puts enormous pressure on its aid budget. This raises doubts about whether the EU can maintain the level of support in the coming years without the risk of reducing ODA to other countries. The amount of funds allocated for development and humanitarian aid is determined in the negotiations of the multiannual financial framework (MFF), and an increase requires the consent of all of the Member States. So, an increase in support for one country of €10 billion per year is huge bearing in mind that the budget of the entire NDICI-Global Europe instrument for assistance to most developing countries (including Ukraine) was €79.5 billion for a period of seven years. The increase in ODA for Ukraine was the main reason for the increase in all EU institutions' expenditures on ODA in 2022, rising by 30.3% to \$23.1 billion.¹⁰

The mobilisation of extraordinary funds in 2022 was possible through the use of funds remaining from the previous financial perspective (2014-2020), along with the activation of all available EU instruments and

¹⁰ "ODA Levels in 2022 ...," *op. cit.*, p. 3; "European Union institutions," *Development Co-operation Profiles*, OECD Publishing, 2023, www.oecd.org.

institutions (including the European Investment Bank and the European Bank for Reconstruction and Development) and the flexibility built into the NDICI. The fund for emergencies planned into the NDICI (€3.5 billion for emergency response for 2021-2027) and a special reserve (a cushion of €9.53 billion) allowed for the quick release of some of it for aid to Ukraine. However, these resources have both dried up and turned out to be too limited in relation to the massive need. Maintaining a similar level of financing for assistance to Ukraine and other countries therefore requires either an increase in the NDICI or the creation of new extra-budgetary instruments.

The mid-term review of the MFF and the start of negotiations on necessary changes in mid-2023 provided an opportunity to increase ODA expenditure. The European Commission presented its proposal to strengthen the MFF on 20 June 2023. Among other demands, it assumes the creation of a special instrument for Ukraine and an increase of €15 billion in the budget for 2024-2027 in the part regarding the possibility of responding to the global consequences of the war, relations with developing countries, and migration management.¹¹ This includes an additional €10.5 billion for Heading 6 of the EU budget (“Neighbourhood and the World”) and a top-up of the Solidarity and Emergency Aid Reserve (SEAR) with €2.5 billion. This will allow for refilling the reserve (cushion) under the NDICI instrument. Although the increase in the entire Community budget proposed by the European Parliament seemed unlikely until recently due to the resistance of net payer countries,¹² the needs caused by the war in Ukraine will encourage EU members to find a way to actually increase ODA funds (e.g., transfers between budget categories). Negotiations on the Commission’s proposals will last until the end of 2023, and their introduction will require the consent of the European Council and the European Parliament.

¹¹ European Commission, “EU budget: Commission proposes to reinforce long-term EU budget to face most urgent challenges,” Brussels, 20 June 2023.

¹² M. Szczepanik, “Weighing the Prospects for a Revision of the EU Multiannual Budget 2021-2027” *PISM Bulletin*, No. 202 (2119), 30 December 2022, www.pism.pl.

New Aid Instrument

The question about financial resources leads to the second challenge, which concerns the development cooperation system. Although existing aid instruments (NDICI, humanitarian aid) allowed for a flexible and effective response to the war, the scale of Ukraine's needs and the pressure on the entire Community budget necessitated the creation of additional mechanisms. Therefore, already in 2022 the Commission launched the Macro-Financial Assistance (MFA) mechanism, which is granted to countries experiencing a balance-of-payments crisis. It allows the EU to take out debt on the international financial market on favourable terms and then transfer the funds to the selected country in the form of a low-interest, long-term loan or grant.¹³ In February 2022, the EU granted Ukraine an Emergency MFA programme in the amount of \$1.2 billion, while subsequent tranches of so-called Exceptional MFA in the amount of €6 billion was granted by the end of 2022.¹⁴ On 9 November 2022, the European Commission proposed the "MFA+" instrument of €18 billion in macro-financial assistance to Ukraine for the whole of 2023. The assistance agreement was finalised in January 2023.

Taking into account the enormous costs of reconstruction in Ukraine, the Commission also signalled in 2022 the need to create a new instrument for this country. On 22 June 2023, the EC proposed the creation of a special Instrument for Ukraine (Ukraine Facility) with a target

¹³ Its aim is to restore a stable financial situation, while encouraging structural reforms and the implementation of an adjustment programme. The Union grants such assistance to countries that are close to it geographically, politically, or economically, including several countries that are candidates to join the Union and have a neighbourhood policy. MFA funds are disbursed to the central banks of beneficiary countries and can generally be used in any way the government sees fit, whether for reserves, foreign exchange interventions, or direct budget support.

¹⁴ European Commission, "Ukraine: Economy and Finance," <https://economy-finance.ec.europa.eu>.

value of €50 billion for the years 2024-2027.¹⁵ It is intended to provide a sustainable source of support for Ukraine's efforts to maintain macro-financial stability and promote the reconstruction and modernisation of the country while implementing key reforms on the path to the EU. It will support the transition to a green, digital, and inclusive economy that is progressively aligned with EU rules and standards.¹⁶ The new instrument is to have three pillars: 1) state financial support in the form of grants and loans; 2) a special investment framework to attract private investment, and 3) technical assistance and other support measures, largely consisting of EU development assistance. The grants are to come from the new instrument, which is to be created as part of the periodic review of the MFF. Its creation should therefore add another tool to the EU development aid toolbox and provide additional resources for ODA at the Community level. It would also allay the concerns of external partners regarding the impact of aid to Ukraine on the EU's global activity.

Aid to Ukraine at the Expense of the Rest of the World?

The third challenge for the EU's development cooperation policy is the impact of the situation in Ukraine on the European Union's relations with third countries. The increase in aid to Ukraine has raised concerns in other developing countries that the EU will reduce support for them and other partners.¹⁷ Indeed, in 2022, Ukraine received as much as 38% of all ODA from European institutions, confirming concerns about the focus on this single European crisis.¹⁸ Moreover, the arrival of huge numbers of refugees from Ukraine to the EU Member States meant a further financial

¹⁵ European Commission, "Ukraine: Commission proposes to set up a dedicated Facility to support Ukraine's recovery, reconstruction and modernisation," Brussels, 20 June 2023.

¹⁶ *Ibidem*.

¹⁷ M. Gavas, S. Pleeck, "Will the Ukraine Crisis Mean EU Aid Is Pulled from the Rest of the World?" Center for Global Development, 29 March 2022.

¹⁸ "ODA Levels in 2022 ...," *op. cit.*

burden that absorbed their resources, which became more difficult to direct to other purposes. The war in Ukraine additionally coincided with a dramatic deterioration of the humanitarian, economic, and social situation in many developing countries and with growing humanitarian needs around the world.¹⁹ The twinned food and energy crises deepened by the war in Ukraine have worsened the already poor condition of the economies of many developing countries, which are still struggling with the effects of the COVID-19 pandemic, and for many of them, their debt has increased as well as the number of people living in poverty.

Although detailed data on the use of EU aid in 2022 is not yet available, developing countries' concerns are confirmed by preliminary OECD statistics. According to them, while the entire ODA of OECD DAC members increased in 2022 compared to 2021 by 15.3% in current values (up to \$205.98 billion), the value of funds allocated to Sub-Saharan African countries decreased by 7.8%, and for all least-developed countries (LDCs) by 0.7%.²⁰ Maintaining financing for the countries of the Global South and minimising the effects of the food crisis has turned out to be an important element in the information war with Russia,²¹ particularly its responsibility for rising global food prices and the condemnation of Russian aggression by the affected countries.

To meet these concerns, EU representatives repeatedly assured its partners since the beginning of the war that greater support for Ukraine would not mean less interest and involvement of the EU in aid in other parts of the world.²² To counteract the negative, global effects of the war, the Union increased food aid for the most needy countries. To this end,

¹⁹ P. Kugiel, "The Impact of the War in Ukraine on the Food Security of Developing Countries," *PISM Bulletin*, No. 63 (1980), 14 April 2022, www.pism.pl.

²⁰ "ODA Levels in 2022 ...," *op. cit.*, p. 5.

²¹ J. Czerep, S. Nowacka, "Fertile ground: How Africa and the Arab World found common language with Russia on Ukraine," *PISM Report*, January 2023, www.pism.pl.

²² V. Chadwick, "EU aid chief vows not to neglect other crises amid Ukraine needs," *DEVEX*, 1 March 2022, www.devex.com.

a number of regional and global initiatives were relaunched in 2022 to improve access to food, including for sub-Saharan Africa, especially the Sahel and the Horn of Africa. The value of humanitarian food aid provided by the Directorate-General for Humanitarian Aid (DG ECHO) increased to €950 million in 2022, a 64% jump compared to 2021 and almost 90% over 2020.²³ The Commission also increased the humanitarian aid budget for 2023 to €1.7 billion.

Although no current data are available yet, the increase in the overall ODA budget in 2022 suggests that the EU managed to maintain a similar level of funding for development and humanitarian assistance to countries of the Global South. Yet, in the future, the utilisation of funds from the reserve and the crisis response fund under the NDICI-Global Europe to help Ukraine may create a problem if it limits the EU's ability to respond to other crises in other parts of the world. This is, in effect, an argument for increasing the entire NDICI and humanitarian aid budget (Heading 6 of the EU budget).

Aid as a Political Instrument

An additional political effect of the war in Ukraine has been the strengthening finally of a new approach to development assistance in the EU's foreign policy. It confirmed the belief among EU institutions that aid should be treated as a foreign policy instrument supporting the global ambitions of the organisation. This type of thinking was already visible in the new development aid strategy (New European Consensus on Development) in 2017, and was reinforced with the election of the new European Commission under the leadership of Ursula von der Leyen in 2019. However, it was the war in Ukraine that was the indisputable confirmation that in times of the return of "power politics", EU instruments must primarily serve its own interests.²⁴ This made it possible to obtain

²³ European Commission, "DG ECHO Reports on food security. Release no 5—May 2023," Luxembourg, 2023, p. 7.

²⁴ P. Kugiel, "EU Development Cooperation Policy Shifts from Charity to Self-interest," *PISM Bulletin*, No. 80 (2199), 27 June 2023, www.pism.pl.

the general consent of the Member States for the large involvement of aid funds in activities stabilising the EU's neighbourhood.

Development policy has also gained importance as an element of the Union's response to existential threats in its environment. This also confirmed the approach that EU funds should go primarily to places where the Union has its vital interests. It seems that this will strengthen the trend of treating ODA as a "normal" foreign policy instrument, supporting countries close to the EU (geographically or politically) and exerting influence in order to pursue their own interests. This approach is increasingly used, for example, in the negotiation of favourable cooperation agreements in the field of migration control, where financial assistance is an important incentive for partners to improve the protection of their borders or agree to readmission agreements.²⁵

Conclusions

The war in Ukraine confirmed the usefulness and importance of EU development and humanitarian aid, an important instrument of foreign policy and response to crises in the neighbourhood. EU institutions—equipped with a significant aid budget, flexible instruments, and the ability to mobilise additional funds—played a major role in supporting the Ukrainian economy, state, and society. They have become the largest donor of financial aid (before the U.S.) and the second-largest source of humanitarian aid behind the U.S. The scale of the crisis in the EU's neighbourhood has also revealed the financial and organisational limitations of the EU as an aid donor. Maintaining the current level of support in the coming years will become a serious financial, organisational,

²⁵ The latest example of this approach is the EU agreement with Tunisia of 16 July 2023, under which the EU promised assistance of up to €1 billion in exchange for improved border control and cooperation in combating irregular migration from Tunisia to Europe; see: T. Amara, "Tunisia and EU sign pact to stem migration," Reuters, 16 July 2023.

and political challenge for EU development policy. This will also have a significant impact on the future of the EU as a donor in three dimensions.

First, it will probably lead to a further increase in ODA budget at the disposal of the European Commission, either as part of the interim review of the MFF or through the creation of additional extra-budgetary instruments and funds. Therefore, an increase in the budget until 2027 that boosts the NDICI instrument and funds for humanitarian aid should be expected. This decision will be dictated not only by the need to maintain support for Ukraine and participate in its reconstruction but also by growing needs in other parts of the world.

Second, the challenges related to assistance to Ukraine has led to organisational changes in the EU development assistance system. The creation of a new instrument responsible for helping Ukraine (Ukraine Facility), which will also play a major role in mobilising funds for the country's reconstruction, seems certain. Certain changes in the organisation of the Instrument for Pre-Accession Assistance cannot be ruled out, so Ukraine could also benefit from it, as well as the establishment of additional trust funds and other mechanisms increasing the Union's ability to support the countries of the Global South. These changes will likely be part of the reforms introduced during the mid-term review of the EU's multiannual financial framework.

Third, aid to Ukraine will contribute to the disappearance of EU development aid as a unique and distinctive area of external action aimed at supporting developing countries in combating poverty. Aid will be subordinated to a greater extent to the EU's strategic, political, and economic goals, and to a lesser extent to international standards and obligations. This change will facilitate the synchronisation of EU aid with the actions of the Member States and enable support for increasing the common aid budget. Hence it will serve a main goal of strengthening the EU's position as an independent geopolitical actor.

JOLANTA SZYMAŃSKA

Reception of Refugees from Ukraine in the EU and the Future of EU Migration and Asylum Policy

Introduction

Russia's full-scale war against Ukraine, which began on 24 February 2022, led to mass refugee movement. The scale and dynamics of the migration from the conflict-ridden state to the European Union posed a major challenge both for the Member States directly neighbouring Ukraine and for the entire organisation. Responding to this challenge required unprecedented measures to avoid a humanitarian crisis.

The European Union's reaction to the mass exodus of people from Ukraine was conditioned by the specific division of competences in the area of migration between the EU and the Member States, as well as by the difficult experience of managing past migration crises in the EU. Although the 1997 Treaty of Amsterdam transferred migration and asylum from intergovernmental to Community cooperation, and then the Lisbon Treaty of 2007 moved all remaining Justice and Home Affairs under the Community method, forming a single EU area of

freedom, security, and justice with shared competences between the EU and the Member States, tensions between the intergovernmental and supranational actors in this area remain.¹ The lack of established patterns of cooperation in the supranational formula and the limited mutual trust of the states made it difficult to respond to the emerging migration challenges.

A remnant of the political disputes over migration characteristic of the 2015–2016 crisis was the lack of effective systemic solutions in asylum policy. The numerous proposals put forward by the European Commission (EC) to reform the so-called Dublin system,² especially the creation of a system for the relocation of asylum seekers, have met with resistance from many Member States. Central and Eastern European countries, which in 2022 became the first destinations for refugees from Ukraine, were particularly reluctant to this proposal.³ Migration diplomacy, which was an ad hoc solution to the 2015–2016 crisis as reflected in the EU-Turkey agreement of March 2016, has been put to the test on both Europe's southern and eastern peripheries. At the beginning of 2020, Turkey began pushing refugees to the border with Greece and Bulgaria, thus undermining the 2016 agreement, and since spring 2021, the Baltic states and Poland have been confronted with the

¹ For more, see: J. Szymańska, "Intergovernmentalism vs. Supranationalism in the Migration Policy and Home Affairs of the European Union," in: T.G. Grosse (ed.), *European Union Policies at a Time of Crisis*, Scholar Publishing House, 2017.

² The Dublin system, based on the Dublin III Regulation, sets out the criteria and mechanisms for determining the Member State responsible for examining an application for protection in the European Union. In most cases, it is the first Member State whose border has been crossed by a foreigner seeking protection; see: *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*, OJ L 180, 29.6.2013.

³ For more, see: K. A. Wojtaszczyk, J. Szymańska (eds.), *Uchodźcy w Europie. Uwarunkowania, istota, następstwa*, Oficyna Wydawnicza ASPRA-JR, 2016.

instrumentalisation of migration by the Belarusian regime, which has led to a crisis on the border with that country.⁴

In the face of rapid socio-economic changes on the Old Continent, especially labour shortages in the markets of many Member States, including those from Central and Eastern Europe, the importance of economic migration was growing before 2022. The problem of labour shortages intensified during the COVID-19 pandemic as sanitary restrictions resulted in reduced mobility and the number of first residence permits issued to foreigners in the EU fell from around 3 million to 2.3 million per year between 2019 and 2020, only approaching pre-pandemic levels again in 2021. The situation on the labour markets in the EU and the accompanying trend of liberalisation of legal migration laws in the Member States created favourable conditions for the reception and integration of Ukrainian refugees.⁵

EU Response to Refugees from Ukraine

The Union's response to the mass movement of refugees from Ukraine took into account both the difficult experience of developing a unified response to the 2015 migration-management crisis and the new socio-economic conditions in the EU. Its key element was the Directive on minimum standards for granting temporary protection in the event of a mass influx of displaced persons.⁶ The Directive had already been introduced into the Community legal order in 2001 in the wake of the refugee crisis of the 1990s associated with the war in the former

⁴ A.M. Dwyer, "The Border Crisis as an Example of Hybrid Warfare," *PISM Strategic File*, No 2 (110), February 2022, www.pism.pl.

⁵ For more, see: J. Szymańska, "Refugees from Ukraine Adapting to the European Labour Market," *PISM Bulletin*, Nr 28 (2147), 16 March 2023, www.pism.pl.

⁶ *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*, OJ L 212, 7.8.2001.

Yugoslavia, but it had never been applied before. The mass exodus from Ukraine was an opportunity to test this instrument in practice.

The Council Decision establishing the existence of a mass influx of displaced persons from Ukraine and introducing temporary protection was taken on 4 March 2022. On its basis, refugees from Ukraine were granted collective protection on the territory of the EU. This included access to the labour market and vocational training, housing, and other services in host countries, such as access to education for children and young people on the same terms as citizens, access to (at least) basic health care and social care. Initially, the protection was introduced for one year, and then extended until 4 March 2024 (with the possibility of extending it for another year, depending on the development of the situation in Ukraine).

The movement of refugees within the EU under the Directive facilitated access to free transport services offered by transport companies in many Member States. The exchange of information on available places for refugees through the Solidarity Platform specially created for this purpose also proved to be useful.

The assumption that refugees can obtain protection in any EU country conditioned the financial assistance offered for their reception from the EU budget. The EC proposed the Cohesion Action for Refugees in Europe (CARE), enabling all Member States to use cohesion funds remaining from the 2014-2020 budget to support refugees. The total additional liquidity provided by the EU through CARE and the similar FAST-CARE packages amounted to €13.6 billion. The EC also enabled the flexible use of funds in the area of home affairs, making it easier for countries to reallocate funds available under the 2014-2020 programmes to actions targeting displaced persons from Ukraine. In addition, the “Stand Up for Ukraine” pledging conference mobilised €400 million in emergency assistance from funds in the area of internal affairs.⁷

⁷ *Communication from the Commission to the European Parliament and the Council, Temporary protection for those fleeing Russia's war of aggression against Ukraine: one year on*, COM/2023/140 final.

Providing refugees from Ukraine with an automatic right to employment on the markets of the Member States (after registering for temporary protection) was intended to reduce the scale of costs associated with their admission to the EU and to support the process of their integration into the host societies. To this end, following the launch of the Temporary Protection Directive, Member States started simplifying procedures and removing barriers to access to the labour market. Many public employment services have offered simplified registration or pre-screening of displaced persons from Ukraine, for example, in Belgium, Bulgaria, Czechia, Spain, Poland, Portugal, and Romania.⁸

Member States have taken steps to integrate displaced children from Ukraine into their national education systems. In many cases, this involved the employment of Ukrainian-speaking support teachers in schools, the introduction of Ukrainian-language textbooks, and the preparation of special information materials for Ukrainian parents.⁹ Many Member States organised specific language courses for students, for example, in Italy language courses were offered as part of the 2022 summer school to prepare children for the next school year, while in Luxembourg, Ukrainian secondary school students were able to participate in summer activities combining English with sports and artistic activities. Several Member States have allocated additional funding to support the education system with including school children from Ukraine. In the Netherlands, for example, €704 million has been earmarked for this purpose.¹⁰

Since many refugees found shelter in houses and flats provided by nationals of the host countries, thereby significantly relieving the

⁸ L. Asscher, “Integration of people fleeing Ukraine in the EU,” Note to the European Commission, May 2023.

⁹ *Communication ...*, *op. cit.*

¹⁰ European Migration Network, “Annual Report on Migration and Asylum 2022,” July 2023.

burden on reception centres, many Member States provided financial support to households that decided to do so, while others provided housing benefits directly to the beneficiaries of temporary protection.¹¹ Latvia, for example, has granted households so-called solidarity benefits of up to €300 per month, while Poland decided to pay compensation for accommodation and meals for refugees from Ukraine in the amount of PLN 40 (about €8) per day. Romania introduced the “50/20” programme, which provides homeowners with RON 50 (about €10) per person per day for accommodation and utilities and RON 20 per person per day for meals. Germany has supported private residents with a rent subsidy, the amount of which varies from municipality to municipality.¹²

Although the EU’s competences in the area of integration are very limited (according to Article 79(4) of the Treaty on the Functioning of the EU, they remain the responsibility of the Member States, and the EU can only establish measures to encourage and support countries in this area), the EC has taken initiatives to facilitate this process. In April 2022, it provided a recommendation and practical guidance on the flexible recognition of qualifications, and in June it provided recommendations on facilitating access to the labour market, vocational education and training, and adult education. In October 2022, together with the European Labour Authority, it launched the EU Talent Pool pilot project, enabling refugees to create CVs and helping to match the profiles of beneficiaries of temporary protection with vacancies in the EU.

With regard to education systems, the EU has financially supported the training of teachers to adapt schools to the needs of refugee reception and has made training programmes available through the School Education Gateway, a European online platform for schools. Dedicated discussion groups have been set up on the eTwinning community platform to support European teachers in promoting inclusion and diversity in their

¹¹ OECD, “Housing support for Ukrainian refugees in receiving countries,” 27 July 2022 r.

¹² L. Asscher, “Integration ...,” *op. cit.*

classrooms. The EC also promoted the Erasmus+ programme, which offers scholarships for studies or traineeships in the Member States, as well as a dedicated Marie Skłodowska-Curie fellowship programme for researchers fleeing Ukraine among Ukrainian students and academics.¹³

In addition, the EC launched the Safe Homes Project, presenting guidelines on initiatives for housing refugees in private homes¹⁴ and encouraging countries to exchange views and good practices in this regard. As part of the project, together with the International Federation of Red Cross Societies, it worked to better match refugees with potential hosts, while assessing the needs of the Member States and providing support and advice to hosts. Elements of the programme have been implemented in Belgium, France, Germany, Hungary, Ireland, the Netherlands, Luxembourg, Poland, Romania, and Slovakia.¹⁵

Effects of the Activation of the Temporary Protection Directive

The triggering of the Temporary Protection Directive enabled the Member States to avoid the overloading of their asylum systems, which was characteristic of the 2015-2016 crisis. It also sent a signal to the refugees from Ukraine that they were welcome across the EU, stimulating the bottom-up relocation of refugees from frontline countries to other Member States. While in the first month of the application of the Directive, the largest number of people were registered for protection in the countries of Central and Eastern Europe—in Poland (675,100), Czechia (244,600) and Slovakia (58,700)¹⁶, a year later Germany came out on top of the countries granting protection. In March 2023, nearly

¹³ *Communication ...*, *op. cit.*

¹⁴ European Commission, “Solidarity and housing: Supporting Safe Homes Considerations, key principles and practices,” Migration and Home Affairs, 6 July 2022, <https://home-affairs.ec.europa.eu>.

¹⁵ *Communication ...*, *op. cit.*

¹⁶ European Commission, “Temporary protection for persons fleeing Ukraine,” 3 June 2022, <https://ec.europa.eu>.

1.068 million (27%) were protected in this country, followed by Poland with nearly 976,600 (25%) and Czechia with about 325,200 (8%).¹⁷

The initial effects of the integration of Ukrainian refugees into Europe have been positive, especially with regard to the labour market. Data from November 2022 provided to the Commission by 21 PES indicate that more than 1.1 million displaced persons from Ukraine were employed in the European Economic Area. Although the figures varied from country to country, refugees found employment mainly in the sectors of construction, hospitality, and trade.¹⁸ According to OECD data, people displaced from Ukraine have integrated into European labour markets much faster than refugees from other regions—it has so far taken an average of about five years to achieve similar effects of professional activation in the case of immigrants from other regions. However, the mismatch between jobs and the qualifications of the refugees from Ukraine has been a challenge.¹⁹ The main barrier limiting the possibility of finding a satisfactory job was insufficient knowledge of the language of the host country.²⁰

Both integrating refugees into Member States' education systems and providing them with adequate accommodation remain difficult. Due to the uncertainty about the length of stay, the increased availability of distance education during the COVID-19 pandemic, as well as the language barrier, refugee children from Ukraine have in many cases not been integrated into the education systems of the host countries or only partially benefit from them. According to a UNESCO report,

¹⁷ European Commission, "31 March 2023: 3.9 million with EU temporary protection," 8 May 2023, <https://ec.europa.eu>.

¹⁸ European Commission, "Public Employment Services support to persons displaced from Ukraine: latest developments," 20 December 2022, <https://ec.europa.eu>.

¹⁹ "OECD, "What we know about the skills and early labour market outcomes of refugees from Ukraine," *OECD Report*, 6 January 2023, www.oecd.org.

²⁰ FRA, "Barriers to employment of displaced Ukrainians, Fundamental Rights Agency," Eurofound/FRA, 14 June 2023, <https://fra.europa.eu>.

in June 2023, the enrolment rate of Ukrainian refugees in primary and secondary schools in seven European countries (Bulgaria, Czechia, Hungary, Poland, Moldova, Romania, and Slovakia) ranged from 4% to 59% (43% on average).²¹

The housing situation of refugees also leaves much to be desired. Due to the conditions of the labour market, many of them decided to settle in large cities, but in some agglomerations the rental offer was limited, which resulted in an increased prices. For example, in 2022, apartment rental prices in Warsaw, the most populous city in Poland, increased by 18% in the fourth quarter compared to the previous year (in Kraków and Łódź, by 19%). As a result, despite the implementation of mechanisms to encourage refugees to become independent (e.g., in Poland, since March 2023, refugees have been obliged to cover part of the costs of staying in collective accommodation centres), many of them have remained in reception centres despite their temporary nature.²²

Discussion on Reform of Asylum Policy in the EU

The activation of the Temporary Protection Directive following the Russian invasion of Ukraine and the positive effects of its implementation have raised the question of whether this instrument can be used in the future. This has become all the more important as the automatic granting of temporary protection to refugees from Ukraine has generated differences in the status of different groups of refugees in the EU, and therefore accusations of discrimination against newcomers from other conflict zones and the application of double standards in European asylum policy. Indeed, with regard to nationals of other third countries, there are significant differences between the Member

²¹ UNESCO, “Ukrainian refugees’ pathways to inclusion in education: Insights from host countries,” 20 June 2023, www.unesco.org.

²² Amnesty International, “Ukraińcom nie chcą wynajmować. Sytuacja mieszkaniowa uchodźców z Ukrainy w Polsce. Wyniki monitoringu Amnesty International,” 2023, www.amnesty.org.pl

States in the procedures used, the rates at which protection is granted, the type of protection, and the benefits guaranteed to applicants and beneficiaries of international protection. Due to the individual nature of each case²³ and the overload of systems, asylum procedures are often prolonged, delaying the integration of refugees in the host countries.

There is no doubt that the decision to activate the Temporary Protection Directive in the face of the exodus from Ukraine was easier for EU countries than during other mass refugee crises in the past. In this context, the visa-free regime between the EU and Ukraine, which has been in force since 2017, has been crucial.²⁴ Citizens of this country with a biometric passport have been able to move freely within the EU for up to 90 days. Thus, after the start of the Russian aggression, they could also apply for asylum in any EU country (once they reached its territory), and thus the responsibility for examining applications did not remain almost exclusively with the frontline states, unlike the experience of Syrians in 2015, who were subject to the procedure based on the Dublin regulation. From the perspective of the EU Member States, therefore, the advantage of applying the Temporary Protection Directive in this case was primarily the speeding up of the procedure for granting protection. However, there has been no change in the rules for determining which EU country is responsible for granting it.

The positive perception of refugees from Ukraine in European societies also helped in making the decision to open the borders. In an April 2022 Eurobarometer survey, as many as 89% of Europeans declared sympathy for Ukrainians, and 88% expressed support for accepting refugees from this country into the EU.²⁵ These figures contrast with

²³ See: EASO, “EASO Guidance on asylum procedure: operational standards and indicators,” September 2019.

²⁴ EEAS, “Visa-free travel for Ukrainians comes into force,” 11 June 2017, www.eeas.europa.eu.

²⁵ European Union, “Eurobarometer: Europeans approve EU’s response to the war in Ukraine,” *Flash Eurobarometer 506*, Brussels, 5 May 2022.

the results of surveys on the perception of migrants in Europe during the 2015-2016 crisis. For example, in a spring 2016 Pew Research Center survey, the majority of Europeans saw migrants from Syria and Iraq as the main threat to their countries' security²⁶ (this was, among others, the result of politicians' securitisation of migration from the Middle East).

These differences have meant that, despite the positive effects of the application of the Temporary Protection Directive in the face of the mass of refugees from Ukraine, it has not become the basis for wider reform of asylum policy. In the discussion on its shape, the ideas put forward in response to the migration-management crisis of 2015–2016 were revisited. In 2023, in response to the post-pandemic increase in irregular migration on the southern migration routes to the EU, the Member States stepped up their work on the migration and asylum package, including reform of the Dublin Regulation. In June 2023, the Council of the EU (with opposition from Poland and Hungary, which demanded that the discussion on reform be moved to the European Council in order to reach consensus on this issue) adopted its negotiating position on the new regulation on asylum and migration management and the draft regulation of 2016 on the asylum procedure. The first document provided for a solidarity mechanism (“mandatory solidarity”) based on different forms of Member State involvement—relocation, financial equivalent, or alternative measures, such as operational support. The project provided for a minimum annual number of relocations from one Member State to another of 30,000 people and a minimum annual amount of financial contributions of €20,000 for the relocation of one person. At the same time, discussions were resumed on improving migration diplomacy, including cooperation with Tunisia and Turkey, in order to reduce irregular migration to the EU.

²⁶ Pew Research Center, “Europeans Fear Wave of Refugees Will Mean More Terrorism, Fewer Jobs,” 11 June 2016, www.pewresearch.org.

Conclusions

In response to the war in Ukraine, the EU took swift and decisive action to welcome refugees on its territory. The activation of the Temporary Protection Directive also facilitated the reception and initial integration of newcomers into the labour markets of the host countries, avoiding overloading Member States' asylum systems. Given the protracted conflict in Ukraine, and thus the stay of refugees in the Member States, their further integration, especially in non-economic areas, remains a long-term challenge for the EU.

Importantly, the application of the Temporary Protection Directive avoided a difficult political debate on solidarity mechanisms in the area of migration, which in 2015-2016 resulted in deepening divisions between Member States and which was also reflected in other policy areas. However, this discussion returned to the EU in the first half of 2023 as work on the reform of the Dublin system in the Council of the EU accelerated. Although the socio-economic conditions in the Member States have changed significantly, proposals to create a solidarity mechanism that takes into account relocation remain controversial, which does not allow for the success of the reform to be prejudged.

Although the applicability of the Temporary Protection Directive is limited, in the case of non-European refugee crises that put pressure on the EU's external borders, the experience of implementing this document can be used to reform national asylum systems (e.g., by extending access to the labour markets of applicants for international protection in order to speed up their integration process) and to have a positive impact on the further development of cooperation between EU states in crisis situations (e.g., through the use of the Solidarity Platform that was established during the Ukrainian case).

SZYMON ZARĘBA

**EU's Involvement in the Prosecution
of International Crimes in Ukraine
and the Prospects for Enhancing the Union's Role
in Shaping International Criminal Law**

Introduction

The war in Ukraine confronted the European Union with the need to respond to reports of mass crimes committed there by the Russian military and other state organs. While public expectations were high, the EU's modest record of prosecuting and punishing international crimes, its lack of experience in this regard during the active phase of hostilities, and its institutional and procedural limitations remained a challenge.

Cooperation between EU Member States in matters of international criminal law was established with the entry into force of the Maastricht Treaty in 1993. Its Title VI on cooperation in the field of Justice and Home Affairs created the possibility of judicial and police cooperation between the members of the Union in criminal matters, including with regard to "serious forms of international crime". Title V, on the establishment

of a Common Foreign and Security Policy, made it possible to promote the EU's common values and respect for human rights abroad. Initially, however, EU cooperation in criminal matters focused on the prosecution and punishment of economic and financial crimes affecting the Union's interests. Only over time did the EU begin to broaden its interest to include the prosecution and punishment of other serious crimes with a transnational dimension, including international crimes.¹ The first step in this direction is considered to be the introduction of the so-called principle of conditionality for countries created during the break-up of the former Yugoslavia and interested in joining the Union under the Stabilisation and Association Process established for them in 1999. The EU expected them to hand over the main war criminals of 1991–1995 to the International Criminal Tribunal for the former Yugoslavia (ICTY), set up by the UN to punish them and to cooperate fully with this tribunal.² With the adoption of this principle, it also began to financially support the ICTY.³ Appraisals of its work have varied considerably: while the ICTY Prosecutor claimed that 90% of ICTY indictees had been arrested as a result of EU pressure, experts pointed to the inconsistency of EU pressure to prosecute criminals from Serbia or Croatia in a number of cases.⁴ Another facet of EU activity in this sphere was the support for the International Criminal Court (ICC). However, its Member States were

¹ M. Caianiello, "The Role of the EU in the Investigation of Serious International Crimes Committed in Ukraine. Towards a New Model of Cooperation?," *European Journal of Crime, Criminal Law and Criminal Justice*, 2022, No. 30, pp. 219–220.

² *Ibidem*, p. 222.

³ "Support from European Union to the ICTY," 7 December 2000, www.icty.org.

⁴ See, e.g.: F. Hartmann, "The ICTY and EU conditionality," in: J. Batt, J. Obradovic-Wochnik (eds.), *War crimes, conditionality and EU integration in the Western Balkans*, European Union Institute for Security Studies, Paris 2009, pp. 67–68 (the EU has not been consistent enough in its policy towards Serbia); or D. Hedl, "Croatia Whitewashes War Crimes After Joining EU," *Balkan Insight*, 11 June 2014, www.balkaninsight.com (after Croatia's accession to the Union, the pressure from the organisation for real accountability for the crimes committed by its citizens clearly diminished).

initially clearly divided on this issue. During the negotiation of the ICC's Rome Statute in the second half of the 1990s, 13 of the then EU members supported the creation of a strong and independent ICC, but France and the UK were sceptical, reflecting the views of the other permanent members of the UN Security Council. It was only within a few years that the position of the EU states converged towards support for the court. Eventually, all EU states acceded to the Rome Statute of the ICC, and the EU began to support the ICC financially.⁵ The clarification of EU states' attitudes towards criminal justice during the negotiation of the ICC Statute in the early 2000s allowed the Union to become somewhat more active in the sphere of the investigation and prosecution of international crimes. In 2002, it established the Genocide Network (European Network for investigation and prosecution of genocide, crimes against humanity, and war crimes) to coordinate cooperation in the investigation and prosecution of these crimes.⁶ In 2006, the EU concluded a cooperation and assistance agreement with the ICC. It provided for close cooperation between the two institutions and consultations on matters of common interest. It was the first agreement of its kind between the EU and another international court.⁷ The EU also committed itself (including in particular its EULEX mission in Kosovo) to the establishment of the Kosovo Specialist Chambers and the Specialist Prosecutor's Office at The Hague in 2017. The aim of these bodies—which technically were not

⁵ M. Caianiello, *op. cit.*, p. 223.

⁶ The network brings together EU countries, the Union itself, and its agencies such as Eurojust and the European Union Agency for Law Enforcement Cooperation (Europol), some non-EU countries such as Canada, Switzerland and the U.S., international institutions such as the UN and the ICC Office of the Prosecutor, and large NGOs such as Human Rights Watch and Amnesty International. See: Eurojust, "Supporting judicial authorities in the fight against core international crimes," 19 May 2020, www.eurojust.europa.eu.

⁷ M. Groenleer, "The United States, the European Union, and the International Criminal Court: Similar values, different interests?," *International Journal of Constitutional Law*, 2015, vol. 13, no. 4, p. 927–929, 936.

international but “internationalised”, as they included prosecutors and judges from EU countries alongside their counterparts from Kosovo— was to prosecute and punish international crimes committed in Kosovo between 1998 and 2000.⁸ It should be noted that, although the Union gradually increased its activity in the analysed field, until the outbreak of the war in Ukraine it had always engaged in activities aimed at apprehending and punishing the perpetrators of crimes only after the active phase of the conflicts had ended (as, for example, in the case of the ICTY and the Kosovo Trial Chambers).

The lack of its own criminal justice system and its total dependence in the field of criminal cooperation on the goodwill of individual Member State judiciaries and law enforcement has also limited the EU’s activity in the prosecution and punishment of crimes committed in Ukraine.⁹ This was related to the fact that Article 83(1) of the Treaty on the Functioning of the European Union (TFEU), which contains a catalogue of spheres in which judicial cooperation in criminal matters is carried out, does not mention major international crimes. Although it allows for the possibility of extending this catalogue with the consent of the Parliament and the Council to include other cases of “serious crime with a cross-border dimension”,¹⁰ (which could apparently also include international crimes), the two bodies have to date not decided to include these crimes in the catalogue indicated, leaving the Union’s competence limited. For this reason, the initiative and activity of individual Member States played a greater role than in other areas. The Union itself could therefore mainly take action to coordinate its actions and cooperate with other institutions. Its involvement was linked to Article 3 of the Treaty on European Union (TEU), which mentions the promotion of EU’s values and respect for human rights among the objectives of the

⁸ M. Caianiello, *op. cit.*, p. 226.

⁹ B. Yakut, “Post-Lisbon Criminal Law Competency of the European Union,” *Marmara Journal of European Studies*, 2009, vol. 17, No. 1-2, p. 3.

¹⁰ This is also the view of, among others, M. Caianiello, *op. cit.*, p. 227.

organisation, and Article 21 of the TEU, which states that in its external action the Union shall advance the rule of law, human rights and the principles of international law.

Key Initiatives

Just six days after the outbreak of war, on 2 March 2022, at the request of the Lithuanian, Polish, and Ukrainian authorities, the EU Agency for Criminal Justice Cooperation (Eurojust) organised a meeting to discuss the possibility of cooperation in the prosecution of international crimes committed in Ukraine.¹¹ On 25 March, the same three countries set up a Joint Investigation Team (JIT) operated by Eurojust. The main feature of such arrangements is that direct contact and joint investigative activities are carried out without the intermediation of ministries.¹² On 25 April, the Office of the ICC Prosecutor joined the JIT, followed by Estonia, Latvia and Slovakia on 30 May 2022, and Romania on 13 October 2022.¹³ Officers from other EU countries cooperated with the team sporadically, for example, prosecutors from France, the Netherlands, and Germany participated in a workshop held in December 2022. The original purpose of the JIT was to coordinate the collection of evidence of war crimes and crimes against humanity that might have occurred during Russia's aggression against Ukraine, to ensure the rapid exchange of evidence and information among the co-participating partners and to facilitate the cooperation of national investigative bodies and prosecutors' offices and their cooperation with the ICC.¹⁴ On 3 March 2023, the states that

¹¹ Eurojust, "Joint investigation team into alleged core international crimes committed in Ukraine – Milestones," 20 April 2023, www.eurojust.europa.eu.

¹² S. Kolarz, "EU Supports the Ukrainian Justice System in the Face of War," *PISM Bulletin*, No. 151 (2068), 16 September 2022, www.pism.pl.

¹³ Eurojust, "The joint investigation team garners further support for the ICPA and agrees to investigate genocide crimes in Ukraine," 14 April 2023, www.eurojust.europa.eu.

¹⁴ Eurojust, "Eurojust supports joint investigation team into alleged core international crimes in Ukraine," 28 March 2022, www.eurojust.europa.eu.

formed the JIT signed a memorandum of understanding with the U.S., which made it possible to cooperate in their investigations with U.S. authorities. Moreover, on 14 April 2023, they entered into an additional agreement among themselves to expand the scope of the JIT's work to include cases of genocide in an ongoing war,¹⁵ completing this scope with the last of the three most classic international crimes.

In early 2023, the EU itself became more involved in efforts to enforce accountability for international crimes, taking long-term steps to punish Russia's key political and military leaders for committing the crime of aggression against Ukraine. On 2 February 2023, at a conference with Ukrainian President Volodymyr Zelensky, EC President Ursula von der Leyen announced the establishment of an International Centre for the Prosecution of Crimes of Aggression against Ukraine (ICPA) at Eurojust. On 4 March 2023, the seven JIT countries decided to amend the agreement establishing the JIT to allow the ICPA to operate. The centre was inaugurated on 3 July 2023. It is located at The Hague with its headquarters in the Eurojust building.¹⁶ For the time being, the ICPA's activities are fully funded by the EU, with an initial allocation of €8.3 million from the European Commission's Service for Foreign Policy Instruments.¹⁷ In addition to the EU, technical support is provided by the U.S. and the ICC. The ICPA is composed of prosecutors operating within the JIT and a U.S. prosecutor, supported by experts.¹⁸ Other states that have evidence

¹⁵ W. Nicałek, "Prokuratura Krajowa podpisała porozumienie w sprawie badania przypadków ludobójstwa w związku z napaścią Rosji na Ukrainę," *Gazeta Prawna*, 17 April 2023.

¹⁶ "Office tasked with investigating the Russian invasion of Ukraine opens in The Hague," *Euronews*, 8 February 2023, www.euronews.com.

¹⁷ Eurojust, "History in the making—the International Centre for the Prosecution of the Crime of Aggression Against Ukraine starts operations at Eurojust," 3 July 2023, www.eurojust.europa.eu.

¹⁸ L. O'Carroll, "Centre for prosecuting crimes of aggression opens in The Hague," *The Guardian*, 3 July 2023.

of crimes of aggression against Ukraine will also be able to take part in the work of the centre at their own request.¹⁹ It will collect and analyse evidence for future national and international cases against Russian political and military leaders prosecuted for aggression against Ukraine. Still, it will not prepare indictments, but will collect evidence and make it available to national and international courts to help develop strategies on how best to deliver justice.²⁰ The Ukrainian authorities stress that this is the first initiative since the Second World War to bring to justice the perpetrators of crimes of aggression.²¹ For her part, von der Leyen declared that, from the EU's perspective, the ICPA was intended as a first step towards creating a judicial mechanism to hold those responsible for the aggression against Ukraine accountable, such as a special tribunal.²² Eurojust supports the activities of the JIT and ICPA with organisational, logistical, financial, and legal assistance.²³

In addition, thanks to the rapid extension of Eurojust's mandate in June 2022 (by Regulation 2022/838), it became possible to set up the Core International Crimes Evidence Database (CICED).²⁴ It was launched on 23 February 2023. CICED is a database managed by Eurojust, aimed to store evidence of international crimes (in addition to documents, such as audio and video recordings, DNA profiles, fingerprints) and make it available for national and international investigations, including the JIT dealing with crimes in Ukraine. Evidence can be submitted to it by the

¹⁹ "History in the making..." *op. cit.*

²⁰ L. O'Carroll, *op. cit.*

²¹ I. Drabok, "Anton Korynevych, Ambassador at Large of the Ministry of Foreign Affairs of Ukraine," *Ukrinform*, 15 June 2023, www.ukrinform.net.

²² "Ukraine: EU welcomes establishment of the International Centre for the Prosecution of Crimes of Aggression," *EU Neighbours East*, 7 March 2023, www.euneighbourseast.eu.

²³ "Intl Center for Investigation of Russia's Crimes of Aggression against Ukraine starts its work," *Interfax*, 3 July 2023, www.en.interfax.com.ua.

²⁴ Eurojust, "Start of operations of Core International Crimes Evidence Database and new International Centre for Prosecution of the Crime of Aggression to be based at Agency," 23 February 2023, www.eurojust.europa.eu.

authorities of EU Member States and countries with liaison prosecutors at Eurojust. Its operation is not limited to the conflict in Ukraine, so it will be able to serve as a repository for any armed conflict under investigation by Eurojust partners.²⁵

Moreover, the EU, together with the U.S. and the UK, succeeded in establishing an international format for cooperation in the form of the Atrocity Crimes Advisory Group (ACA) in Ukraine. Its mandate is to coordinate assistance to the Ukrainian Prosecutor General's Office in the prosecution of violations of international humanitarian law committed during the war in Ukraine, in order to ensure the optimal use of resources and personnel.²⁶ The ACA's activities comprise two components. The first one is the Advisory Group to the Office of the Prosecutor General of Ukraine, which includes prosecutors, military analysts, and forensic specialists, who provide ongoing advice and mentoring. The second is the Mobile Justice Teams (MJTs), composed of Ukrainian and international experts, which are deployed to the field at the request of the Ukrainian Prosecutor General's Office to support its operations in places of urgent need.²⁷

Other Activities

Between March 2022 and the end of July 2023, Eurojust organised 16 coordination meetings between prosecutors and investigators from 26 Member States and 10 third countries investigating crimes committed in Ukraine.²⁸ In addition, it has coordinated meetings of the Genocide

²⁵ Eurojust, "Core International Crimes Evidence Database (CICED)," 23 February 2023, www.eurojust.europa.eu.

²⁶ U.S. Department of State, "The European Union, the United States, and the United Kingdom establish the Atrocity Crimes Advisory Group (ACA) for Ukraine," 25 May 2022, www.state.gov.

²⁷ EEAS, "Questions and Answers: Atrocity Crimes Advisory Group (ACA) for Ukraine," 25 February 2022, www.eeas.europa.eu.

²⁸ "Joint investigation team into alleged core ...," *op. cit.*

Network dedicated to Ukraine since March 2002. The secretariat of this network also organised, together with the European Judicial Training Network (EJTN), workshops on, among others, the prosecution of sexual crimes, the use of open-access information, and international cooperation in the prosecution of international crimes.²⁹

The EU and its Member States have also actively supported the International Criminal Court in its efforts to enforce accountability for crimes committed in Ukraine. In response to ICC Prosecutor Karim Khan's call on 28 February 2022 for parties to the Rome Statute of the ICC to request an investigation by the Court's Prosecutor's Office (a formal requirement), by 2 March 2022 all EU states had submitted such requests, enabling the ICC to proceed further.³⁰ Based on the above-mentioned agreement of April 2022, under which the Office of the Prosecutor of the ICC joined the JIT investigating crimes in Ukraine, ICC prosecutors became part of a team under the auspices of Eurojust for the first time in history.³¹ Regular meetings were also held between the president of Eurojust and representatives of Ukraine and the ICC. In addition, in June 2022 the EU allocated €7.25 million from the European Commission's Service for Foreign Policy Instruments to the Court's activities. The funds were to be used to expand the data storage and processing infrastructure and analytical and forensic capacity of the ICC's Office of the Prosecutor.³² Cooperation at the working level continued in the following months. By

²⁹ Frontex, "JHA Agencies' contribution to EU Solidarity with Ukraine," March 2023, pp. 18–19, www.frontex.europa.eu.

³⁰ ICC, "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation," 2 March 2022, www.icc-cpi.int.

³¹ ICC, "Statement by ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor joins national authorities in Joint Investigation Team on international crimes committed in Ukraine," 25 April 2022, www.icc-cpi.int.

³² European Commission, "Russian war crimes in Ukraine: EU supports the International Criminal Court investigation with €7.25 million," 8 June 2022, ec.europa.eu.

the end of July 2023, EU support for ICC war-related activities in Ukraine exceeded €10 million.³³

The EU also assisted investigations carried out by Ukraine financially and by providing personnel and technical support. Established back in 2014 to aid the reform of Ukraine's judiciary and civilian security sector, the EUAM mission provided the Ukrainian services with financial resources and specialised equipment for investigative activities, including the collection of evidence.³⁴ Other Union agencies besides Eurojust also provided assistance. The European Union Agency for Law Enforcement Training (CEPOL) provided courses to Ukrainian authorities on matters such as witness protection and war crimes investigations. Some of them were conducted in cooperation with the ICC and EUAM.³⁵ Europol, for its part, set up an operational task force to support investigations by Ukraine, other countries and the ICC. It carried out direct activities, including documenting traces of a crime in the form of photographs and video recordings, collecting witness statements, and identifying the perpetrators.³⁶

Conclusions

The European Union's involvement in efforts to enable the prosecution and punishment of international crimes in Ukraine has been unprecedented in the organisation's history. This is not only due to the extent of the assistance provided to the authorities of Ukraine as a non-EU state in this regard and the active cooperation with other organisations and states. It is also due to the fact that this activity began and has been carried out on a large scale during the conflict not only afterwards, as

³³ European Commission, "Holding Russia accountable," July 2023, www.eu-solidarity-ukraine.ec.europa.eu.

³⁴ EEAS, "Ukraine: High Representative Borrell visited Kyiv to reinforce EU support," 8 April 2022, www.eeas.europa.eu.

³⁵ "JHA Agencies' contribution ...," pp. 4-6.

³⁶ *Ibidem*, p. 21.

was the case, for example, with the war in the former Yugoslavia. Finally, it is also related to the fact that it was the EU that has led the world in initiatives to bring perpetrators of crimes in Ukraine to justice. In this context, the important role of Poland as one of the main countries motivating EU bodies to act in this area should be appreciated. At the same time, the Union's involvement demonstrates a growing acceptance among its members that its agencies, such as Eurojust and Europol, may go beyond pursuing organised crime with a cross-border dimension, which is focused on protecting the security and financial interests of the EU itself and its countries (fight against terrorism, drug trafficking and human trafficking, financial crime).³⁷ This is particularly evident in the case of the activities of Eurojust and the agreement of EU states to extend its powers, which, thanks to its indefinite nature, will facilitate the Union playing a greater role in prosecuting perpetrators of crimes in future armed conflicts. However, there has been as yet no initiative from the Member States to formally extend the scope of cooperation in criminal matters to include international crimes. Closer cooperation between prosecutors and law enforcement agencies could be a first step towards greater unification of the conduct of criminal proceedings across the EU, but treaty change would be required for radical change in this area. The moderate support of states for expanding EU investigative powers in spheres other than the prosecution of international crimes—such as the activities of the European Public Prosecutor's Office³⁸—suggests that the prospect of such changes is currently remote.

Confirmation of the growing external awareness of the importance of the high standards of prosecution and punishment of international crimes set by the ICC, and of the role of the Court itself for the EU, can be found in the statement made by the Prosecutor General of Ukraine, Andriy Kostin, on 3 July. He declared that Ukraine was ready to ratify

³⁷ Eurojust, "What we do," July 2023, www.eurojust.europa.eu.

³⁸ S. Kolarz, "The Difficult Beginnings of the European Public Prosecutor's Office," *PISM Bulletin*, No. 103 (1799), 24 May 2021, www.pism.pl.

the Rome Statute of the ICC and intended to do so soon. He announced that the agreement would be an integral part of the package of treaties that Ukraine intends to ratify on its way to joining the Union.³⁹ This was in response to the EU Council's call for Ukraine to take such a step.⁴⁰ Accession to the Rome Statute of the ICC and the implementation of the solutions contained therein in the national legal system may therefore, in practice, start to become one of the requirements for EU membership,⁴¹ just like accession to the European Convention on Human Rights. This would be a clear step forward compared to accession processes so far, in which the Union has insisted on effective investigations of international crimes in the declarative sphere, as in the case of Croatia, but with only moderate credibility.⁴² At the same time, this could be another major setback in the accession process of Serbia, whose society and elites remain generally sceptical of international criminal justice.

It is not entirely clear whether the EU's involvement can be seen as a sign of its willingness to play a greater role in the prosecution and punishment of the most serious international crimes. On the one hand, in recent months and years there has been an increase in its activity in various forums related to international criminal law in the broadest sense. One of these areas is the aforementioned discussions on the establishment

³⁹ "Ratification of Rome Statute to be part of Ukraine's accession to EU—Prosecutor General," Yahoo News, 3 July 2023, news.yahoo.com.

⁴⁰ European Council, "Council adopts conclusions on the fight against impunity in Russia's war of aggression against Ukraine," 9 December 2022, www.consilium.europa.eu.

⁴¹ It is worth pointing out here that in December 2022, for example, the Council of the EU called on the States of the Union to fully implement the definitions of the main international crimes and types of responsibility provided for in the Rome Statute of the ICC and to ensure the possibility of close judicial cooperation with the ICC. See: footnote 40.

⁴² This is especially true for Croatia—after joining the Union, the pressure from the organisation for real accountability for crimes committed by its citizens clearly decreased. See, e.g.: D. Hedl, "Croatia Whitewashes War Crimes After Joining EU," *Balkan Insight*, 11 June 2014, www.balkaninsight.com.

of a special international tribunal for crimes of aggression against Ukraine, the idea of which is unanimously supported by the Council, the Parliament, and the European Commission. No less important, however, is the Union's continued participation as an observer in the ongoing UN debate on an international convention on the prevention and punishment of crimes against humanity. The Union is an active participant in this process, striving to finalise it and conclude the treaty on the basis of the existing draft of the International Law Commission.⁴³ However, it cannot be ruled out that the increased interest of the EU and its members in enforcing accountability for crimes committed during the war in Ukraine and in the development of international criminal law is rather the result of special circumstances. This would be related to the geographical proximity of the place where the crimes are currently taking place, the political, economic and cultural ties linking the Union and Ukraine, and the extensive involvement of the EU in the resolution of the war as an armed conflict in its immediate neighbourhood.⁴⁴

⁴³ UN, "Speakers Argue over Codifying International Law Commission Draft Articles on Crimes against Humanity, as Sixth Committee Resumes Session," 10 April 2023, www.press.un.org.

⁴⁴ M. Caianiello, *op. cit.*, pp. 236–237.

FILIP BRYJKA, AGNIESZKA LEGUCKA

EU Efforts to Combat Russian Disinformation about the War in Ukraine and Build EU Resilience to Information Challenges

Introduction

On 24 February 2022, Russia's full-scale military invasion against Ukraine caught the European Union by surprise, as it had been preparing for an information war and Russian hybrid actions rather than a conventional war at its borders. The EU's efforts to combat disinformation date back to March 2015 when it recognised that, with the illegal annexation of Crimea a year earlier, Russia was perpetrating a series of information manipulation and influence operations against Ukraine, as well as against Western states. At that time, the European Council asked the High Representative for Foreign Affairs and Security Policy to develop an action plan that included strategic communications to counter Russia's disinformation campaigns. As a result, a task force, East StratCom, responsible for monitoring, analysing, and responding to Russian propaganda and disinformation was established within the

European External Action Service (EEAS). In 2017, two further StratCom Task Forces were established: one for the Southern Neighbourhood and one for the Western Balkans. The following year, the Commission, together with a group of experts, produced the document “Combating disinformation online: a European approach”, which set out the principles and objectives for combating this threat. This was mainly about raising public awareness of disinformation. In 2018, the Commission published an EU plan to combat disinformation, which identifies four priority areas (pillars) for action: (1) enhancing the capacity of EU institutions to detect, analyse, and disclose disinformation; (2) strengthening a coordinated and concerted response to disinformation; (3) mobilising the private sector to combat disinformation; (4) raising awareness and enhancing public resilience.¹ This was to lead to improved democracy and secure European electoral processes.

However, the threat of disinformation from Russia, perceived fairly early on, did not equip the Union with sufficient resources to counter it effectively (the East StratCom team consisted of three people and did not have a dedicated budget).² Although Russia used its disinformation-propaganda apparatus to destabilise, interfere with political processes, and attack the democratic value system, there was no political will or awareness in many EU countries that these actions supported the aggressive policy of the Russian Federation. European leaders delayed restricting the activities of Russian propaganda channels, fearing accusations of censorship or violation of the fundamental democratic principle of freedom of expression. The EU failed to counter the Russian influence machinery supported by state institutions. In the view of the

¹ EEAS, “The Action Plan against Disinformation,” 5 December 2018, www.eeas.europa.eu.

² For more about disinformation, see: A. Legucka, R. Kupiecki (eds.), *Disinformation, Narratives and Memory Politics in Russia and Belarus*, Routledge 2022; R. Kupiecki, A. Legucka (eds.), *Disinformation and the Resilience of Democratic Societies*, Warsaw 2023, www.pism.pl.

European Commission, Russia stood out from other countries using disinformation (such as China, Iran, and North Korea) in terms of the systematic and long-term nature of its activities and the considerable stock of instruments for its spread.³ The Union identified the objectives of Russian disinformation operations, which were to seek to weaken the social resilience of Western states and, consequently, to influence their political processes. Russia was determined to destabilise the EU from within and consequently weaken it. A lack of sufficient preparation and response on the part of the EU led to Russian interference in the EU's political processes between November 2016 and April 2019, comprising 16 out of a total of 20 such cases recorded worldwide (occurring in the UK, France, Germany, Spain, and others). It predominantly took the form of disinformation campaigns and cyberattacks, including hacking websites and altering their content, attacking electoral infrastructure, or stealing and publishing information ("hack and leak") to manipulate public opinion.⁴

During the aggression in Ukraine, the Russian authorities were also intent on influencing public debate in European states, including through blackmailing Europeans with the use of nuclear weapons, high energy prices, and the destabilisation resulting from a protracted conflict (including the prospect of mass migration, arms trafficking, increased crime). The aim of these actions was to get EU states to weaken their support for Ukraine, sowing fear among European societies and political elites so that they would convince the Ukrainian authorities to make territorial concessions to Russia. For example, in February 2022, more than 65% of disinformation messages directed at Lithuania concerned

³ European Parliament, "Russia's national security strategy and military doctrine and their implications for the EU," Directorate-General for External Policies, January 2017, www.europarl.europa.eu.

⁴ See: F. Hansen, S. O'Connor, M. Walker, L., Courties, "Hacking democracies Cataloguing cyber-enabled attacks on elections," Australian Strategic Policy Institute, 15 May 2019, www.aspi.org.au.

its military and defence capabilities.⁵ In this way, pro-Kremlin media intended to undermine the sense of security of Lithuanian society.⁶ At the time, disinformation campaigns were aimed at dividing the West and undermining support for Ukraine. They portrayed Russia as a state defending itself against U.S. “imperial expansionism” and the “threat from” NATO. Another objective was to undermine the legitimacy of Western sanctions, which the Russian government would like to reduce and lift. In Germany, for example, online trolls took advantage of public sentiment about rising inflation and stirred up discussions about sanctions, suggesting that they were more severe for the West than for Russia.⁷ In Russia, on the other hand, pro-Kremlin media argued that the sanctions were conducive to the development of the Russian economy. The latest goal of Russian disinformation during the conflict with Ukraine is to undermine the current international order and show Russia as a victim of Western “collusion” motivated by Russophobia.⁸ Russian disinformation campaigns are driven by the need to discredit Ukraine and Ukrainians to three audiences: the West, the Global South, and the Russian public. The Russian government and Kremlin media have been using terms such as the “Kiev regime”, “Washington’s puppets”, “fascists”, “bandits” and, in particular, “Nazis” and “neo-Nazis”, and even “satanists” with greater intensity. According to research by the EU East StratCom Task Force, there was a 290% increase in the use of the word “Nazis” in Russian pro-Kremlin media between February and April 2022,

⁵ In September, the Lithuanian Parliament (Seimas) banned the retransmission and online broadcasting of radio and TV programmes from Russia and Belarus, but experts say that Lithuanians can still receive at least 20 channels from these two countries (e.g., by purchasing a corresponding service for €100); A. Kuczyńska-Zonik, “Moskiewska Zaraza,” *Forum Dziennikarzy*, 2023, no. 1 (148), p. 32.

⁶ *Ibidem*.

⁷ “The Kremlin’s Trolls Never Sleep,” *Political Capital*, 28 October 2022 r., www.politicalcapital.hu.

⁸ A. Curanović, *The sense of Mission in Russian Foreign Policy. Designed for Greatness!*, Routledge, London & New York, pp. 155-156.

and a more than 500% increase in the use of the word “genocide”.⁹ This was intended, on the one hand, to dehumanise the Ukrainians in the eyes of the Russians, and, on the other hand, to convince international public opinion that Ukraine is not an independent entity, but merely an instrument of American interests in Europe, used against Russia in international competition (to build an “anti-Russia” on its territory).¹⁰ Russia in its propaganda and in statements by its authorities further insinuated that the U.S. built biotechnology laboratories in Ukraine responsible for spreading viruses that could threaten international security. Russia presented this claim at the UN Security Council in March and October 2022.¹¹

EU Countering Disinformation in the Face of War

After the full-scale invasion of Ukraine in February 2022, Russian media were finally recognised by the EU as tools of warfare on the information front. In March, the Council of the European Union imposed sanctions on Russian state broadcaster RT/Russia Today and the Sputnik agency (including their various language versions).¹² For years, they have been among the main tools of Russia’s ecosystem of disinformation and propaganda against Ukraine and Western countries.¹³

⁹ F. Bryjka, A. Legucka, “Rozmowa z Martyną Bildziukiewicz – szefową unijnego zespołu ds. walki z rosyjską dezinformacją (EU East StratCom Task Force)”, *Sprawy Międzynarodowe*, 2022, no. 2, pp. 9-18. DOI:10.35757/SM.2022.75.2.02.

¹⁰ “Russia’s Strategic and Tactical Narratives in Its War against Ukraine,” (video) Centre for Democratic Integrity, 28 December 2022, www.youtube.com.

¹¹ Twitter (X): @JayinKyiv, 28 October 2022, <https://twitter.com>.

¹² These are RT, formerly Russia Today, and its affiliates, including Russia Today English, Russia Today UK, Russia Today Germany, RT Balkans, Russia Today France, Russia Today Spanish, and RT Arabic, as well as Sputnik and its affiliates, including Sputnik Arabic. In June 2023, Oriental Review, Tsargrad, New Eastern Outlook and Katehon were further restricted as part of the 11th sanctions package.

¹³ For more extensive information about the role of RT and Sputnik in the Russian disinformation-propaganda ecosystem, see: U.S. Department of State, “GEC Special

These media are under the direct or indirect permanent control of the Russian authorities and used to support unjustified armed aggression against Ukraine and to destabilise neighbouring countries. They also constitute a serious and immediate threat to public order and security in the European Union.¹⁴ After 24 February, leading Russian propagandists, including TV presenter Vladimir Solovyov and editor-in-chief of the English-language version of RT, Margarita Simonyan, were placed on the EU sanctions list. In total, more than 50 propagandists from the Kremlin and other entities involved in Russian disinformation activities have been included on the list, including Rossiya RTR/RTR Planeta, Rossiya 24/Russia 24, Rossiya 1, TV Centre International, NTW/NTV Mir, REN TW, Pervy Kanal, and the media organisation RIA FAN, with more being added in subsequent sanctions packages.¹⁵ The restrictions imposed by the EU prevent these media from broadcasting material via cable and satellite, as well as transmitting (via web TV, platforms, portals, and apps) content that undermines the democratic order in European countries and aims to polarise EU societies. However, the Council's decision was temporary. The sanctions were put in place "until the aggression against Ukraine ceases and the Russian Federation and its associated media cease their disinformation and manipulative activities against the EU and its Member States".¹⁶

At the same time, the EU extended the catalogue of challenges related to interference by other actors in political processes, not limiting it to

Report: Kremlin-Funded Media: RT and Sputnik's Role in Russia's Disinformation and Propaganda Ecosystem," Global Engagement Center, January 2022, www.state.gov.

¹⁴ *Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine*, European Union, 1 March 2022, www.eur-lex.europa.eu.

¹⁵ *Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine*, European Union, 17 March 2014, www.eur-lex.europa.eu.

¹⁶ Council of the EU, "EU imposes sanctions on state-owned outlets RT/Russia Today and Sputnik's broadcasting in the EU," 2 March 2022, www.consilium.europa.eu.

disinformation only,¹⁷ which was particularly valid in view of Russia's aggression towards Ukraine. This approach resonated in March 2022, in the Strategic Compass adopted by the EU, which broadened the understanding of this threat, referring to it as Foreign Information Manipulation and Interference (FIMI). It describes it as a "mostly non-illegal pattern of behaviour that threatens or has the potential to negatively impact values, procedures and political processes. Such activity is manipulative in character, conducted in an intentional and coordinated manner, by state or non-state actors, including their proxies inside and outside of their own territory".¹⁸ A report by the EEAS in February 2023 showed that Russia remained the main actor using information manipulation and FIMI interference against the EU.¹⁹ The result was that the Russian propaganda and disinformation apparatus adapted to the new circumstances and changed the tactics of hybrid influence and influence operations conducted against Ukraine or EU states. From October to December 2022, Russia was responsible for 88% of the information incidents, China for 17%, while in 5% of the cases, there was evidence of Russian-Chinese cooperation.²⁰ The report shows, among other things, that 60% of information manipulation supported Russian military aggression against Ukraine, and 33% of FIMI attacks were directly directed against the Ukrainian authorities.²¹

¹⁷ Until recently, the European Commission has understood disinformation as "false, inaccurate or misleading information which is produced, presented and disseminated for profit or with the intention of causing public harm"; European Commission, "Tackling online disinformation," 12 March 2018, <https://ec.europa.eu>.

¹⁸ EEAS, "1st EEAS Report on Foreign Information Manipulation and Interference Threats Towards a framework for networked defence," Strategic Communications, Task Forces and Information Analysis (STRAT.2), February 2023, p. 4, www.euvdsdisinfo.eu.

¹⁹ *Ibidem*.

²⁰ For more about cooperation between Russia and China, see: A. Legucka, J. Szcudlik, "Breaking Down Russian and Chinese Disinformation and Propaganda About the War in Ukraine," *PISM Strategic File*, No. 2 (123), January 2023, www.pism.pl.

²¹ "1st EEAS Report ...," *op. cit.*

The full-scale invasion of Ukraine intensified the EU institutions' activities in countering disinformation. East StratCom has been strengthened financially and in terms of personnel, growing to 13 full-time staff to commission research tasks and analyse how Russia adapts disinformation techniques and methods to the changing situation. East StratCom monitors information messages published in more than 20 languages. By the end of June 2023, the team had identified more than 15,500 instances of Russian disinformation, which were catalogued in the EUvsDisinfo database, the group's flagship project largely concerned with Russian disinformation against Ukraine.²²

The EU approach to countering foreign information manipulation and interference is based on four pillars: (1) identifying, monitoring, and analysing disinformation, and responding directly to incidents (FIMI); (2) building resilience within the EU, as well as in Eastern Partnership and Central Asian countries, through training and cooperation with independent journalists and fact-checking organisations; (3) sharing information through international cooperation, including through the Rapid Alert System (RAS),²³ cooperation with like-minded partners (e.g., United States, United Kingdom, Canada, Japan) and systemic cooperation with NATO; (4) disrupting disinformation by imposing sanctions and making it more difficult for *disinformers* to operate.²⁴

Although the EEAS has stated that Russian disinformation, due to its systemic nature, poses the greatest threat to EU states, it recognises that Russia is cooperating with other actors, such as China, Belarus, and Iran,

²² All information can be found at www.euvsdisinfo.eu.

²³ The Rapid Alert System on Disinformation (RAS) was established in March 2019 to increase situational awareness of hostile information manipulation. The exchange of information under this system is carried out through contact points established in individual EU countries: in the case of Poland, this is the special strategic communication desk at the Ministry of Foreign Affairs, which deals primarily with disinformation in relation to Poland's foreign policy priorities. For more, see: F. Bryjka, "Tracing the Development of EU Capabilities to Counter Hybrid Threats," *PISM Strategic File*, No. 9 (117), August 2022, p. 4, www.pism.pl.

²⁴ "Rozmowa z Martyną Bildziukiewicz ...," *op. cit.*

and also non-state actors in its long-term strategy of destabilisation and disintegration of the Euro-Atlantic area. Therefore, within the EEAS, similar tasks to those conducted by East StratCom are carried out by analogous teams (six full-time staff members each) responsible for the Western Balkans region (Western Balkans Task Force) and the Middle East and North Africa (South StratCom Task Force). They focus on counter-radicalisation, combating propaganda from terrorist organisations as well as disinformation from Russia, China, Iran, and Turkey. In addition, there is a Horizontal Threat Team dealing with Chinese disinformation (four staff), a team supporting EU missions and operations, a team analysing quantitative data on disinformation techniques, tactics, and procedures (TTPs) used by *disinformationists* (three analysts) and two political action teams dealing with building resilience. A team responsible for Africa, which is currently seen as the main area of Russian disinformation operations, will soon be established (as a result of French efforts).²⁵

All these teams are part of the nearly 40-strong Strategic Communication, Task Forces and Information Analysis Division (SG.STRAT.2) of the EEAS, which supports EU institutions with policy planning, strategy, and strategic communication tools. It also provides support (e.g., analysis and instructions to combat disinformation) to EU diplomatic missions, missions, and Common Security and Defence Policy (CSDP) operations. The Unit also develops cooperation with partner countries, the G7, NGOs, civil society, and the private sector (e.g., on data acquisition using modern software and technology). The aim of these activities is to build public awareness and strengthen the resilience of states to disinformation in the EU neighbourhood.²⁶

²⁵ On Africa's vulnerability to Russian propaganda and disinformation, see: J. Czerep, S. Nowacka, "Fertile ground: How Africa and the Arab World found common language with Russia on Ukraine," *PISM Report*, January 2023, www.pism.pl.

²⁶ EEAS, "2021 StratCom activity report," Strategic Communication Task Forces and Information Analysis Division, 24 March 2022, www.eeas.europa.eu.

On 9 March 2022, the European Parliament (EP) adopted a resolution highlighting that “Russia has been engaging in disinformation of an unparalleled malice and magnitude across both traditional media outlets and social media platforms, in order to deceive its citizens at home and the international community on the eve of and during its war of aggression against Ukraine, which Russia started on 24 February 2022, proving that even information can be weaponised”.²⁷ In the document, the EP highlighted the importance of online platforms, which it wants to oblige to regulate the opaque advertising market, given that advertising technology companies are forcing brands to suffer the consequences of their negligence in monitoring the placement of ads potentially spreading disinformation. As recently as 27 February 2022, the prime ministers of Estonia, Latvia, Lithuania, and Poland addressed managers of social media owned by the tech giants (Twitter [X], Alphabet, YouTube, and Meta), calling on them to, among other things suspend the activities of accounts that engage in and glorify war crimes and crimes against humanity, strengthen the moderation of Russian and Ukrainian language content, fully and immediately de-monetise all accounts operated by the Russian and Belarusian governments and spreading disinformation, and help users find reliable information on the war in Ukraine. Parliament also called for the protection of critical infrastructure that could be attacked by external actors.²⁸

²⁷ *European Parliament resolution of 9 March 2022 on foreign interference in all democratic processes in the European Union, including disinformation*, European Parliament, 9 March 2022 r. www.europarl.europa.eu.

²⁸ *Ibidem*.

Conclusions and Recommendations

Faced with Russia's invasion of Ukraine, the EU has demonstrated its effectiveness in the fight against Russian disinformation. Russian propaganda messages and disinformation campaigns targeting Western and Ukrainian audiences have mostly failed to find supporters. This was shown in opinion polls conducted by the ECFR: in June 2022, supporters of "peace", that is, the Russian view that the quickest end to the conflict should come even at the expense of Ukraine's territorial losses, outnumbered supporters of "justice", or Russia's defeat (35% to 29%), but by January 2023, the proportions had shifted in favour of supporters of punishment and defeat of the Russian Federation (29% to 38%).²⁹ This showed that Europeans' perception of the war has moved closer to the Ukrainian perspective, which does not mean that EU residents are not vulnerable to Russian disinformation in the longer term.

In order to effectively fight against manipulated information and external interference, the European Union should instil and build up the social resilience of its citizens. This should include increasing their knowledge of the threats posed by the information war systematically waged by Russia (but not only), media and information literacy, underpinned by pluralism and independent journalism, and public education. Although the EU calls on the Member States to increase resources for the work of bodies and organisations across Europe and around the world (such as think tanks and information verifiers), the problem is not always seen as important in all EU countries to the same extent. In the aforementioned ECFR study, Poland, Denmark, and the Baltic states were the biggest supporters of Russia's defeat, while Italy, Germany, and Romania were in favour of "peace" (even at the expense of

²⁹ ECFR, I. Krastew, M. Leonard, "Fragile unity: Why Europeans are coming together on Ukraine (and what might drive them apart)," *Policy Brief*, 16 March 2023, www.ecfr.eu.

Ukraine's territorial losses).³⁰ The think tanks tasked with monitoring the situation and raising awareness of the seriousness of the threats, including disinformation, are only the first stage, as the key issue is to raise awareness among the public and educate them to be critical of information obtained from traditional media and, above all, from social media and the internet. EU institutions and Member States need reliable and interconnected systems to detect, analyse, track, and map attempts by foreign state and non-state actors to interfere with democratic processes.³¹ To improve cybersecurity, the Union wants to increase funding for capabilities—such as AI, secure communications and data and cloud infrastructure—to detect, disclose, and counter foreign interference. In addition, the EU should tighten sanctions regimes in relation to cyberattacks threatening the Union and Russian interference in Ukraine after 24 February 2024.

³⁰ *Ibidem.*

³¹ *European Parliament resolution of 9 March 2022, op. cit.*

About the Authors

Filip Bryjka is an analyst at the Polish Institute of International Affairs and assistant professor at the Institute of Political Studies of the Polish Academy of Sciences. His research interests focus on hybrid threats and crisis response in NATO and the EU. He has a PhD in Social Sciences (War Studies University, 2019); his individual ORCID number is 0000-0002-8613-1030.

Piotr Dzierżanowski is an analyst for international economic relations in the Global Issues Programme at the Polish Institute of International Affairs. His interests include international political economy, relations between developed and developing countries, and the functioning of international financial institutions. Piotr holds an MA in Law (University of Warsaw, 2017) and an MSc in International Development (London School of Economics, 2018).

Aleksandra Koziół is a senior analyst in the European Union Programme at the Polish Institute of International Affairs. Her research interests include EU foreign and security policy and the domestic and foreign policy of the Russian Federation. She has a PhD in Political

Science (Jagiellonian University, 2022). Her individual ORCID ID is 0000-0003-1007-1737.

Elżbieta Kaca is an analyst in the European Union Programme at the Polish Institute of International Affairs. She deals with the European Union's policy towards the Eastern European region and the EU's common foreign and security policy, including EU diplomacy, sanctions, and financial assistance. A graduate of political science at the universities of Warsaw and Bordeaux, she also completed postgraduate studies at the College of Europe in Natolin.

Patryk Kugiel is a senior analyst in the Asia and Pacific Programme at the Polish Institute of International Affairs. His research interests focus on international development cooperation, EU and Polish development cooperation policy, the situation in South Asia, and the EU's relations with India, Pakistan, and Afghanistan. He holds a Master's degree in International Relations and Religious Studies from the Jagiellonian University and a graduate of South Asian Studies at Jawaharlal Nehru University in New Delhi.

Agnieszka Legucka is an analyst on Russia in the Eastern Europe Programme at the Polish Institute of International Affairs. Her research interests include foreign and security policy of the Russian Federation, disinformation, and armed conflicts. She is a professor at Vistula University and is a habilitated doctor of security sciences (National Defence University, 2014). Her individual ORCID ID is 0000-0002-9438-2606.

Zuzanna Nowak is analysis director at The Opportunity Institute for Foreign Affairs. Previously, she was energy and climate analyst in the Global Issues Programme of the Polish Institute of International Affairs. Her research interests focus in particular on energy security issues, as well as multilateral climate diplomacy. A graduate of The Paris Institute of Political Studies (Sciences Po) and the College of Europe in Bruges.

Melchior Szczepanik is director of the PISM Brussels Office. His research interests include the EU's institutional system, the Common Agricultural Policy, and the budget and fiscal rules. In 2010, he received

his PhD in Political Science from Loughborough University in the United Kingdom.

Daniel Szeligowski is head of the Eastern Europe Programme at the Polish Institute of International Affairs. His research interests focus primarily on Ukraine: its political and economic situation, foreign and security policy, prospects for post-war reconstruction, Ukraine's integration with the European Union and NATO. He has been an author of two studies on the implementation of the EU-Ukraine Association Agreement, commissioned by the European Parliamentary Research Service (2020, 2022). Daniel is an economist and political scientist, holds PhD in Political Science and Public Administration from Warsaw School of Economics. He is an editorial board member of *Strategic Panorama* (Стратегічна панорама), a scientific journal in Ukraine's foreign affairs and national security, published by the National Institute for Strategic Studies in Kyiv.

Jolanta Szymańska is head of the European Union Programme at the Polish Institute of International Affairs. Her research interests include EU migration and home affairs policy and the EU institutional system. She has a PhD in Political Science (University of Warsaw, 2012). Her individual ORCID ID is 0000-0002-4107-812.

Tomasz Zając is an analyst in the European Union Programme at the Polish Institute of International Affairs. His research interests focus primarily on the functioning of European institutions (with particular emphasis on audit control institutions) and the electoral election process for the European Parliament. He is a graduate of the Institute of Political Science at the University of Warsaw and the College of Europe in Natolin. His individual ORCID ID is 0000-0002-0317-5899.

Szymon Zaręba is head of the Global Issues Programme at the Polish Institute of International Affairs, assistant professor at the Institute of Law Studies of the Polish Academy of Sciences. His research interests include a variety of regulatory issues in the field of international and EU law. He has a PhD in Law (Institute of Law Studies of the Polish Academy of Sciences, 2018). His individual ORCID ID: 0000-0003-3226-4441.

"The book is a valuable compendium of knowledge on an important and highly topical issue, which is the position of the European Union (EU) on the war in Ukraine. This position is, for obvious reasons, complex and multidimensional, as it concerns various aspects and areas of EU policy. Therefore, its understanding and evaluation requires not only broad knowledge about the EU itself—its political and institutional complexity and decision-making system, but above all excellent orientation in areas of EU public policies, with particular emphasis on the EU's relations with Ukraine and Russia. An additional advantage of the book is its accessible and comprehensive language, which means that its potential reader may also be someone unfamiliar with EU issues. As a result, this book could constitute an effective educational tool to combat disinformation about EU policy towards Ukraine."

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Institute of Political Science and Jean Monnet Chair University of Wrocław

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ISBN: 978-83-67487-36-8



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