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У СХІДНОМУ ПАРТНЕРСТВІ: ПРАВОВІ ЗАСАДИ,
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• підтверджую, що написана мною магістерська робота на тему "Роль Європейського Союзу у врегулюванні конфліктів у Східному партнерстві: правові засади, інструменти та ефективність" виконується виконавцем академичної доброчесності та не містить порушень, передбачених пунктами 3.1.1-3.1.6 Положення про академічну доброчесність здобувачів НАУКМА від 07.03.2015 року, зі змістом якого я ознайомлений;

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• даю згоду на архівування моєї роботи в репозиторіях та баз даних даного університету для порівняння цієї та майбутніх робіт.

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CEPA	Comprehensive and Enhanced Partnership Agreement
CFSP	Common foreign and security policy
CBMs	Confidence-building measures
COBERM	Confidence Building Early Response Mechanism
Court, CJEU	Court of Justice of the European Union
EEAS	European External Action Service
ENP	European Neighbourhood Policy
EPNK	European Partnership for the Peaceful Settlement of the Conflict over Nagorno-Karabakh
EU	European Union
EUBAM	European Union Border Assistance Mission
EUMM	European Union Monitoring Mission
EUSR	European Union Special Representative
NATO	North Atlantic Treaty Organisation
PCA	Partnership and Cooperation Agreement
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union

INTRODUCTION

The European Union (then the European Economic Community) was formed after Europe had been shaken and heavily wounded by one of the most disastrous armed conflicts, *i.e.*, World War II. European countries had come to an understanding that cooperation is better than rivalry and that legal disputes are better than armed conflicts.

The EU, due to its size, population and strong economy, has become one of the leaders on the international as well as European plane. The EU has been implementing its external policies, which resulted, *inter alia*, in the creation of the Eastern Partnership as a part of the EU's European Neighbourhood Policy (the "ENP"). Yet, each country participating in the Eastern Partnership has its own significant problems and conflicts. In this thesis the following cases will be analysed: Revolution of Dignity in Ukraine, the annexation of Crimea and conflict in Eastern Ukraine, the Transnistrian conflict in Moldova, the conflict over South Ossetia and Abkhazia, the Nagorno-Karabakh conflict and the conflict between Belarus' authoritarian regime and the local population.

It brings me to the **relevance of this thesis**. All the aforementioned conflicts have adversely affected the countries comprising the Eastern Partnership and European region as such, and almost all of them continue to date, hampering the development of the Eastern Partnership countries on an everyday basis. Thus, given the EU's role in the region, it is of utmost importance to overview and analyse EU's actions in the resolution of these conflicts. The topic of EU's mechanisms towards the conflict resolution in the Eastern Partnership bears both **practical and scientific relevance** as it consists of complex analysis and assessment of EU's mechanisms, which may assist in better understanding of EU's role in the resolution of conflicts as well as to establish the possibilities for improvement.

The object of this thesis is defined by the relations between the EU, Member States and other countries of the Eastern Partnership, their nationals, Russia with respect to the conflict resolution in the Eastern Partnership. In turn, **the subject** is EU's

policies, adopted secondary and soft law towards the conflict resolution in the countries comprising the Eastern Partnership.

The issues of EU's external actions have been analysed by some scholars, including Gráinne De Búrca, Marise Cremona, Bart Van Vooren, Ramses Wessel, Roman Petrov, Peter Van Elsuwege, Stefan Lorenzmeier, Christoph Vedder, Geert De Baere, Tanel Kerikmäe, Archil Chochia and Guillaume Van der Loo. Specifically, the EU's participation in the conflict resolution has been analysed by Nicu Popescu, Bart Scheffers, Gwendolyn Sasse, Evhen Tsybulenko, Sergey Pakhomenko, Anna Khvorostiankina, Esmira Jafarova, Nana Macharashvili, Ekaterine Basilaia, Nikoloz Samkharade and others.

For the purposes of this thesis, I have asked the following **research question**: which instruments does the EU exercise in respect to the conflict resolution in the Eastern Partnership countries? Given this, **the aim of this thesis** is to critically analyse EU's instruments used towards the resolution of conflicts in the Eastern Partnership.

To this end, I have defined the following **tasks for this thesis**:

- to analyse EU's competence in the sphere of external actions under the TFEU and the TEU and to establish the grounds for the judicial supervision of such EU's actions;
- to establish the rationale behind EU's active participation in the conflict resolution;
- to overview the issues on the background, substance and participants of the Eastern Partnership as a part of the ENP;
- to analyse EU's role in the conflict resolution during the Revolution of Dignity;
- to analyse EU's instruments used in the resolution of the conflict in Crimea and Eastern Ukraine;
- to overview the conflicts in Armenia, Azerbaijan, Belarus, Georgia and Moldova and to analyse EU's mechanisms used towards the conflict resolution.

A set of general-scientific and special-legal **methods of research** form the basis for this thesis. A dialectical method, due to its universalism, allows to analyse correlation and interdependence between different conflicts and EU's approaches towards those conflicts. An axiological method assists in defining which policies, decisions most positively affect the people affected. A comparative method provides tools to compare the conflicts at their current stage and EU's respective policies. A doctrinal method allows to define the plain meaning of legal provisions, to characterise and organise them. The behaviouristic method helps to analyse EU's and other countries' actions during the conflicts and their resolution. Finally, the socio-legal approach has presented a possibility to analyse legal acts and policies from their economic and political perspectives.

CHAPTER 1

EXTERNAL ACTIONS OF THE EU: COMPETENCE, REASONING AND POLICIES TOWARDS THE EASTERN EUROPE

1.1. The competence of the EU in the sphere of external actions under the Treaties

The Treaty on the Functioning of the European Union (the “TFEU”) and the Treaty on the European Union (the “TEU”) are the main acts governing the EU, its competences and the procedure to transform powers into actions. Article 3(5) of the TEU provides that the EU’s external actions shall be based on the promotion of EU’s values and interests and the protection of its citizens. It states that the EU “shall contribute to peace, security [...], free and fair trade, [...] protection of human rights [...], as well as to the strict observance and the development of international law”.¹ This provision forms part of the Title on common provisions, creates a basis and establishes a vector for the EU and its relations with the wider world.

Article 8(1) of the TEU establishes rather an obligation on the EU to exercise its competences with respect to third countries as it states that the EU “shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation”. Bart Van Vooren and Ramses Wessel highlight on the word “shall” as evidence of such an obligation concluding that “the EU cannot therefore choose not to have a neighbourhood policy”.² Article 8(2) of the TEU further elaborates that the EU may conclude agreements with other countries with “reciprocal rights and obligations”. Yet, scholars and the European

¹ Consolidated version of the Treaty on the European Union (entered into force 1 December 2009), OJ C 326/01 (TEU), Article 3(5)

² Van Vooren, Bart and Ramses Wessel. “EU External Relations Law : text, cases and materials”. Cambridge: CUP, 2014, p. 537

Commission are of the position that this is not a proper legal basis to conclude such agreements but forms an objective for the EU which is to be specified.³

The Title V of the TEU named “General Provisions on The Union's External Action and Specific Provisions on the Common Foreign and Security Policy” regulates more specifically EU’s powers with respect to external actions. Article 21(1) of the TEU continues the line proposed by Article 3(5) of the TEU and also establishes principles on which EU’s external actions shall be based, including democracy, human rights and the rule of law and “respect for the principles of the United Nations Charter and international law”. It is also necessary to mention that the common foreign and security policy (the “CFSP”) relates to EU’s exclusive competence,⁴ thus providing the EU with a wide field to regulate. However, it creates a need to be able to distinguish between the CFSP and other EU external actions, where the EU does not enjoy exclusivity.

Different EU institutions take part in the execution of EU’s competence towards the wider world. For instance, The Council submits proposals to the European Council and the European Council adopts decisions on strategic interests and objectives of the EU with respect to the CFSP and other external actions.⁵ A special role is prescribed for the High Representative as he or she is empowered to conduct EU’s CFSP and shall “ensure the consistency of the Union’s external action”.⁶

The scope of CFSP is defined by the TEU. Article 24(1) of the TEU states that this policy shall cover all areas concerning EU’s foreign policy, security, and defence policy. Article 42(1) of the TEU establishes that the common security and defence policy constitutes an integral part of EU’s CFSP. It allows the EU to establish missions for “peace-keeping, conflict prevention and strengthening international security” using

³ *Ibid.*; European Commission. “Proposal for a Regulation of the European Parliament and of the Council establishing a European Neighbourhood Instrument”. COM(2011) 839 final. Brussels, 7 December 2011, <https://bit.ly/3tzqvOH> (Accessed 9 May 2021), p. 7

⁴ TEU, Article 24(1)

⁵ TEU, Article 22(1)

⁶ TEU, Article 18(2), (4)

the capabilities of the Member States.⁷ For that purpose, the Member States are obliged to “make civilian and military capabilities available” to the EU.⁸

Article 42(6) of the TEU also forms a basis for the creation of permanent structured cooperation. This is created for the Member States who fulfil higher standards of military capabilities and are interested to undertake more binding commitments.⁹ Protocol No. 10 on permanent structured cooperation establishes the objectives of such an initiative, including intense development of defence capacities, participation in multinational forces and to be able to supply necessary combat units.¹⁰

Article 45 of the TEU prescribes for another EU institution which is empowered to act within the field of common security and defence policy – the European Defence Agency. It is entrusted to monitor the military capabilities of the Member States, assist with harmonisation in this sphere, support defence technology research etc.¹¹ The primary role of the European Defence Agency seems to assist the Member States and provide guidance, but not to impose some rules and requirements as Article 5(2) of the Council Decision 2015/1835 states that the functioning of this Agency “shall be without prejudice to the competences of Member States in defence matters”.¹²

Thus, the TEU provides with several cooperation platforms for the Member States, which they can voluntarily join for better military cooperation and development.

While the European Council establishes general strategic frames, the Council narrows down it by adopting decisions defining actions to be undertaken and positions to be taken by the EU.¹³ The High Representative of the Union for Foreign Affairs and Security Policy and Member States are entrusted to put those decisions into effect.¹⁴ However, “in cases of imperative need arising from changes of situation”, Member

⁷ TEU, Article 42(1)

⁸ TEU, Article 42(3)

⁹ TEU, Article 42(6)

¹⁰ TEU, Protocol (No 10) on permanent structured cooperation established by Article 42 of the Treaty on European Union, Article 1

¹¹ TEU, Article 45(1)

¹² Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency. OJ L 266, 13.10.2015, p. 55–74, Article 5(2)

¹³ TEU, Articles 25, 26(2)

¹⁴ TEU, Articles 24(1), 26(3)

States may adopt urgent measures and immediately inform the Council.¹⁵ The High Representative chairs the Foreign Affairs Council, represents EU's position and acts on its behalf on the international plane and conducts "political dialogue with third parties".¹⁶ Therefore, the High Representative is mainly empowered to represent the EU in foreign affairs, conducts common foreign security and security and defence policies, ensures uniformity amongst EU's actions etc.

The European External Action Service (the "EEAS") is created to assist the High Representative in accomplishing his or her duties.¹⁷ A special representative may also be appointed by the Council "with a mandate in relation to particular policy issue".¹⁸ This issue may be geographically or thematically tailored, thus, appointing a special representative in the sphere and/or the region which requires deeper scrutiny.

Even though the EEAS was formally established by the TFEU, its functions and organisation were later prescribed by the Council's Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service. Apart from assisting the High Representative in his or her duties, the EEAS is specifically entrusted to cooperate with diplomatic services of the Member States to promote the consistency of EU's external policy.¹⁹ The EEAS characterises itself as a "diplomatic service" and as a body which "is responsible for the running of EU Delegations and Offices around the world".²⁰ Undoubtedly, such role of the EEAS makes it an important player in executing EU's external policies and cooperating with other countries as the EEAS has direct channels of communication and discussion with many countries and international organisations around the world.

Apart from the CFSP, the EU may act within the frames of common commercial policy, which includes trade aspects, investment etc.²¹ In issues that do not concern the

¹⁵ TEU, Article 28(4)

¹⁶ TEU, Article 27(1), (2)

¹⁷ TEU, Article 27(3)

¹⁸ TEU, Article 33

¹⁹ Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, OJ L 201, 3.8.2010, p. 30–40, Article 3(1)

²⁰ European External Action Service. "About the European External Action Service (EEAS)". 25 November 2019. <https://bit.ly/3vWOUz1> (Accessed 9 May 2021)

²¹ Consolidated version of the Treaty on the Functioning of the European Union (entered into force 1 December 2009), OJ C 326/01 (TFEU), Articles 206, 207(1)

conclusion of international agreements, the European Parliament and the Council adopt regulations to establish the framework of the common commercial policy.²² In turn, Article 216 TFEU provides with EU's competence to conclude international agreements when it is necessary to achieve EU's objective or when it is required thereby. It also includes association agreements, which comprise of "reciprocal rights and obligations, common action and special procedure".²³

The procedure of concluding international agreements requires participation of several EU actors but the Council plays the most important role. The Council supervises the negotiation procedure by initiating it, addressing directives for negotiations, appointing negotiators and concludes the agreement.²⁴ In some cases, including association agreements, agreements with important budgetary implications, the consent of the European Parliament is required and, in all times, shall it be informed about the stage of the procedure.²⁵

Another field where the EU is entitled to act internationally is development cooperation, which is aimed at eradication of poverty.²⁶ The European Parliament and the Council adopt legal acts in accordance with the ordinary legislation procedure in this sphere.²⁷ Article 210 of the TFEU also imposes a duty of cooperation between the EU and the Member States in the field of development.

According to Article 212(1) of the TFEU, the EU also carries out "economic, financial and technical cooperative measures", but this does not include the assistance to developing countries. The procedure to adopt measures in this sphere is similar to the previous one as it requires actions from the European Parliament and the Council within the ordinary legislative procedure.²⁸ However, in urgent matters the procedure might be changed and the Council may provide the third country with financial assistance upon Commission's proposal.²⁹

²² TFEU, Article 207

²³ TFEU, Article 217

²⁴ TFEU, Article 218(1-6)

²⁵ TFEU, Article 218(6), (10)

²⁶ TFEU, Article 208

²⁷ TFEU, Article 209(1)

²⁸ TFEU, Article 212(2)

²⁹ TFEU, Article 213

Apart from the aforementioned financial assistance and development cooperation, the EU provides with humanitarian aid. The aim of this policy is to protect victims from man-made or natural disasters “in order to meet humanitarian needs”.³⁰ Similarly, the European Parliament and the Council act within the ordinary legislative procedure.³¹ It is also necessary to mention that such development cooperation and humanitarian aid constitute shared competence in the EU, meaning that the Member States are not precluded to act alone in these spheres.³² However, it should be followed by cooperation between the EU and the Member States to ensure effectiveness of the measures.³³

Finally, the EU may also adopt measures which are aimed to adversely affect a concerned party, *i.e.*, restrictive measures. It constitutes an element of EU’s CFSP and prescribes for the “interruption or reduction, in part or completely, of economic and financial relations with one or more third countries”.³⁴ Such measures may also concern natural or legal persons, groups or non-State agencies.³⁵ The Council adopts respective measures upon a joint proposal from the High Representative and the Commission.³⁶

The factual difference between the CFSP and other EU external policies is not clear but critically needs to be established. The policy under which a specific measure falls defines not only the legal basis and the procedure for the adoption and execution of such measure, but may also concern the division of competence between the EU and the Member States, scope or even possibility of judicial review etc. Article 40 of the TEU acts as a non-affectation clause and “attributes an equal weight to the various types of EU external action”.³⁷ Yet, it does not help to resolve an issue which legal basis shall be applied in the specific circumstances.

³⁰ TFEU, Article 214(1)

³¹ TFEU, Article 214(3)

³² TFEU, Article 4(4)

³³ TFEU, Articles 210, 212(1), 214(6)

³⁴ TFEU, Article 215(1)

³⁵ TFEU, Article 215(2)

³⁶ TFEU, Article 215(1)

³⁷ Van Elsuwege, Peter. “EU external action after the collapse of the pillar structure. In search of a new balance between delimitation and consistency”. *Common Market Law Review* 47, no. 4 (2010): 987-1019, p. 1002

In Opinion 1/78 the Court attempted to establish a test to solve legal basis disputes. In this Opinion the Court stated that even though a specific measure may cover different subjects, the regard shall be made to the “essential objective rather than in terms of individual clauses of an altogether subsidiary or ancillary nature”.³⁸ Marc Maresceau interprets it as an “absorption doctrine”, meaning that more dominant objective absorbs the others.³⁹ In other words, in each specific case it is necessary to define the predominant, “essential” objective, the one which is more fully represented in the measure.

However, it is surely easier said than done as in some cases it is extremely difficult to establish the “essential objective”, especially when the CFSP is formulated in such broad terms referring to “all areas of foreign policy and all questions relating to the Union's security”.⁴⁰ The task becomes even harder if we look at Article 23 of the TEU, which declares that the objectives of the CFSP are the same as of other external policies. Thus, other rules shall also be established to define the borderlines between different legal bases.

Peter Van Elsuwege criticises the proposal that the CFSP shall be regarded as *lex generalis* as it runs counter to the provisions of Article 40 of the TEU, which establishes parity between the CFSP and other EU external policies.⁴¹ Peter Van Elsuwege goes further and proposes an attitude that may solve the problem of choosing the appropriate legal basis, *i.e.*, to analyse the specific nature of the EU instrument.⁴² Given the fact that the CFSP is considered as non-legislative, the determination of the legal basis shall be based on the legal nature of the measure, “whether the legislative action is needed or not”.⁴³ This option is also cannot be regarded as a clear differentiation mechanism but it extends the toolkit for the Court to analyse on case-by-case basis whether the legal basis was chosen correctly.

³⁸ CJEU, Opinion 1/78 of 4 October 1979 [1979] ECR 2871, paragraph 56

³⁹ Maresceau, Marc. “The place of bilateral agreements in EC law”. Collected Courses of the Hague Academy of International Law 309 (2004): 149-310, p. 157

⁴⁰ TEU, Article 24(1)

⁴¹ Van Elsuwege, Peter. “EU external action after the collapse of the pillar structure. In search of a new balance between delimitation and consistency”. Common Market Law Review 47, no. 4 (2010): 987-1019, p. 1005

⁴² *Ibid.*

⁴³ *Ibid.*

Hence, the Treaties provide with an extensive list of EU's competences to act in relation to the wider world, establishes general principles on which such actions shall be based, division of competence, specific measures and procedure to follow to utilise them. Yet, the Treaties do not propose clear borderlines between the CFSP and other EU external policies making it rather difficult to establish a proper legal basis in each case.

1.2. Judicial supervision over EU's external actions

The differentiation between the CFSP and other EU external policies is not only needed to establish a procedure for adopting a particular measure. It also defines the scope of the judicial supervision by the Court.

The competence of the Court with respect to EU's CFSP is rather limited, comparing with other spheres. Article 24 of the TEU generally defines the Court's competence with respect to the issues concerning CFSP as it states that the Court generally shall not have jurisdiction but may only monitor the compliance with Article 40 of the TEU and may review some issues according to Article 275(2) of the TFEU. Article 40 of the TEU states that the implementation of the CFSP shall not intervene in other spheres of EU's competence. Thus, the Court may review the measures adopted under the common foreign and security umbrella on the issue whether they affect other policies, *i.e.*, whether the measure exceeds the scope of the CFSP. However, such distinction is not the one that can easily be drawn as it was highlighted in the previous part on the difference between the CFSP and other EU external actions.

Article 275(1) of the TFEU reiterates that the Court does not have jurisdiction over the provisions of the CFSP and acts which were adopted on these bases. Yet, Article 275(2) of the TFEU provides with exclusion from this general rule. It allows judicial review of conformity with the rules of procedure and legality of the restrictive measures against legal and natural persons adopted by the EU based on the CFSP.⁴⁴ Thus, in addition to the review whether the common foreign and security

⁴⁴ TFEU, Article 275(2)

measure intervenes into other spheres, the Court may also analyse whether the adoption of such measures was done properly in accordance with the procedure and whether the restrictive measures were lawful.

In case C-91/05 *Commission v Council* it was stated that it is Court's task "to ensure that acts which [...] fall within the scope of Title V of the [TEU] and which [...] are capable of having legal effects, do not encroach upon the powers conferred by the EC Treaty on the Community".⁴⁵ The same approach was also established in cases C-170/96 *Commission v Council*, C-176/03 *Commission v Council* and C-440/05 *Commission v Council*.⁴⁶ Thus, the CJEU's attitude is to rigidly protect the borderlines of the EU law from the intervention of measures that fall within the CFSP and are not subject to Court's judicial review.

But the question remains why the measures under the umbrella of the CFSP deserve such immunity from the judicial review. In the Case C-120/94 *Commission v Greece* the Commission claimed that "the embargo established by Greece would increase rather than decrease the tension and would thus have detrimental consequences for the internal and external security of Greece".⁴⁷

Advocate General Jacobs responded to it by stating that there are no available legal tests to determine whether a policy of dialogue or economic sanctions are better suited to bring dispute settlement and it is not for the Court to decide upon the appropriateness of such measures.⁴⁸ Geert De Baere concluded in this respect that Advocate General Jacobs "attempted to introduce a "political doctrine" into the EU legal order".⁴⁹

⁴⁵ CJEU, Case C-91/05 *Commission of the European Communities v Council of the European Union* [2008] ECR I-3651, Judgment of 20 May 2008, paragraph 33

⁴⁶ CJEU, Case C-170/96 *Commission of the European Communities v Council of the European Union* [1998] ECR I-2763, Judgment of 12 May 1998, paragraph 16; CJEU, Case C-176/03 *Commission of the European Communities v Council of the European Union* [2005] ECR I-7879, Judgment of 13 September 2005, paragraph 39; and CJEU, Case C-440/05 *Commission of the European Communities v Council of the European Union* [2007] ECR I-9097, Judgment of 23 October 2007, paragraph 53

⁴⁷ De Baere, Geert. "Democracy and the Rule of Law in EU Foreign Policy". In *Constitutional Principles of EU External Relations*, edited by Geert De Baere, 159-200. Oxford: Oxford University Press, 2008, p. 195

⁴⁸ Opinion of Advocate General Jacobs in Case C-120/94 *Commission of the European Communities v Hellenic Republic* [1996] ECR I-01513, delivered on 6 April 1995, points 59 and 65

⁴⁹ De Baere, Geert. "Democracy and the Rule of Law in EU Foreign Policy". In *Constitutional Principles of EU External Relations*, edited by Geert De Baere, 159-200. Oxford: Oxford University Press, 2008, p. 195-196

Such conclusion made by Advocate General Jacobs and Geert De Baere completely makes sense and explains why the CFSP measures are taken away from the Court's jurisdiction as these measures are deemed to be political rather than legal. This practice is of course usual in many other states across the world.⁵⁰ Even within legal issues it often happens that an institution may have different but equally legal ways to move forward and, in such cases, courts declare that such an institution has a discretion on how to act. Even though authorities are obliged to act strictly within the prescribed borders, such borders may still allow some different paths. This is even more true for the issues that are political in its nature as court's supervision becomes even more limited as the competence in this sphere is prescribed more broadly and many different paths remain open for an authority.

With respect to other measures being part of EU external actions, the Treaties do not prescribe special limitations or exclusions meaning that they are subject to the Court's review on a general basis. Article 263(1) of the TFEU establishes a legal basis for reviewing the legality of EU acts as it states that the Court is empowered

to review the legality of legislative acts, of acts of the Council, of the Commission [...], and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.⁵¹

The Commission is obliged to ensure the application of the Treaties and that the bodies and institutions of the EU act in a manner consistent with the Treaties.⁵² Thus, it would usually be the Commission who brings a case to the Court for its review on the legality of a specific measure.

It is also often the case that the EU, while concluding an international agreement, inserts provisions on dispute settlement, as it is the case under EU-Ukraine Association agreement, other association and free trade agreements, investment treaties etc. One of the vivid examples on how the Court considers its powers was presented in the Achmea case. The case concerned the question whether the EU law precludes the application of

⁵⁰ *Ibid.*, p. 197

⁵¹ TFEU, Article 263(1)

⁵² TEU, Article 17(1)

the arbitration clause that refers disputes under the intra-EU bilateral investment treaties to an arbitral tribunal.⁵³

The CJEU has stated that under the arbitration clause in the Netherlands-Slovakia bilateral investment treaty dispute that concerns the interpretation of EU law could be submitted to an arbitral tribunal, which does not form part of the EU judicial system.⁵⁴ Consequently, such an arbitral tribunal cannot refer a question regarding interpretation of the EU law to the CJEU under Article 267 TFEU.⁵⁵

Thus, the CJEU ruled that subjecting disputes under such bilateral investment treaty to an arbitral tribunal contradicts with the EU law as such disputes may concern the interpretation of the EU law.⁵⁶

As we may see, the Court takes the preservation of EU legal order quite seriously and is willing and ready to delegitimise even a formed investment system within the EU. Article 344 of the TFEU partly forms such position as it states that “Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein”. With respect to that, any EU external measures, acts conducted under international agreements, which, may have their own dispute resolution provisions, may be still reviewed only by the Court in case this dispute concerns interpretation of EU law.

In order to preserve the system of dispute resolution provisions under international agreements, the EU includes provisions to ensure a possibility to obtain an opinion from the Court on the matters of the EU law. For instance, Article 322(2) of the EU-Ukraine Association Agreement provides that an arbitration panel shall refer an issue of the interpretation of the EU law to the CJEU.

Thus, the Court is empowered to review the legality of acts adopted within the field of external policy, without prejudice to the measures within the CFSP. This rule excludes predominantly political questions from the judicial supervision as the Court is not placed to adjudicate on the feasibility of political decisions. The Court actively

⁵³ CJEU, Case C-284/16 Slovak Republic v. Achmea BV, Digital Reports, judgment of 6 March 2018, paragraph 13

⁵⁴ *Ibid.*, paragraphs 40-49

⁵⁵ *Ibid.*, paragraph 58

⁵⁶ *Ibid.*

protects its competence to interpret the EU law and to preserve the EU legal order even in cases of international agreements.

1.3. The rationale of EU's active participation in conflict resolution

The EU possesses a vast list of instruments for its external actions in general and for conflict resolution in particular, but the question remains why the EU needs or is willing to actively use these instruments, especially with respect to the countries comprising the Eastern Partnership. In case the EU is not genuinely interested in active external participation, then it significantly lowers the threshold of expectations from them as the absence of interest may easily result in minimal participation in the conflict resolution. However, if the EU declares it as one of top priorities of external actions, then the level of expectations naturally becomes higher.

Even though the topic of the Eastern Partnership will be reviewed more deeply in the next sub-chapter, it is necessary to mention here at least the countries, which together constitute the Eastern Partnership. It comprises Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.⁵⁷

Article 21(2) of the TEU states that the EU needs to actively pursue its external policy in order to, *inter alia*, “(a) safeguard its values, fundamental interests, security, independence and integrity; (b) consolidate and support democracy, the rule of law, human rights and the principles of international law; (c) preserve peace, prevent conflicts and strengthen international security”. This Article also provides that the EU shall act abroad in order to “promote an international system based on stronger multilateral cooperation and good global governance”.⁵⁸ These points are directly related with EU's role in conflict resolution in a wider world in general and in the Eastern Partnership area specifically. First, safeguarding EU's values, independence, security depends on the security situation in neighbourhood countries. This is even more the case in relation to the Eastern Partnership countries due to their close location to the Russian Federation, Russia's active participation in the conflicts and consistent

⁵⁷ European Commission. “Eastern Partnership”. <https://bit.ly/3o2BwXy> (Accessed 9 May 2021)

⁵⁸ TEU, Article 21(2)(h)

hostility from the latter towards the EU. Given that, the EU should actively promote its values in order to safeguard those values and use them as a protection from the threat to the security, independence of the EU and its close neighbours.

Second, the support of democracy, rule of law and human rights in the countries comprising the Eastern Partnership would ensure that those countries will be more immune from dangerous populist governments and overall will remain much closer to the EU and its values, will have a sound governing system at hand which will be able to defend against foreign armed threats and, thus, providing the EU and the whole European continent with more safety. Political stability would also enhance the economic development of the EU and the region as a whole. Unstable governments, constant human rights violations in neighbourhood countries directly jeopardise the safety and well-being of those close to them geographically. Third, the preservation of peace, prevention of conflicts and strengthening of international security is directly connected to the conflict resolution. The EU undertook an obligation under the TEU to preserve and reinstate peace and strengthen international security as such.

Finally, the promotion of multilateral cooperation and good governance is only possible in a peaceful area. Article 21(2)(h) of the TEU obliges the EU to try to resolve disputes to ensure multilateral cooperation and to promote good governance in third countries as a prerequisite for fruitful cooperation and a safer international society. It is evident that there were no wars between two democracies and, thus, the promotion of good governance is one of the best prerequisites to prevent potential conflicts and ensure sound multilateral cooperation.

The EU institutions themselves also repeatedly reiterated not only an option but an obligation to act actively with the purpose to prevent and resolve conflicts in other countries. For instance, in Commission's Communication "Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours" it was stated that the EU has a duty towards its neighbours to promote cooperation, which should ensure political stability and reduction of social divisions.⁵⁹

⁵⁹ European Commission. "Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours". COM (2003) 104 final. Brussels, 11 March 2003, p. 3

As early as in 2003 the EU admitted that it “should take a more active role to facilitate settlement of the disputes” and declared that it was willing to assume “a greater share of the burden of conflict resolution in the neighbouring countries”.⁶⁰ These are very strong words pronounced by the EU which clearly articulate EU’s inner imperative to actively participate in the conflict resolution. The EU also acknowledged its important role in the international scene meaning that the EU should play part in conflict preventions.⁶¹

When establishing the ENP, the EU defined stability, security and well-being (or prosperity) as the main objectives of such policy.⁶² These objectives are closely interconnected with aforementioned objectives mentioned in Article 21(2) of the TEU. The EU admits that the stability in the close region directly affects the stability of the EU as such in a form of influx of refugees, cutting of trade and transport links, increase of criminal activities etc.⁶³ Nowadays we already have such examples as the Syrian civil war caused a massive refugee crisis in the EU. In turn, the prosperity “is clearly connected with economic reform, the successful transition to a market economy, and economic integration”.⁶⁴ The EU even proclaims that the promotion of democracy in countries which are located far away from EU borders is also a key foreign policy priority.⁶⁵

In addition to legal obligations of the EU established by the TEU to act abroad to prevent and resolve conflicts, the EU also has to do so from a purely political point of view. The EU is considered as a protector of democratic values, human rights and is expected to protect these values when they are endangered. It is impossible to be regarded as a strong international actor and as a dominant power in the region if such

⁶⁰ *Ibid.*, p. 12

⁶¹ Commission of the EC. “Communication from the Commission on Conflict Prevention”. COM (2001) 211. Brussels, 11 April 2001. <https://bit.ly/3exbZ5F> (Accessed 9 May 2021), p. 5

⁶² Commission of the EC. “European Neighbourhood Policy Strategy Paper”. COM(2004) 373. Brussels, 12 May 2004. <https://bit.ly/3uL83Uo> (Accessed 9 May 2021), p. 3; Cremona, Marise. “The European Neighbourhood Policy More than a Partnership?”. In *Developments in EU External Relations Law*, edited by Marise Cremona, 244-299. Oxford: Oxford University Press, 2009, p. 257

⁶³ Cremona, Marise. “The European Neighbourhood Policy More than a Partnership?”. In *Developments in EU External Relations Law*, edited by Marise Cremona, 244-299. Oxford: Oxford University Press, 2009, p. 258

⁶⁴ *Ibid.*, p. 259

⁶⁵ Grimm, Sonja. “European Democracy Promotion in Crisis: Conflicts of Objectives, Neglected External–Domestic Interactions and the Authoritarian Backlash”. *Global Policy* 6, supplement 1 (June 2015): 73-82, p. 73

an actor does not involve itself in resolving conflicts and other geopolitical issues. Bearing this in mind, if the EU wants to become and remain a dominant political actor and a guardian of democracy, it has to establish and exercise such powers as a peacemaker and promoter of democratic values.

For instance, EU's successful participation in resolving conflicts in the South Caucasus could not only bring more safety and security in the area close to the EU borders, but also, due to the geographical location of this region, helping those countries and obtaining their alliance could bring more energy security for the EU as it would provide an alternative to Russian sources of energy.⁶⁶

Hence, the EU has numerous reasons to actively participate in the conflict resolution. Article 21(2) of the TEU establishes an obligation for the EU to pursue external policies in order to strengthen international security, support democracy, rule of law, preserve peace, prevent conflicts and promote multilateral cooperation and good governance. The EU also reinforces its obligations to respond to external challenges as a safer world contributes to safety of the EU, economic prosperity, increased trade and transport links. The strengthening of democratic values in third countries also contributes to the security, safety and enhancement of connections of EU with other countries. Therefore, the EU is vastly interested in the resolution and prevention of the conflicts.

1.4. The Eastern Partnership as a part of the European Neighbourhood Policy: background, substance and participants

On 1 May 2004 the world witnessed the biggest enlargement of the EU as 10 new countries has joined the EU.⁶⁷ This enlargement expanded the borders of the EU, especially eastern ones, and put a question mark on how the EU should continue its policy towards new neighbours and other countries relatively close to the EU.

⁶⁶ Chochia, Archil and Johanna Popjanevski. "Change of Power and Its Influence on Country's Europeanization Process. Case Study: Georgia" In *Political and Legal Perspectives of the EU Eastern Partnership Policy*, edited by Kerikmäe, T. & Chochia, A., 197-210. Cham: Springer International Publishing, 2016, p. 199

⁶⁷ Publications Office. "The 2004 enlargement: the challenge of a 25-member EU". <https://bit.ly/3uycQc3> (Accessed 9 May 2021)

It gave a start to the initiation of the ENP, which covered sixteen countries: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Republic of Moldova, Morocco, Syria, Palestine, Tunisia and Ukraine.⁶⁸ The geography of the ENP was rather big as it covered all countries that are closely located to the EU on the south and east.

The EU stated that the objective of the ENP is to “share the benefits of the EU’s 2004 enlargement with neighbouring countries in strengthening stability, security and well-being for all concerned”.⁶⁹ Given the size of EU’s extension, it potentially saw itself as a region leader and, subsequently, felt a duty to act externally. Within this policy, the EU put an emphasis on the cooperation between the aforementioned countries and the EU in various fields, including economy, rule of law, human rights, sustainable development.⁷⁰ The EU also highlighted on the importance of conditionality as an instrument to establish the extent of cooperation and integration with different countries.⁷¹ Bilateral “Action Plans” constitute the main working document between the EU and a country.⁷² These bilateral plans include various issues, such as political and economic reforms, trade, cooperation in different spheres, political dialogue etc.⁷³ In return for the completion of prescribed steps by a partner country, the EU proposes the deeper integration into the EU and cooperation in a form of “twinning”.⁷⁴ The “twinning” is described as the cooperation instrument that brings together institutions of the EU and a partner country in order to assist the latter in approximating the EU laws and improve the public administration in that country.⁷⁵ The action plans were more of political nature and did not have any binding effects

⁶⁸ European External Action Service – European Commission. “European Neighbourhood Policy (ENP)”. 8 February 2021. <https://bit.ly/3uz7Eoc> (Accessed 9 May 2021)

⁶⁹ Commission of the EC. “European Neighbourhood Policy Strategy Paper”. COM(2004) 373. Brussels, 12 May 2004. <https://bit.ly/3uL83Uo> (Accessed 9 May 2021), p. 3

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Sasse, Gwendolyn. “The European Neighbourhood Policy and Conflict Management: A Comparison of Moldova and the Caucasus”. *Ethnopolitics* 8, issue 3-4 (2009): 369-386, p. 371

⁷³ De Búrca, Gráinne. “EU External Relations: The Governance Mode of Foreign Policy.” In *The EU's Role in Global Governance: The Legal Dimension*, edited by Bart Van Vooren, Steven Blockmans, and Jan Wouters, 39-58. Oxford: Oxford University Press, 2013, p. 48

⁷⁴ *Ibid.*

⁷⁵ European Commission. “Twinning - European Neighbourhood Policy And Enlargement Negotiations - European Commission”. 7 May 2021. <https://bit.ly/3o3nCo7> (Accessed 9 May 2021)

upon the EU or partner countries, they served as detailed road-maps for respective years on what is to be achieved.

Yet, as it is visible from the list of the countries forming the ENP, this policy tries to put together extremely different countries with different problems, needs and different attitudes that are necessary for approaching those countries. It is seemingly impossible to work with these countries in the same manner and apply “fit for all” policy to them. If we consider that the EU did not intend to have if not the same but similar approach for the countries comprising the ENP, then the question arises what the purpose of such a broad program is, apart being able to gather in one place close neighbours of the EU. Thus, the ENP was criticised for not taking into account drastic political, economic and cultural differences between the countries.⁷⁶

It may also be argued that the partner countries were also not happy with being in such a group, given their different relations and aspirations towards the EU. The ENP comprise of countries who aspire to join the EU (*e.g.*, Ukraine, Moldova) and countries, who do not have the slightest will and possibility to do that (*e.g.*, Syria, Libya). The “aspiring” countries might see such partnership as lack of the interest from the EU to consider them in the future as the Member States of the EU. That being said, the ENP did indeed not propose the perspective of the membership,⁷⁷ which is predominantly seen by scholars as one of the weakest spots of this policy.⁷⁸ In such context, the EU membership of course could not have been offered to 16 partner countries, many of which are not even European countries.

There are also aspects of the ENP which were massively criticised. One of them is the lack of equality and partnership in the direct meaning of this word as the EU was visibly the dominant party in such relations and basically dictates conditions for the cooperation.⁷⁹ It is true that the EU is a stronger party in relation with these countries,

⁷⁶ Nielsen, Kristian L., Maili Vilson, “The Eastern Partnership: Soft Power Strategy or Policy Failure?”. *European Foreign Affairs Review* 19, Issue 2 (2014): 243-262, p. 248

⁷⁷ *Ibid.*, p. 248

⁷⁸ Sasse, Gwendolyn. “The European Neighbourhood Policy and Conflict Management: A Comparison of Moldova and the Caucasus”. *Ethnopolitics* 8, Issue 3-4 (2009): 369-386, p. 370

⁷⁹ Nielsen, Kristian L., Maili Vilson, “The Eastern Partnership: Soft Power Strategy or Policy Failure?”. *European Foreign Affairs Review* 19, Issue 2 (2014): 243-262, p. 248

but it only helps when the other countries are willing to be as close as possible to the EU and are willing to accept EU's requirements and conditions. In case the countries do not pursue the membership of the EU, they may be significantly less interested in accepting many EU regulations and proposals and vertical cooperation may not be feasible.

Moreover, as Kristian L. Nielsen and Maili Vilson point out, the emphasis on such policies as border control, combat of crime could be interpreted as that the EU has a perception towards these countries as dangerous ones and sees them as “buffer zones”,⁸⁰ which, of course, does not assist to fruitful cooperation. Even the European Commission in 2006 recognised that the ENP needs a review to be able to better assist countries with reforms, address frozen conflicts and persuade hesitant countries to be more active in the cooperation with the EU.⁸¹ The EU separately admitted that the ENP had little help to resolve regional conflicts and that the EU should be more active in this sphere.⁸² Therefore, the ENP had many problematic aspects and definitely needed a review.

Due to the insistence from Poland and Sweden in 2009, the EU introduced the Eastern Partnership initiative intending to upgrade the ENP and solve its drawbacks.⁸³ The creation of the Eastern Partnership was announced at the summit in Prague on 7 May 2009. The Eastern Partnership comprises six eastern neighbours of the EU, namely, Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.⁸⁴ The Joint Declaration of the Prague Eastern Partnership Summit provides the main aim as to “accelerate political association and further economic integration”.⁸⁵ The EEAS on its webpage also reinforces that the aim of the Eastern Partnership is to “strengthen and

⁸⁰ *Ibid.*, p. 248

⁸¹ European Commission. “Strengthening the European Neighbourhood Policy”. COM (2006) 726. Brussels, 4 December 2016. <https://bit.ly/3tyPqla> (Accessed 9 May 2021), p. 2

⁸² *Ibid.*, p. 4

⁸³ Babayan, Nelli. “A Global Trend EU-style: Democracy Promotion in ‘Fragile’ and Conflict-Affected South Caucasus”. *Global Policy* 7, Issue 2 (May 2016): 217-226, p. 219

⁸⁴ European Commission. “Eastern Partnership”. <https://bit.ly/3o2BwXv> (Accessed 9 May 2021)

⁸⁵ Council of the European Union. Joint Declaration of the Prague Eastern Partnership Summit. 8435/09 (Presse 78). Prague, 7 May 2009, p. 6

deepen the political and economic relations between the EU, its Member States and the partner countries, and supports sustainable reform processes in partner countries”⁸⁶

The Joint Declaration of the Prague Eastern Partnership Summit also in general terms provides the substance and framework of the Eastern Partnership. It states that the Eastern Partnership is based on similar values as the ENP, including commitment to the democracy, rule of law, human rights, market economy and sustainable development.⁸⁷ The political and socio-economic reforms should also be supported alongside with the approximation towards the EU.⁸⁸ This joint declaration also elaborates on possible ways to achieve better integration and cooperation, which is conclusion of the association agreements with the partner countries, and highlights that specific situation of each country shall be taken into account.⁸⁹ The joint declaration also mentions the visa liberalisation as a potential way how the EU could engage the partner countries to the cooperation and promote integration.⁹⁰

The development of the Eastern Partnership and subsequent events presented a *de facto* division within the Eastern Partnership on two groups of countries, depending on how they progressed within this partnership with the EU. Ukraine, Georgia and Moldova stand out in a positive way as countries of the Eastern Partnership initiative. At the first Eastern Partnership Summit – after its creation – on 29-30 September 2011 in Warsaw some progress was already highlighted. Apart from the increase in trade, the Joint Declaration also mentions the launch of negotiations on visa-free regime with Ukraine and Moldova and implementation of visa-facilitation and readmission agreements with Georgia.⁹¹ Subsequently, these three countries have concluded association agreements with the EU, opening a new chapter in their relations and integration. Tsybulenko and Pakhomenko also consider that it has established the key

⁸⁶ European External Action Service – European Commission. “European Neighbourhood Policy (ENP)”. 8 February 2021. <https://bit.ly/3uz7Eoc> (Accessed 9 May 2021)

⁸⁷ Council of the European Union. Joint Declaration of the Prague Eastern Partnership Summit. 8435/09 (Presse 78). Prague, 7 May 2009, p. 5

⁸⁸ *Ibid.*, p. 6

⁸⁹ *Ibid.*, p. 7

⁹⁰ *Ibid.*

⁹¹ Council of the European Union. Joint Declaration of the Prague Eastern Partnership Summit. 14983/11 (Presse 341). Warsaw, 29-30 September 2011, p. 2

difference between two groups of countries, while the group of Armenia, Azerbaijan and Belarus do not see their future as being part of the EU.⁹²

Overall, it seems that the Eastern Partnership was trying to correct the wrongs of the ENP. It narrowed down the number of partner countries from sixteen to six, put more emphasis on binding acts – association agreements – as instruments to promote the cooperation and integration, instead of action plans, highlighted the perspective of the visa liberalisation. However, similar to the ENP, the potential membership was not mentioned, and the Eastern Partnership again gathered under its roof countries of completely different backgrounds and different expectations from the cooperation with the EU. These countries were also at seemingly different stages of cooperation levels of integration with the EU. Moreover, the joint declaration just once mentioned the security of the EU, partner countries and the whole European continent⁹³ but apparently the security was not regarded as one of key priorities, even though at the time of the creation of the Eastern Partnership program four out of six countries (Armenia, Azerbaijan, Georgia and Moldova) had frozen conflicts.

On 7 May 2009 Polish Foreign Minister Radoslaw Sikorski, responding to Russian allegations that the Eastern Partnership threatens its sphere of interests, stated that “the European Union will not apologize for the "civilizational attraction" of its Eastern Partnership project”.⁹⁴ Thus, the EU planned to use the soft power, the power of persuasion and attractiveness to make the Eastern Partnership prosperous. Unsurprisingly, Russia considered the Eastern Partnership as a threat and the EU unwillingly joined the competition with Russia.

The creation of the Eastern Partnership had not stopped the EU from trying to improve the existing ENP as a common platform. In 2015, more than 10 years after the launch of the ENP, the High Representative presented the Review of the ENP, defining

⁹² Tsybulenko, Evhen and Sergey Pakhomenko. “The Ukrainian Crisis as a Challenge for the Eastern Partnership” In *Political and Legal Perspectives of the EU Eastern Partnership Policy*, edited by Kerikmäe, T. & Chochia, A., 167-179. Cham: Springer International Publishing, 2016, p. 171

⁹³ Council of the European Union. Joint Declaration of the Prague Eastern Partnership Summit. 8435/09 (Presse 78). Prague, 7 May 2009, p. 6

⁹⁴ Radio Free Europe. “Polish FM: EU Won’t Apologize for Being ‘Attractive’ to Its Neighbors”. referl.org, 7 May 2009. <https://bit.ly/33x3BwN> (Accessed 9 May 2021)

“differentiation and greater mutual ownership” as key cornerstones of this revision.⁹⁵ It means that the EU took into account drastic differences between partner countries and their different expectations and aspirations and tried to work on making the partnership more specific and up-to-the-needs.

Given the overall unsatisfactory conditions with respect to the security and safety in close EU neighbourhood in the middle of 2010s, it is not surprising that the stabilisation of the region became the main priority of the EU within the ENP. The EU, though, correctly pointed out that not only armed conflicts are causes of instability but also inequality, corruption, weak economic and social development assist to the overall instability of the region and, thus, undertook an obligation to address more these spheres.⁹⁶ The EU also declared its readiness to increase the security-related cooperation, including conflict-prevention and strengthening “the resilience of the EU’s partners in the face of external pressures and their ability to make their own sovereign choices”.⁹⁷ Bearing that in mind, the EU presented itself as more prepared to participate in conflict prevention and resolution. Being more specific, the EU mentioned, *inter alia*, the use of common security and defence policy missions, appointment of EU’s Special Representatives and participation of partner countries officials in defence courses.⁹⁸ Even though these mechanisms do not sound as the most decisive and ground-breaking but as very vague ones, the EU highlighted that each conflict shall be dealt separately taking all issues into consideration. Thus, it might explain such wording in this review. Yet, the actual steps of the EU shall be analysed as part of conflict resolution agenda, which is presented below in this thesis.

Hence, the EU’s big enlargement in 2004 created a need for the EU to update policy towards its new neighbours. The ENP was created and combined 16 countries. Given many disadvantages of such broad policy, the Eastern Partnership was

⁹⁵ High Representative of the Union for Foreign Affairs and Security Policy. “Review of the European Neighbourhood Policy”. Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. JOIN(2015) 50 final. Brussels, 18 November 2015. <https://bit.ly/3bhjZWj> (Accessed 9 May 2021), p. 2

⁹⁶ *Ibid.*, pp. 3-4

⁹⁷ *Ibid.*, p. 4

⁹⁸ *Ibid.*, p. 14

introduced in 2009. The Eastern Partnership was aimed to form a basis for better cooperation between the EU and partner countries, to assist the latter with reforms, enhance the trade and political cooperation etc. It seems that the overall attractiveness of the EU, its values, the access to EU's market were considered as main tools to reach the hearts of partner countries and promote stable, secure and prosper cooperation. The EU, acknowledging the drawbacks of existing ENP, decided to review it in 2015 and put more emphasis on each country and each situation rather than trying to impose similar rules for all countries. The stabilisation of the region took a much higher spot in EU's priorities.

The Treaties provide with an extensive list of EU's powers to act externally, establishes general principles on which such actions shall be based, divides competences between different EU institutions and bodies, provides with specific measures and procedures to follow to utilise those competences. Yet, the Treaties do not propose clear borderlines between the CFSP and other EU external policies making it rather difficult to establish a proper legal basis in each case.

This directly affects the Court's ability to review the legality of acts adopted within the field of external policy as it cannot adjudicate upon the measures within the field of CFSP. This rule excludes predominantly political questions from the judicial supervision as the Court is not placed to adjudicate on the feasibility of political decisions. Yet, the Court may look into the common foreign and security measures to evaluate whether it does not transgress its boundaries. With respect to other acts within adopted as a part of external policy, the Court enjoys usual competence to overview their legality.

In addition to the fact that the EU is empowered to act externally, it also has numerous reasons to actively participate in the conflict resolution. Article 21(2) of the TEU establishes an obligation for the EU to pursue external policies in order to strengthen international security, support democracy, rule of law, preserve peace, prevent conflicts and promote multilateral cooperation and good governance. The EU

also reinforces its obligations to respond to external challenges to protect democracy, human rights and ensure the safety and security of the EU and the world in general.

The ENP is one of the prominent examples of EU exercising its external competence as it covers 16 countries located closely to the EU. Within this area, the EU has defined a smaller group of countries located in the Eastern Europe and started developing the Eastern Partnership as a part of the ENP. This partnership includes Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

CHAPTER 2

EU'S INSTRUMENTS AIMED TOWARDS CONFLICT RESOLUTION IN UKRAINE

2.1. EU's conflict resolution role during the Revolution of Dignity

Ukraine is the biggest country wholly located in Europe, is a direct EU's neighbour and, undoubtedly, unrest, crises, conflicts in Ukraine are hard to ignore for the EU. It could also be said that the EU, even for its own safety and well-being, cannot abstain from trying to assist in resolving crises in Ukraine.

In first instance, I will start with the analysis of EU's role during the Revolution of Dignity, which occurred from November 2013 to February 2014. Those events were closely related to the EU and were even caused by the EU-related issue. On the verge of the Eastern Partnership Summit in Vilnius on 28-29 November 2013, Ukrainian government announced that it would not sign the Association Agreement and Deep and Comprehensive Free Trade Area with the EU at the following Vilnius Summit.⁹⁹ It was predominantly argued that the main reason for such U-turn was Russian pressure.¹⁰⁰ From the hindsight, we now see how far Russia can go to try to keep Ukraine within its sphere of influence.

It was previously mentioned in this thesis that Russia perceived the initiation of the Eastern Partnership as a threat to its interests in the region and Ukraine's refusal to sign the Association Agreement in Vilnius supported this stance and clearly demonstrated that the EU is not only trying to persuade its partner countries about the benefits of their civilisation choice in favour of the EU, but it had also found itself in a direct confrontation with Russia. This conflict between the Ukrainian government and people of Ukraine because of the former's refusal to sign the Association Agreement became the first big conflict from the moment of the initiation of the Eastern

⁹⁹ Українська правда. "Азаров відмовився від угоди про асоціацію з ЄС". pravda.com, 21 листопада 2013. URL: <https://bit.ly/3o6q50X> (Accessed 9 May 2021)

¹⁰⁰ Traynor, Ian and Oksana Grytsenko. "Ukraine suspends talks on EU trade pact as Putin wins tug of war". The Guardian, 21 November 2013. <https://bit.ly/33uEPNO> (Accessed 9 May 2021)

Partnership and may serve as an example how the EU reacted and whether it was capable of acting rapidly to instantly changing circumstances.

Right after the announcement that Ukraine would not sign the Association Agreement, the parliamentary opposition called the EU to adopt sanctions against key figures of the regime and prohibit them to visit the EU.¹⁰¹ However, the EU had not reacted to such claims. It seemed that the EU had no reason to enact legal measures against the leaders of Ukrainian government, hoped to solve the issue in a diplomatic and political manner. However, it was expected from the EU to demonstrate the largest possible support of the Euromaidan, especially given the causes of it.

In the Joint Declaration of the Vilnius Summit, it was simply stated that the participants of the summit took “note of the unprecedented public support for Ukraine's political association and economic integration with the EU”.¹⁰² However, given the presence of Ukrainian delegation at that summit, it was unrealistic to expect some stronger statements in the Joint Declaration. When the EU had a possibility to present its statement in an official act, it provided with more elaborate view of the conflict.

On 12 December 2013, the European Parliament adopted the Resolution on the outcome of the Vilnius Summit and the future of the Eastern Partnership, in particular regarding Ukraine. The EU deplored Ukrainian government's decision to put the signing of the Association Agreement on hold and the violent events that occurred against protesters, media, opposition parties and expressed full solidarity with protesters.¹⁰³ The EU used strong wording and made its position clear that Ukrainian government's actions against protesters constitute a fundamental breach of human rights and runs counter to European values.

The EU has not limited itself only to the condemnation of the Ukrainian government. Trying to assist in resolving this conflict, the European Parliament called for the creation of the EU mediation mission “at the highest political level, to achieve,

¹⁰¹ Українська правда. “Опозиція вимагає від Януковича помилування Тимошенко, а від Європи – санкцій”. pravda.com, 21 листопада 2013. URL: <https://bit.ly/33vBJsI> (Accessed 9 May 2021)

¹⁰² Council of the European Union. Joint Declaration of the Prague Eastern Partnership Summit. 17130/13 (Presse 516). Vilnius, 28-29 November 2013, p. 3

¹⁰³ European Parliament resolution of 12 December 2013 on the outcome of the Vilnius Summit and the future of the Eastern Partnership, in particular as regards Ukraine. 12 December 2013 (2013/2983(RSP)), paragraphs 2-3, 7

and assist in, roundtable talks between the government and the democratic opposition and civil society and to secure a peaceful outcome to the current crisis”.¹⁰⁴ The EU also acknowledged that Ukraine’s step backwards was not purely its own initiative but was caused by Russia’s influence and condemned “unacceptable political and economic pressure, coupled with threats of trade sanctions, being exerted by Russia on Ukraine”.¹⁰⁵

The European Parliament acknowledged the problem of Russia’s illicit behaviour towards countries in the Eastern Partnership. It asked for the EU and Member States to develop mechanisms to respond to such Russia’s acts, as well as to consider possible counter-measures under the WTO, highlighting that the EU “should be able to react when it or its partner countries come under political and economic pressure”.¹⁰⁶ Even though these are mere declaratory provisions included in a non-binding European Parliament’s resolution, the EU still acknowledged the problem, the need to deal with it and outlined potential further steps.

Yet, the problem was that it was not the first time when the EU raised concern about Russia’s influence and pressure over the countries of the Eastern Partnership. On 12 September 2013, the European Parliament issued a resolution on the pressure exerted by Russia on Eastern Partnership countries (in the context of the upcoming Eastern Partnership Summit in Vilnius). The wording of this resolution clearly demonstrated that the EU saw the challenge and asked the EEAS “to take action in defence of the Union’s partners” and to send “a strong message of support for all Eastern Partnership countries”.¹⁰⁷ Given that the European Parliament asked a diplomatic service to respond to these challenges, it seems that the EU at that moment preferred to pursue diplomatic channels to solve them and publicly support the European integration path of respectful countries. Yet, the outcome spoke for the EU’s

¹⁰⁴ European Parliament resolution of 12 December 2013 on the outcome of the Vilnius Summit and the future of the Eastern Partnership, in particular as regards Ukraine. 12 December 2013 (2013/2983(RSP)), paragraph 6

¹⁰⁵ *Ibid.*, paragraph 8

¹⁰⁶ *Ibid.*, paragraphs 8-9

¹⁰⁷ European Parliament resolution of 12 September 2013 on the pressure exerted by Russia on Eastern Partnership countries (in the context of the upcoming Eastern Partnership Summit in Vilnius), 12 September 2013 (2013/2826(RSP)), paragraph 5

inaction or lack of determined actions as Russia succeeded in its pressure towards Ukraine.

Later it became apparent what, at least partly, helped Russia to succeed as on 17 December 2013 Russian President Vladimir Putin and Ukrainian President Viktor Yanukovich signed Ukrainian-Russian Action Plan, under which Russia proposed to Ukraine, *inter alia*, USD 15 billion and cheaper gas.¹⁰⁸ Bearing this in mind, it may be concluded that the EU actually could not win that short battle before the Vilnius Summit to persuade Ukraine to sign the Association Agreement. The EU cannot simply give a state such a big amount of money, especially when there are no guarantees whether this money will be used properly. The EU's foreign policy is based on the principle of conditionality and big steps from the EU require big steps from another country. Yanukovich's government, of course, had not been agitated by EU's proposals of stable development and gave preference to cash in exchange for sovereignty from Russia.

The EU decided to increase the cooperation directly with people by strengthening research cooperation, expanding youth cooperation and increasing availability of scholarships.¹⁰⁹ To my mind, in case of conflicts within a country between a government and population, the increase of direct connections between the EU and members of civil society potentially may have a great success as the EU-state relations are becoming complicated. The direct connection with the population may help to demonstrate tangible benefits of the European integration, attract more support for the movement and the cause of it.

In mid-December 2013 the EU also put on hold any further trade talks with the then-sitting government,¹¹⁰ but reaffirmed the support towards Ukrainians and said that "the door for Ukraine to Europe is open".¹¹¹ These EU's instruments and declarations

¹⁰⁸ Voice of America. "Russia Promises Ukraine Cheaper Gas, \$15 Billion Loan". voanews.com, 17 December 2013. <https://bit.ly/3bfcH5A> (Accessed 9 May 2021)

¹⁰⁹ European Parliament resolution of 12 December 2013 on the outcome of the Vilnius Summit and the future of the Eastern Partnership, in particular as regards Ukraine. 12 December 2013 (2013/2983(RSP)), paragraph 11

¹¹⁰ Herszenhorn, David M., and Andrew Herszenhorn. 2013. "European Union Suspends Trade Talks With Ukraine". New York Times, 15 December 2013. <https://nyti.ms/2RCn5gH> (Accessed 9 May 2021)

¹¹¹ Englund, Will. "In Ukraine, Sens. McCain, Murphy address protesters, promise support". Washington Post, 15 December 2013. <https://wapo.st/3h8K10C> (Accessed 9 May 2021)

may not seem as rather effective mechanisms to try to resolve the conflict occurred between Yanukovich's regime and protesters, but in no way should we underestimate EU's soft power. The words can be powerful, yet the value and influence of those shall be determined.

On 16 January 2014, the Revolution of Dignity entered a new phase of escalation as the Ukrainian parliament adopted so-called "Laws of 16 January" or "Dictatorship Laws", which were adopted with significant procedural violations and extremely violated fundamental rights, including freedom of speech, freedom of assembly.¹¹² On the next day, the High Representative Catherine Ashton issued a statement and expressed her deep concern with respect to these laws and asked the President of Ukraine to ensure the revision thereof.¹¹³ The Council comprising of foreign affairs ministers also issued its conclusions. It condemned the Laws of 16 January, raised concern about the intensification of the conflict and asked all the parties to seek a democratic solution.¹¹⁴ The Council also reiterated that the EU was still ready to sign the Association Agreement and Deep and Comprehensive Free Trade Area.¹¹⁵ The EU also decided to delegate a mission consisting of high foreign policy officials to mediate the conflict between the Yanukovich regime and protesters.¹¹⁶

On 6 February 2014, the European Parliament issued another resolution on the situation in Ukraine. It reiterated its support for the protesters, condemned the brutal use of force by security forces, militia and numerous cases of human rights violations.¹¹⁷ The main difference of this resolution, comparing to the previous one, is that it is more detailed in the manner of description of the situation and proposed steps for the EU to take. First, the European Parliament mentioned EU's engagement in the

¹¹² Верховна Рада України. Закон України від 16 січня 2014 року № 732-VII «Про внесення змін до Закону України "Про судоустрій і статус суддів" та процесуальних законів щодо додаткових заходів захисту безпеки громадян». Відомості Верховної Ради (ВВР), 2014, № 22, ст.801

¹¹³ European Union External Action. "Statement by EU High Representative Catherine Ashton on developments in the Ukrainian Parliament". 140117/01. Brussels, 17 January 2014 <https://bit.ly/3f4mQTQ> (Accessed 9 May 2021)

¹¹⁴ Council of the European Union. "Council conclusions on Ukraine". Foreign Affairs Council meeting. Brussels, 20 January 2014. <https://bit.ly/3ewsK0o> (Accessed 9 May 2021)

¹¹⁵ *Ibid.*

¹¹⁶ Traynor, Ian and Oksana Grytsenko. "Vladimir Putin tells Brussels to stay out of Ukraine's political crisis". The Guardian, 28 January 2014. <https://bit.ly/3beEmn9> (Accessed 9 May 2021)

¹¹⁷ European Parliament resolution of 6 February 2014 on the situation in Ukraine. 6 February 2014 (2014/2547(RSP)), paragraphs 1-5

mediation of the conflict.¹¹⁸ Second, it took a decision to open a permanent European Parliament mission in Ukraine as a response to requests from Ukrainians that constant presence of the EU could potentially reduce the violence.¹¹⁹ Third, the European Parliament called for other institutions and Member States to prepare personalised sanctions (including travel restrictions, freeze of assets) against Ukrainian officials responsible for the death of protesters and against oligarchs backing those officials.¹²⁰ Fourth, the necessity to develop a financial aid plan for Ukraine was mentioned, given the worsening economic and social situation at that time.¹²¹ Finally, the European Parliament called for more direct contact between the EU and Ukrainians by reducing visa fees and ultimately abolishing visa regime.¹²² These declarations sound rather promising but almost none of them were realised during the protests. It especially relates to the imposition of restrictive measures, which had the potential to decrease financial support of Yanukovych's regime. This mechanism was not used until the end of the Revolution of Dignity. The visa liberalisation also was not initiated.

It is also necessary to bear in mind EU's awareness of Russia's significant influence over Yanukovych's regime and its general position to prevent Ukraine from following the pro-European path. However, with respect to Russia, the European Parliament in the resolution limited itself to encouraging Russia to support pro-European choice and asking to stop the pressure and retaliatory measures.¹²³ The EU constantly failed to apply any measures against Russia during the Revolution of Dignity, while Russian authorities actively instigated violence, punished Ukraine for its pro-European choice and blamed the EU and the United States of America for the violence.

After the horrible events of 18-20 February 2014, the Council again issued conclusions on Ukraine. It provided one of the strongest words of condemnation from the EU, as it was stated that the EU "is appalled and deeply dismayed by the

¹¹⁸ *Ibid.*, paragraph 12

¹¹⁹ *Ibid.*, paragraph 13

¹²⁰ *Ibid.*, paragraph 14

¹²¹ *Ibid.*, paragraph 15

¹²² *Ibid.*, paragraph 18

¹²³ *Ibid.*, paragraph 20

deteriorating situation in Ukraine” and that it condemns “in the strongest terms all use of violence”.¹²⁴ Apart from condemnations, the EU decided to impose sanctions against individuals responsible for human rights violation and excessive use of force.¹²⁵ Yet, the sanctions, prescribing a list of individuals, were imposed only after the Revolution of Dignity.

On 21 February 2014, Yanukovych and opposition leaders reached the Agreement on the Settlement of Crisis. The EU, represented by foreign ministers of France, Germany and Poland, helped to mediate and agree on the agreement.¹²⁶ However, it would be a massive overstatement to say that this agreement helped resolving the crisis, due to several reasons.

First, it has never been executed because Yanukovych left Ukraine on 22 February 2014. The EU’s participation in the mediation process and subsequent conclusion of the agreement had not assisted to the resolution of the conflict. Second, even if Yanukovych had not left Ukraine and the opposition leaders, the EU, Russia and Yanukovych regime insisted on the compliance with that agreement, its implementation would had also been hardly possible. The magnitude of violence, including mass killings, injuries, beatings, tortures delegitimised Yanukovych’s regime and made any additional day of his rule just unbearable. Yet, the Agreement on the Settlement of Crisis prescribed that the presidential elections should be held no later than December 2014.¹²⁷ Noteworthy, the next presidential elections in any event should have occurred at the beginning of 2015, so this agreement basically moved the elections back for several months. Other conditions of the agreement were to free all the administrative buildings, clear squares from protests, pass all weapons to the militia etc.¹²⁸ As the events which followed the signing of the Agreement on the Settlement of

¹²⁴ Council of the European Union. “Council conclusions on Ukraine”. Foreign Affairs Council meeting. Brussels, 20 February 2014. <https://bit.ly/3evuyHu> (Accessed 9 May 2021), paragraph 1

¹²⁵ *Ibid.*, paragraph 4

¹²⁶ The Guardian. “Agreement on the Settlement of Crisis in Ukraine - full text”. [theguardian.com](https://bit.ly/3vRV9Er). 21 February 2014. <https://bit.ly/3vRV9Er> (Accessed 9 May 2021)

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

Crisis clearly demonstrated, the protesters had not accepted such terms and it was completely unreasonable to consider that the protesters would agree on them.

Despite thorough attention to the events in Ukraine during November 2013 and February 2014, the EU failed to understand the feelings and the ultimate demand of the protesters. The EU continued attempts to find solution within the existed status-quo, yet it was impossible. However, it may be unfair to blame the EU for the inability to understand the protest and to impose adequate measures for the resolution of the conflict, given the fact that the opposition leaders also agreed to these terms. It is hard to expect from the EU more than from the leaders of the one side of the crisis which it supports.

In the aftermath of the Revolution of Dignity, the EU imposed the sanctions, following the Council's conclusions of 20 February 2014. On 5 March 2014, the Council adopted the Decision 2014/119/CFSP. This Decision prescribed restrictive measures for 18 Ukrainian individuals responsible for the violation of human rights and misappropriation of Ukrainian State funds.¹²⁹ The list included Viktor Yanukovich and his sons, Mykola Azarov, former ministers of justice, health, internal affairs, former Prosecutor General of Ukraine, former Head of Administration of President of Ukraine etc.¹³⁰ The Decision ordered to freeze all assets of listed individuals, including the freeze of assets of connected legal persons.¹³¹ Article 29 of the TEU has served as a basis for the adoption of this decision, which prescribes that the Council adopts decisions to define “the approach of the Union to a particular matter of a geographical or thematic nature”.

The Decision 2014/119/CFSP was adopted alongside the Council Regulation No 208/2014. This is required by virtue of Article 75(1) of the TFEU, which establishes that “freezing of funds, financial assets or economic gains” shall be imposed by resolutions. This Regulation refers to the Decision 2014/119/CFSP and duplicates the list of individuals under the sanctions, including identification information and the

¹²⁹ Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine. OJ L 66, 6.3.2014, p. 26–30, Article 1(1), Annex

¹³⁰ *Ibid.*, Annex

¹³¹ *Ibid.*, Article 1(1)

reasons for inclusion into the list.¹³² At the present time, the Council Regulation No 208/2014 is still in force and applicable to eight individuals.¹³³

To conclude, it cannot be said that the EU's role in the resolution of the crisis during the Revolution of Dignity was successful. Ukrainians' will to be a part of European family became a catalysator for the protests, in the aftermath of Yanukovich's refusal to sign the Association Agreement. Given that, the EU, if not legally but morally, was obliged to stand up for Ukrainians and use everything within its power to support protests. Undoubtedly, the EU as a third party to this conflict was limited by the obligation to not interfere with state's sovereignty. However, other mechanisms were available, which respect the principle of state sovereignty.

First of all, even though the EU recognised the threat from the Russian Federation and condemned its pressure towards Ukraine and other Eastern Partnership countries, it did not go further than condemnation. The EU considered trade sanctions as a response to Russia's trade pressure on the Eastern Partnership countries but abstained from such actions. In the absence of more harsh reactions, Russia only understood it as a toleration of such activities and went further and uglier trying to find and push the limit of permissible. A more aggressive reaction on Russia's actions could have prevented further blatant violations of international law.

Second, the EU has not imposed any legal measures during the Revolution of Dignity which would bring the victory of the Maidan closer. Such measures could potentially include restrictive measures against main responsible persons, oligarchs. However, the EU always considered that at some point it would be possible to reach an amicable solution with Yanukovich. The EU adopted sanctions against several individuals only on 5 March 2014. The EU could also ease the visa requirements for Ukrainians, increase and deepen connections between EU citizens and Ukrainians.

However, even the given support demonstrated in many resolutions, conclusions, public statements of EU officials were one of prerequisites of the strong Maidan. Such

¹³² Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine. OJ L 66, 6.3.2014, p. 1–10, Article 3(1), Annex I

¹³³ Consolidated text: Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, Annex I

EU's actions provided protesters with necessary international credibility and public support, which inevitably put more pressure on Yanukovich. This is an example of the soft power which the EU possesses, i.e., being a moral and political leader in the region with a very high reputation. The EU used many available opportunities to express its support for the Euromaidan. The absence of support from the EU could let to the result that the post-revolution government would not had been recognised by the international community. The absence of such recognition from international actors could lead to another, even more horrible spin in the conflict.

Therefore, despite EU's lack of decisiveness during the Revolution of Dignity, it had done the least it could do and yet the most important thing: the EU expressly supported protesters and their cause.

2.2. EU's role in the resolution of the conflict in Crimea and Eastern Ukraine

The direct Ukrainian-Russian conflict started right after the end of the Revolution of Dignity as so-called "little green men" (in fact, Russian troops) appeared on the territory of Crimea. On 1 March 2014, the Russian Federation Council approved President's Putin request to use military forces in Ukraine.¹³⁴ In response to this event and to the ongoing escalation, the ministers of foreign affairs gathered for the Council meeting on 3 March 2014. The Council recognised Russia's conduct as an act of aggression, strongly condemned it, asked Russia to "withdraw its armed forces to the areas of their permanent stationing" and threatened to suspend discussions on visa matters and conclusion of the new agreement.¹³⁵

Following this, on 6 March 2014 the EU Heads of State or Government issued their statement on the situation in Ukraine. This statement merely reinforced the conclusions of the Council of 3 March 2014, but also proposed some other potential measures to be used against the Russian Federation which should be analysed. The EU Heads of State or Government warned that in case the Russian Federation did not

¹³⁴ BBC. Russian parliament approves troop deployment in Ukraine. bbc.com. 1 March 2014. <https://bbc.in/3y0XSx6> (Accessed 9 May 2021)

¹³⁵ Council of the European Union. "Council conclusions on Ukraine". Foreign Affairs Council meeting. Brussels, 3 March 2014. <https://bit.ly/33tNGPH> (Accessed 9 May 2021), paragraphs 1, 2 and 4

change its course of action, the EU would apply travel bans, asset freeze and would cancel the EU-Russia summit.¹³⁶ Given the severity of the situation in that moment and the announcement of the referendum in Crimea on joining the Russian Federation, it seems that the reaction of the EU did not live up to the threats and the circumstances present at that time. The EU simply limited itself to the verbal condemnation of Russia's actions and called for the negotiations and peaceful settlement. No legal measures were initiated, and the EU merely threatened to apply such measures.

On 16 March 2014, the illegal “referendum” took place in Crimea on the issue of joining the Russian Federation. The organisers announced that more than 95% voted in favour of joining the Russian Federation.¹³⁷ President of the European Council Herman Van Rompuy and President of the European Commission José Manuel Barroso issued a joint statement on that day and declared that the referendum was “illegal and illegitimate and its outcome will not be recognised”.¹³⁸ Despite not being a binding document but a statement, this act was indeed important as it clearly presented the policy of non-recognition of the referendum which formed a basis for Russian annexation of Crimea. Further, I will analyse in details further EU steps.

2.2.1. The application of restrictive measures against individuals, legal persons, entities, bodies

When it became clear and apparent that the Russian Federation would not stop before the annexation of Crimea, the EU announced its first set of restrictive measures with respect to people liable for the violations of territorial integrity, sovereignty and independence of Ukraine. By virtue of the Council's Decision 2014/145/CFSP and Council's Regulation No. 269/2014 of 17 March 2014, the EU imposed restrictive measures against 21 natural persons. This list included self-proclaimed leaders of

¹³⁶ European Council. “Statement of the Heads of State or Government on Ukraine”. Brussels, 6 March 2014. <https://bit.ly/3f62nxN> (Accessed 9 May 2021)

¹³⁷ Harding, Luke and Shaun Walker. “Crimea votes to secede from Ukraine in 'illegal' poll.” The Guardian, 16 March 2014. <https://bit.ly/2RFBadq> (Accessed 9 May 2021)

¹³⁸ European Council. “Joint statement on Crimea by President of the European Council Herman Van Rompuy and President of the European Commission José Manuel Barroso”. EUCO 58/14, PRESSE 140, PR PCE 53. Brussels, 16 March 2014. <https://bit.ly/3f7LW4c> (Accessed 9 May 2021)

Crimea, Crimean high-ranking officials (including speaker of the Verkhovna Rada of Crimea, Deputy Chairman of the Council of Ministers of Crimea), several Russian officials of the Federation Council of the Russian Federation and the State Duma of the Russian Federation and Russian military chiefs.¹³⁹ These restrictive measures included the prohibition for listed individuals to enter into or transit through the territory of the EU and the freeze of all assets owned, held or controlled by listed individuals and natural and legal persons associated with them.¹⁴⁰

Following Russia's annexation of Crimea, the EU extended the sanctions list and included 12 persons connected to such annexation and who publicly called for it. Among those persons were Deputy Prime Minister of the Russian Federation, Adviser and Aide to the President of the Russian Federation, Speakers of the Federal Councils and the State Duma, Head of the Russian Federal State news agency and several military officials.¹⁴¹ Basically, the EU's sanctions list was extended to almost all high-ranking officials of the Russian Federation missing only the President Vladimir Putin and the Prime Minister Dmitriy Medvedev.

Given the grown escalation in Eastern Ukraine, the EU amended the grounds for the adoption of restrictive measures to respond to these challenges by means of the Council Decision 2014/265/CFSP of 12 May 2014. This Decision extends the sanctions to persons who actively support or implement actions against the "territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or which obstruct the work of international organisations in Ukraine" and to the legal

¹³⁹ Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. OJ L 78, 17.3.2014, p. 16–21, Annex; 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. OJ L 78, 17.3.2014, p. 6–15, Annex I

¹⁴⁰ Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. OJ L 78, 17.3.2014, p. 16–21, Articles 1, 2; 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. OJ L 78, 17.3.2014, p. 6–15, Article 2

¹⁴¹ Council Implementing Decision 2014/151/CFSP of 21 March 2014 implementing Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. OJ L 86, 21.3.2014, p. 30–32, Annex; Council Implementing Regulation (EU) No 284/2014 of 21 March 2014 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. OJ L 86, 21.3.2014, p. 27–29, Annex

persons located in Crimea which were unlawfully nationalised by the Russian Federation.¹⁴² This increase of the scope assisted the EU to be able to include bigger number of individuals to the sanctions list and to claim the importance of the work of international organisations in Ukraine (including the OSCE).

Thus, the EU has not only formally condemned the annexation of Crimea but put these words into actions as the EU has imposed restrictive measures against a substantial list of persons which took part in the annexation.

The sanctions have become quite a popular tool for the EU as their scope and extend have developed over time as a reaction to a further escalation of the conflict by the Russian Federation. On 18 July 2014, the Council Decision 2014/475/CFSP expanded the scope of the restrictive measures to potentially cover the persons, bodies, entities which materially or financially support actions against the sovereignty and territorial integrity of Ukraine.¹⁴³ By means of the Council Decision 2014/499/CFSP, those who materially or financially support or benefit from the annexation of Crimea and destabilisation of Eastern Ukraine became also subject to the restrictive measures.¹⁴⁴ The EU simultaneously applied restrictive measures against 15 individuals and 18 legal persons and entities, which undermine the territorial integrity of Ukraine or the ownership of which has been transferred contrary to Ukrainian law.¹⁴⁵

With the development of the conflict in Eastern Ukraine and more clear understanding of the status quo, the EU again extended the ambit of restrictive measures to include “natural or legal persons, entities or bodies conducting transactions

¹⁴² Council Decision 2014/265/CFSP of 12 May 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. OJ L 137, 12.5.2014, p. 9–12, Article 1(1), (2)

¹⁴³ Council Decision 2014/475/CFSP of 18 July 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. OJ L 214, 19.7.2014, p. 28–28, Article 1

¹⁴⁴ Council Decision 2014/499/CFSP of 25 July 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. OJ L 221, 25.7.2014, p. 15–25, Article 1(2)

¹⁴⁵ Council Decision 2014/499/CFSP of 25 July 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. OJ L 221, 25.7.2014, p. 15–25, Annex; Council Implementing Regulation (EU) No 810/2014 of 25 July 2014 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. OJ L 221, 25.7.2014, p. 1–10, Annex

with the separatist groups in the Donbass region of Ukraine”¹⁴⁶ During the following years, the EU have been constantly updating the list of persons and entities under the sanctions. As of the latest amendment to the Council Decision 2014/145/CFSP of 1 October 2020, 178 natural persons and 48 entities are included in the list of sanctions.¹⁴⁷ The EU has tried to cover every person and entity which act against the territorial integrity, sovereignty, independence of Ukraine or benefits from such actions. These sanctions limit the free movement of such people, their business activities as well as significantly limits business opportunities and other sorts of cooperation for listed entities as Russian market seems to be the only one available.

Yet, the restrictive measures avoided the President of the Russian Federation Vladimir Putin the main beneficiary and instigator of the conflict in Eastern Ukraine and the annexation of Crimea, even though it is legally possible for the EU to include him in the sanctions list. It may seem that, despite all previous experience, the EU still views Vladimir Putin as a person with whom it is possible to hold fruitful negotiations and who may voluntarily agree on de-escalation. It may also be explained by the lack of decisiveness of the EU of the position that such act would do more damage than good.

Thus, the EU has been regularly applying the mechanism of restrictive measures against natural persons, legal persons, entities, bodies which act against the territorial integrity, sovereignty, independence of Ukraine or benefit from such actions. Such restrictive measures include the freeze of assets and the prohibition for individuals to enter the EU.

2.2.2. The application of sectoral restrictive measures

Following its policy of non-recognition of the illegal annexation of Crimea, the EU by means of the Council Decision 2014/386/CFSP and Council Regulation No.

¹⁴⁶ Council Decision 2014/658/CFSP of 8 September 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. OJ L 271, 12.9.2014, p. 47–53, Article 1(2)

¹⁴⁷ Consolidated text: Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, Annex

692/2014 imposed another set of restrictive measures, *i.e.*, the prohibition of the import of goods originating in Crimea and the provision of any financial assistance thereto.¹⁴⁸ These legal acts were further amended by the EU and by virtue of such amendments any financing of the business in Crimea, share participation therein has become prohibited.¹⁴⁹ It has also become illegal to “sell, supply, transfer, or export goods and technology” by Member States nationals or using facilities owned by them to Crimea or for the use in Crimea in four following sectors: transport, telecommunications, energy and the prospection, exploration and production of oil, gas and mineral resources.¹⁵⁰

Hence, the EU has isolated Crimea and prohibited any investments, business activities on the peninsula by EU’s companies. The EU is trying to make sure that the annexation of Crimea would not only substantially damage the image of the Russian Federation but would also become a significant financial burden for the aggressor state. Nowadays the analysis whether a company is enlisted in the EU sanctions has become a necessary part of any due diligence and the doing of business for sanctioned companies has become rather complicated.

Apart from isolating Crimea, the EU also applied restrictive measures against Russia. In the Council’s conclusions of 17 March 2014, the EU called for negotiations and warned Russia that any further escalation and annexation of Crimea would lead “to additional and far-reaching consequences for relations in a broad range of economic areas”.¹⁵¹

On 31 July 2014, the Council adopted the Regulation No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

¹⁴⁸ Council Decision 2014/386/CFSP of 23 June 2014 concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol. OJ L 183, 24.6.2014, p. 70–71, Article 1; Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol. OJ L 183, 24.6.2014, p. 9–14, Article 2

¹⁴⁹ Consolidated text: Council Decision 2014/386/CFSP of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol, Article 4a; Consolidated text: Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol, Article 2a

¹⁵⁰ Consolidated text: Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol, Article 2b

¹⁵¹ Council of the European Union. “Council conclusions on Ukraine”. Foreign Affairs Council meeting. Brussels, 17 March 2014. <https://bit.ly/3hfavP5> (Accessed 9 May 2021), paragraphs 3 and 4

and the Decision 2014/512/CFSP aiming to increase the cost for Russia for its actions against Ukraine.¹⁵² In particular, this Regulation has prohibited to sell, supply, transfer or export arms, dual-use goods, *i.e.*, goods that may be used with military or civilian purpose, to any entity in Russia or for use in Russia, as well as prohibited providing technical, financial or any other assistance or services which concern arms or dual-use goods.¹⁵³

Moreover, the EU has imposed restrictions upon the export of certain equipment and technology suited to the oil industry to Russia by requiring a prior authorisation for such export.¹⁵⁴ In addition, it has become prohibited for EU companies to export equipment and technology that may be used for “deep water oil exploration and production, Arctic oil exploration and production, or shale oil projects in Russia”.¹⁵⁵ Finally, the EU has imposed restrictions on the capital market of Russia. Article 5 of the Council Regulation No 833/2014 prohibits to purchase, sell and in any way deal with “transferable securities and money-market instruments with a maturity exceeding 90 days”, which are issued by some listed banks or credit institutions owned by Russia or listed banks.¹⁵⁶

These sectoral sanctions against Russia have been further constantly amended. The EU harshened the sanctions with respect to Russia’s capital market, limiting the maturity of financial instruments allowed for purchase and sale to 30 days, including the financial instruments of military and oil companies to the list of companies to which those restrictions apply.¹⁵⁷ The EU has been regularly prolonging these sanctions and

¹⁵² Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. OJ L 229, 31.7.2014, p. 1–11, Recital 2; Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. OJ L 229, 31.7.2014, p. 13–17, Recital 8

¹⁵³ Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. OJ L 229, 31.7.2014, p. 1–11, Articles 2, 4

¹⁵⁴ *Ibid.*, Article 3

¹⁵⁵ *Ibid.*, Article 3(5)

¹⁵⁶ *Ibid.*, Article 5

¹⁵⁷ Council Decision 2014/659/CFSP of 8 September 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. OJ L 271, 12.9.2014, p. 54–57, Article 1(1)

currently they are applicable till 31 July 2021.¹⁵⁸ It is of course expected that the sanctions will continue to apply, given Russia's unwillingness to cooperate.

Hence, the EU applied sectoral sanctions against Russia in the spheres of finance, energy, defence and dual-use goods. The restrictive measures were predominantly aimed to prevent and prohibit any cooperation with companies which assist Russia in the latter's destabilisation actions against Ukraine and aimed to adversely affect oil industry as an important sphere of Russian economy. It is estimated that the EU sanctions cost Russia 8-10% of the GDP.¹⁵⁹ Even though it is impossible to precisely estimate the effects of restrictive measures, given the other aspects which potentially may affect the economy, these estimated numbers indicate that Russian economy was indeed affected by EU's restrictive measures.

Yet, one of the biggest and most difficult fields for the EU to impose restrictive measures on the natural gas sphere and refuse it. However, this potentially might be the remedy of last resort, given how the EU is dependent on Russian natural gas as it is the biggest EU's supplier.¹⁶⁰ In reverse, Russia also significantly depends on the EU as a supplier and in case the EU finds the sources to move from Russian natural gas, such refusal will definitely weaken Russia and its economy and will decrease EU's dependence upon Russia.

The level of EU's response also sometimes raises questions. For instance, during the Kerch strait incident, when Russia apprehended Ukrainian vessels and detained seamen, the EU simply requested the immediate release and included several persons into the list of sanctions.¹⁶¹ The appropriateness of such response is questionable as the EU could potentially use such measure as restrictive sanctions more actively and effectively.

¹⁵⁸ Council Decision (CFSP) 2020/2143 of 17 December 2020 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. OJ L 430, 18.12.2020, p. 26–26, Article 1

¹⁵⁹ Institute of Economic Forecasting. "Estimating potential effect of sanctions on economic development in Russia and EU". Russian Academy of Science, 2015. <https://bit.ly/3be95kk> (Accessed 9 May 2021)

¹⁶⁰ Eurostat. "EU Imports of Energy Products - Recent Developments". October 2021. <https://bit.ly/3f3R1u9> (Accessed 9 May 2021)

¹⁶¹ Council of the European Union. Ukraine: EU responds to escalation at the Kerch Strait and the Sea of Azov, and renews sanctions over actions against Ukraine's territorial integrity. Press release. 15 March 2019. <https://bit.ly/3f3lpoF> (Accessed 9 May 2021)

Finally, following the recent escalation on the battlefield and the gathering of Russian troops at Ukrainian borders and in Crimea, which is “the biggest concentration of Russian troops since 2014”,¹⁶² the European Parliament has adopted the respective resolution. The European Parliament has enlisted other Russia’s wrongdoings with respect to Ukraine, including illegally detained and imprisoned Ukrainian citizens, human rights violations in Crimea and even recognised that Russian troops are located in Eastern Ukraine, calling “on Russia to remove its troops from the so-called People’s Republics of Lugansk and Donetsk”.¹⁶³ The European Parliament has declared that in case Russia’s military build-up results in invasion into Ukraine, the EU would stop export of gas and oil from Russia, stop the construction of the Nord Stream 2 pipeline, would freeze assets of Russian oligarchs close to the authorities and that Russia would be excluded from the SWIFT payment system.¹⁶⁴

It seems that the EU is indeed trying to learn a lesson and to prevent another Russian invasion in Ukraine. However, if the EU admits that Russian troops are present on the territory of Eastern Ukraine and makes aforementioned severe measures conditional upon Russian invasion, then the question remains why the EU has not proceeded with such measures earlier and yet only threatens Russia with their imposition. At the very least, some measures, such as halting the Nord Stream 2 pipeline completely, should have been implemented to date.

Thus, the EU has imposed several sectoral restrictive measures in respect to Russian aggression in Ukraine. Yet, the EU has not come close to the limits of this mechanism as harsher sanctions are available, which could and should have been imposed as of April 2021.

2.2.3. The EU-Ukraine Association Agreement

Apart from trying to influence Russia and persuade it not to continue with the escalation, the EU also decided to exercise a path of supporting Ukraine in this conflict

¹⁶² European Parliament resolution on Russia, the case of Alexei Navalny, the military build-up on Ukraine’s border and the Russian attack in the Czech Republic (2021/2642(RSP)). 26 April 2021, Recital B

¹⁶³ *Ibid.*, paragraphs 1-2

¹⁶⁴ *Ibid.*, paragraph 3

by available means, which are predominantly political and economic. For instance, the EU decided to temporarily remove custom duties on Ukrainian goods entering EU market, provide Ukraine with financial assistance and to sign the Association Agreement as soon as possible.¹⁶⁵

On 21 March 2014, during the extraordinary EU – Ukraine Summit, the political part of the Association Agreement was signed, including titles on general principles, political dialogue, associations, reforms, cooperation in the field of security etc.¹⁶⁶ The elimination and reduction of custom duties on listed goods was established by the EU’s Regulation No 374/2014 of 16 April 2014 and was in force till 1 November 2014.¹⁶⁷ This unilateral step was caused by “unprecedented security, political and economic challenges faced by Ukraine”.¹⁶⁸ In the same vein, the Commission proposed complex financial assistance, which during the following years could allow Ukraine to receive EUR 11 billion.¹⁶⁹ The reduction and elimination of tariffs seems especially fruitful as it helped the companies, which primarily sold their goods to the Russian Federation, to change their trading paths towards the EU. The EU anticipated that such measure would save Ukrainian exporters and manufacturers around EUR 487 million a year.¹⁷⁰

The EU-Ukraine Association Agreement deserves special attention as a part of EU’s participation in the conflict resolution. First of all, it shall be commended that the EU had not broken its promises on the readiness to sign the Association Agreement with Ukraine, despite constant pressure from the Russian Federation and the breach of territorial integrity of Ukraine by Russia to prevent Ukraine’s closer integration with the EU.

¹⁶⁵ Council of the European Union. “Council conclusions on Ukraine”. Foreign Affairs Council meeting. Brussels, 17 March 2014. <https://bit.ly/3hfavP5> (Accessed 9 May 2021), paragraphs 6 and 7

¹⁶⁶ Government Portal. “Association Agreement between the European Union and Ukraine”. <https://bit.ly/3exafth> (Accessed 9 May 2021)

¹⁶⁷ Regulation (EU) No 374/2014 of the European Parliament and of the Council of 16 April 2014 on the reduction or elimination of customs duties on goods originating in Ukraine. OJ L 118, 22.4.2014, p. 1–760, Articles 1, 7 and Annex I

¹⁶⁸ *Ibid.*, Recital 2

¹⁶⁹ European Commission. “European Commission’s support to Ukraine”. Press release. Brussels, 5 March 2014. <https://bit.ly/3y7ktsb> (Accessed 9 May 2021)

¹⁷⁰ European Parliament. “MEPs cut customs duties on imports from Ukraine”. Press Release, 3 April 2014. <https://bit.ly/2QZDHzc> (Accessed 9 May 2021)

Second, Ukraine undertook legal obligations to conduct reforms, to approximate laws and to move closer to the EU. These actions, especially successful reforms, would definitely take part in the resolution of the conflict between Ukraine and Russia as it would make Ukraine stronger and more stable.

For instance, the EU-Ukraine Association Agreement formed the basis for regular bilateral dialogue between the Parties.¹⁷¹ Given the provisions on the aims of political dialogue, the issues of security, stability, crisis management, peace, promotion of territorial integrity, sovereignty play the most crucial role in the need of such a dialogue.¹⁷²

The Association Agreement also prescribes for the dialogue and cooperation between the EU, Member States and Ukraine with regard to “the area of foreign and security policy, including the Common Security and Defence Policy (CSDP)”.¹⁷³ Article 10 of the EU-Ukraine Association Agreement embraces practical cooperation between the Parties in military and technological spheres, crisis prevention and management. In particular, the military-technological cooperation shall be conducted on the auspices of the European Defence Agency.¹⁷⁴

The Ministry of Defence of Ukraine and the European Defence Agency have concluded the Administrative Agreement. This Agreement provides with a possibility for Ukraine to participate in EU’s projects and programmes of the European Defence Agency. The Administrative Agreement also mentions initial spheres in which the cooperation could be fruitful, including Single European Sky, training of the forces, standardisation and logistics.¹⁷⁵

The cooperation between Ukraine and the EU in the military sphere enhances Ukraine’s connections with the EU in this sphere and allows Ukraine to obtain the knowledge of European counterparts. For instance, Ukraine participates in the Balkan

¹⁷¹ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, signed on 29 May 2014, OJ L 161, p. 3–2137, Article 4(1)

¹⁷² *Ibid.*, Article 4(2)

¹⁷³ *Ibid.*, Article 7(1)

¹⁷⁴ *Ibid.*, Article 10(3)

¹⁷⁵ Administrative Agreement between the European Defence Agency and the Ministry of Defence of Ukraine. Signed in Brussels on 7 December 2015. <https://bit.ly/3y06WIN> (Accessed 9 May 2021), Annex, paragraph 3

Battlegroup HELBROC, the EU holds the CSDP Orientation Course in Ukrainian military university with the help of the European Security and Defence College.¹⁷⁶

Other aspects of the EU-Ukraine Association Agreement, which are not directly linked to the security and defence, may also play role in strengthening Ukraine and, subsequently, increasing the chances of the successful outcome in the conflict for Ukraine. For instance, Ukraine has significant problems with corruption, which unavoidably weakens the state. Even in the defence sphere, which is vital for the protection of territorial integrity, Ukraine encounters many cases of corruption, which the Independent Defence Anti-Corruption Committee highlighted in its compendium.¹⁷⁷ The preamble of the Association Agreement prescribes that the European integration of Ukraine depends on “Ukraine's track record in ensuring respect for common values, and progress in achieving convergence with the EU in political, economic and legal areas”.¹⁷⁸ Legal scholars define this as an example of the conditionality approach and indicate that *the links between country's progress and deepening of the integration is a key characteristic for the Eastern Partnership, yet the Association Agreement provide with legally binding provisions, contrary to soft-law mechanisms of Action Plans*.¹⁷⁹

In addition, the mechanism of legal approximation may also indirectly assist to the conflict resolution by strengthening Ukraine. Ukraine is obliged to carry out the gradual approximation of the legislation to EU law and the EU-Ukraine Association Agreement prescribes for the special monitoring procedure to ensure the compliance, including on-the-spot missions with the EU's participation.¹⁸⁰ This mechanism is expected to ensure that “legislative approximation goes beyond a formal adaptation of

¹⁷⁶ Mission of Ukraine to the European Union. “Ukraine-EU cooperation in the military-political, military and military-technical spheres”. 30 October 2020. <https://bit.ly/3o2SmFV> (Accessed 9 May 2021)

¹⁷⁷ Independent Defence Anti-Corruption Committee. “Compendium 2016-2019: Consolidated NAKO Recommendations”. June 2019. <https://bit.ly/2R8S18v> (Accessed 9 May 2021)

¹⁷⁸ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, signed on 29 May 2014, OJ L 161, p. 3–2137, Preamble

¹⁷⁹ Petrov, Roman, Guillaume Van der Loo, Peter Van Elsuwege. “The EU-Ukraine Association Agreement: A New Legal Instrument of Integration Without Membership?”. *Kyiv-Mohyla Law and Politics Journal* 1 (2015): 1–19, p. 3

¹⁸⁰ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, signed on 29 May 2014, OJ L 161, p. 3–2137, Articles 474, 475

national legislation”.¹⁸¹ In the sphere of national defence and security Ukraine demonstrates the biggest progress in terms of the legal approximation, reaching 89% of the expected progress.¹⁸² Thus, the system of legal approximation under the EU-Ukraine Association Agreement provided Ukraine with a necessary roadmap to improve the normative regulation of the defence and security sphere. In turn, Ukraine complied with almost all milestones to date in this sphere, improving the functioning of the defence and security sphere and, subsequently, increasing its strength in the conflict.

2.2.4. Humanitarian aid

Humanitarian aid from the EU shall also be regarded as one of examples of EU’s active engagement in the conflict resolution. This mechanism is understood as one relevant for the conflict prevention.¹⁸³ Humanitarian aid is a rather important issue as it concerns specifically the persons which are affected the most due to the conflict. The well-being of these people and the support of the area of their residence is necessary for potential reintegration of persons and land into Ukraine. The EU’s humanitarian aid assisted in this regard.

During 2014-2018 the EU has provided humanitarian aid in the amount of around EUR 120 million.¹⁸⁴ The European Civil Protection and Humanitarian Aid Operation mainly concentrated on the population living the closest to the contact line and particularly vulnerable population in the conflict area, providing these groups with food assistance, non-food items, shelter, health and education.¹⁸⁵

The EU has declared that “the critical “life-saving” humanitarian needs were largely being met” and that active participation of the European Civil Protection and

¹⁸¹ Petrov, Roman, Guillaume Van der Loo, Peter Van Elsuwege. “The EU-Ukraine Association Agreement: A New Legal Instrument of Integration Without Membership?”. *Київ-Мохyla Law and Politics Journal* 1 (2015): 1–19, p. 13

¹⁸² Кабінет Міністрів України. “Пульс Угоди: моніторинг реалізації плану заходів з виконання Угоди. Напрямок угоди про асоціацію – прогрес виконання”. URL: <https://pulse.kmu.gov.ua/> (Accessed 14 April 2021)

¹⁸³ Commission of the EC. “Communication from the Commission on Conflict Prevention”. COM (2001) 211. Brussels, 11 April 2001. <https://bit.ly/3exbZ5F> (Accessed 9 May 2021), p. 6

¹⁸⁴ European Commission. “Evaluation of the European Union’s humanitarian assistance in Ukraine 2014-2018”. Final Report, July 2020. <https://bit.ly/3eYy5Ni> (Accessed 9 May 2021), p. 8

¹⁸⁵ *Ibid.*, p. 10

Humanitarian Aid Operation assisted the gathering of bigger support from the international community and increased quality and quantity of the humanitarian aid.¹⁸⁶

Hence, the EU had significant injections of the humanitarian aid to help persons living in the conflict zone, providing them with necessary life-saving attributes. Such EU's actions have also been serving a leading example on the consistency and structure of the humanitarian aid.

Therefore, the annexation of Crimea and prolonged conflict in Eastern Ukraine was met by numerous actions of the EU that were aimed to punish the instigators, beneficiaries and persons liable for the violation of territorial integrity of Ukraine and to try to strengthen Ukraine's positions and to provide some assistance to the people under the constant threat living in the conflict area. Among those mechanisms are diplomatic as well as legal ones. The policy of non-recognition of the annexation pertains to the diplomatic mechanisms and it simultaneously paved the way for the EU to continue with legal mechanisms including restrictive measures against individuals and sectoral sanctions.

Conflicts in Ukraine of different nature and magnitude were analysed: the Revolution of Dignity and the annexation of Crimea and the conflict in Eastern Ukraine. With respect to the EU's role in the resolution of the crisis during the Revolution of Dignity, such role was not extremely successful. Ukrainians' will to be a part of a European family became a catalysator for the protests, in the aftermath of Yanukovich's refusal to sign the Association Agreement. Undoubtedly, the EU as a third party to this conflict was limited by the variety of available instruments and obligation to not interfere with state's sovereignty but more active role could have been expected.

Even though the EU recognised the threat from the Russian Federation and condemned its pressure towards Ukraine and other Eastern Partnership countries, it did not go further than condemnation. In the absence of more harsh reactions, Russia only

¹⁸⁶ *Ibid.*, p. 63

understood it as a toleration of such activities and went further trying to find and push the limit of permissible.

The EU also has not imposed any legal measures during the Revolution of Dignity. Such measures could potentially include restrictive measures against main responsible persons, oligarchs. However, the EU always considered that at some point it would be possible to reach an amicable solution with Yanukovich. The EU adopted sanctions against several individuals only after the end of the Revolution of Dignity.

However, the support demonstrated in declaratory statements of EU bodies and officials was one of prerequisites of the strong Maidan. Such EU's actions provided protesters with necessary international credibility and public support, which inevitably put more pressure on Yanukovich. This is an example of the soft power which the EU possesses. The absence of support from the EU could let to the result that the post-revolution government would not had been recognised by the international community. The absence of such recognition from international actors could lead to another, even more horrible spin in the conflict.

Despite EU's lack of decisiveness during the Revolution of Dignity, the soft power was the main instrument used by the EU, which provided the protesters with more international credibility, support and further recognition of post-revolution government.

The EU's actions in response to Russia's annexation of Crimea and the conflict in Eastern Ukraine are more tangible and significant. First and foremost, the EU uphold the position of non-recognition of the annexation of Crimea. This act was indeed important as it has laid ground for further EU's steps against self-proclaimed leaders, companies which function in Crimea and Russia.

Further, the EU has been regularly applying the mechanism of restrictive measures against natural persons, legal persons, entities, bodies which act against the territorial integrity, sovereignty, independence of Ukraine or benefit from such actions. As of the latest amendment to the Council Decision 2014/145/CFSP of 1 October 2020, 178 natural persons and 48 entities are included in the list of sanctions. By means of restrictive measures, the EU has frozen the assets, limited the business opportunities,

closed the EU market for listed companies and prohibited individuals included in the sanctions list to enter the EU.

The EU also applied sectoral sanctions against Russia in the spheres of finance, energy, defence and dual-use goods. The restrictive measures are predominantly aimed to prevent and prohibit any cooperation with companies which assist Russia in the destabilisation against Ukraine and aimed to adversely affect oil industry as an important sphere of Russian economy. Even though it is impossible to precisely estimate the effects of restrictive measures, given the other aspects which potentially may affect the economy, it is estimated that the EU sanctions cost Russia 8-10% of the GDP.¹⁸⁷ Yet, there is a possibility for the EU to extend the sanctions and to cover other spheres, including the natural gas market, as well as to deepen the existed sanctions, specifically in the sphere of capital market.

The EU-Ukraine Association Agreement also plays a role as an instrument that affects the conflict in Ukraine. First, the system of legal approximation under the EU-Ukraine Association Agreement has provided Ukraine with a necessary roadmap to improve the normative regulation of the defence and security sphere. The EU-Ukraine Association Agreement also prescribes for the cooperation between both Parties in the field of defence and security and such cooperation may also be beneficial for Ukraine. The conditionality principle enshrined in the Association Agreement may indirectly assist the conflict resolution. This principle makes Ukraine's deeper integration conditional upon Ukraine's successful transformation, which includes the democracy promotion, conduct of reforms.

¹⁸⁷ Institute of Economic Forecasting. "Estimating potential effect of sanctions on economic development in Russia and EU". Russian Academy of Science, 2015. <https://bit.ly/3be95kk> (Accessed 9 May 2021)

CHAPTER 3

EU'S INSTRUMENTS AIMED TOWARDS CONFLICT RESOLUTION IN ARMENIA, AZERBAIJAN, BELARUS, GEORGIA AND MOLDOVA

3.1. EU's role in the resolution of the Transnistrian conflict

The Transnistrian conflict is a long-lasting frozen conflict in Moldova's territory. It erupted in 1990 with limited fighting "between Russian-backed pro-Transnistrian forces and the Moldovan police and military".¹⁸⁸ Transnistrian Russian-backed forces claimed at that time that the Moldovan movement towards Romania would affect Transnistria's Russian-speaking population and Transnistria proclaimed independence.¹⁸⁹ In 1992 the war erupted on this territory and Transnistria was supported by Russian forces.¹⁹⁰

On 21 July 1992, the ceasefire was reached, which established a security zone with a peacekeeping mission.¹⁹¹ In this sub-chapter I will analyse the subsequent role of the EU in the frozen conflict, its attempts to bring closer the resolution of the conflict and the instruments used for such aim.

In 2003 the EU took its first step in the attempts to settle the Transnistrian conflict. By means of the Council Common Position 2003/139/CFSP of 27 February 2003 the restrictive measures against the leadership of the Transnistrian region of the Moldovan Republic were imposed. The EU prohibited the entrance of listed individuals into its territory or transit through the territory of the EU.¹⁹² The Common Position 2003/139/CFSP was in force for a year and was not prolonged by the EU.

¹⁸⁸ Association for Diplomatic Studies and Training. "Moldova's Transnistrian conflict". Huffpost, 6 December 2017. <https://bit.ly/2Q5B4eE> (Accessed 9 May 2021)

¹⁸⁹ Stăte, Mihai-Cristian. "Transnistria: The "Hot" Nature of a "Frozen" Conflict". A monograph. School of Advanced Military Studies. 23 May 2013. <https://bit.ly/2SuOVvK> (Accessed 9 May 2021), p. 17; Association for Diplomatic Studies and Training. "Moldova's Transnistrian conflict". Huffpost, 6 December 2017. <https://bit.ly/2Q5B4eE> (Accessed 9 May 2021)

¹⁹⁰ Stăte, Mihai-Cristian. "Transnistria: The "Hot" Nature of a "Frozen" Conflict". A monograph. School of Advanced Military Studies. 23 May 2013. <https://bit.ly/2SuOVvK> (Accessed 9 May 2021), pp. 18, 19

¹⁹¹ *Ibid.*, p. 20

¹⁹² Council Common Position 2003/139/CFSP of 27 February 2003 concerning restrictive measures against the leadership of the Transnistrian region of the Moldovan Republic. OJ L 53, 28.2.2003, p. 60–61, Article 1

In the 2004 Action Plan the solution of the Transnistrian conflict had been defined as one of key objectives of the cooperation, mentioning the need for EU's increased role in the negotiations, political dialogue, assistance with other parties.¹⁹³ The clear declaration of the priorities may form a solid basis for further measures. Afterwards, the EU initiated the creation of the EU Border Assistance Mission (the "EUBAM") as an important step in "countering smuggling and other criminal activities along the 450 km Transnistrian part of the Ukrainian-Moldovan border".¹⁹⁴ The EU regarded the problem with border control as one of the most significant ones which adversely affected the budget and rule of law.¹⁹⁵ In 2006, the EU declared that the EUBAM was an important step for the conflict settlement.¹⁹⁶ In particular, the better management of the border has provided the beginning for the economic integration of Transnistria into Moldova.¹⁹⁷ The success of the EUBAM opened up the possibility for this promising development in the Transnistria conflict, in which the EU also took its part.

Moldova decided to try to solve the Transnistria conflict by economic integration of Transnistria. Given that Transnistria does not share a border with Russia, it inevitably becomes more reliant on Moldova and Ukraine. The EU, by virtue of the EUBAM, ensured that the Transnistrian government would not benefit from smuggling and other criminal activities and it would depend on the legal trade and cooperation, in case there is not enough money coming from Russia.

First, the EU made benefits from a preferential trade regime conditional upon the Transnistrian companies' registration in Chisinau, leading to many such cases of registration.¹⁹⁸ Transnistrian business took a practical and rational approach and

¹⁹³ Legislationonline. "EU/Moldova Action Plan". 2004. <https://bit.ly/2Q1uDsU> (Accessed 9 May 2021), pp. 1, 11-12; Scheffers, Bart. "Tempering expectations: EU involvement with the Transdnestrian conflict". *Security and Human Rights* 4 (2010): 293-302, p. 294

¹⁹⁴ Sasse, Gwendolyn. "The European Neighbourhood Policy and Conflict Management: A Comparison of Moldova and the Caucasus". *Ethnopolitics* 8, issue 3-4 (2009): 369-386, p. 377

¹⁹⁵ Popescu, Nicu. "The EU in Moldova – Settling conflicts in the neighbourhood". The European Union Institute for Security Studies. Occasional Paper No. 60 (October 2005), p. 32

¹⁹⁶ Sasse, Gwendolyn. "The European Neighbourhood Policy and Conflict Management: A Comparison of Moldova and the Caucasus". *Ethnopolitics* 8, issue 3-4 (2009): 369-386citing European Commission (2006) ENP Progress Report Moldova COM(2006)726final, SEC(2006)1506/2, 4 December

¹⁹⁷ Scheffers, Bart. "Tempering expectations: EU involvement with the Transdnestrian conflict". *Security and Human Rights* 4 (2010): 293-302, p. 296

¹⁹⁸ *Ibid.*, pp. 296-297

registered its business in Chisinau to have more possibilities for development and growth, understanding that these factors are closely related to Moldova. Thus, Moldova has chosen cooperation as a tool for conflict resolution, trying to integrate and not isolate the territories.

Second, the EU has provided funding to Moldova aimed to bring Transnistria closer. For instance, the EU funded independent media in Moldova and Transnistria, health, environmental projects etc.¹⁹⁹ These EU tools are called “confidence-building measures” (the “CBMs”), which aim to increase the cooperation between the business, non-governmental organisations, other civil society actors from both conflicting parties.²⁰⁰ By means of the CBMs, the EU targets “the fields of health care, environmental protection and social infrastructure renovation through local development”.²⁰¹ Such actions, even being insignificant, play a role in bringing Transnistria closer to Moldova.

Moreover, the EU by virtue of the Council Joint Action 2005/265/CFSP of 23 March 2005 appointed the first EU Special Representative for Moldova, whose objectives were to contribute to a peaceful settlement of the Transnistria conflict and to contribute to its implementation and overall stability in the region, to promote the rule of law, democracy, respect for human rights in Moldova, to build closer relationship between the EU and Moldova etc.²⁰² Article 4 of the Council Joint Action 2005/265/CFSP states that the EU Special Representative is acting under the authority of the High Representative. The EU Special Representative actively contributed to the political dialogue overall and particularly with regard to the development of the EUBAM.²⁰³

¹⁹⁹ *Ibid.*, p. 296

²⁰⁰ Montesano, Francesco S., Tony van der Togt, Wouter Zweers (2016). “The Europeanisation of Moldova: Is the EU on the Right Track?”. Clingendael Report, July 2016. <https://bit.ly/3hetREg> (Accessed 9 May 2021), p. 18

²⁰¹ *Ibid.*

²⁰² Council Joint Action 2005/265/CFSP of 23 March 2005 appointing a Special Representative of the European Union for Moldova. OJ L 81, 30.3.2005, p. 50–52, Article 2

²⁰³ Grevi, Giovanni. “Pioneering Foreign Policy: The EU Special Representatives”. Report. European Union Institute for Security Studies (2007): 63-70, <https://bit.ly/2SsONGf> (Accessed 9 May 2021), pp. 68-69

Moldova called the EU for more support, asked “to go beyond the role of an observer” and to send EU peacekeeping mission instead of a Russian one.²⁰⁴ The EU Special Representative was the one who pushed these talks in search of different options, even though they have not led to successful outcome.²⁰⁵ The mandate of the EU Special Representative had expired on 28 February 2007.²⁰⁶

The EU has established itself as the closest partner for Moldova and, by using soft power, is able to provide Moldova with clear plans and step-by-step procedures on Moldova’s way to strengthen itself. As it was demonstrated earlier, Moldova has decided to establish deep economic links with Transnistria, hoping that in the future this would result in either the change of elites or change of their narrative. The EU has all necessary tools for Moldova to build itself as a strong economy and to be economically and financially attractive for Transnistria.

However, the problem is that the EU was still enormously cautious trying not to irritate Russia. For instance, Arne Niemann and Tessa de Wekker had analysed press statements of 18 summits of the EU and Russia from 2000 to 2010 and concluded that during those summits “Transnistria was referred to in the final press statements only five times and never on its own”, meaning that it was always mentioned together with other regional conflicts.²⁰⁷ They also quote the interview of the EU Special Representative Adriaan Jacobovits de Szeged, who said that “the EU is afraid to upset Russia about a relatively unimportant matter as Transnistria”.²⁰⁸

On 21 January 2008, the EU adopted the Council Regulation (EC) No 55/2008, by which it introduced autonomous trade preferences for Moldova. Article 1 provided for some goods to be admitted into the EU without any tariffs or charges, quantitative or qualitative restrictions or measures having equivalent effect. The EU subjected such

²⁰⁴ Sasse, Gwendolyn. “The European Neighbourhood Policy and Conflict Management: A Comparison of Moldova and the Caucasus”. *Ethnopolitics* 8, issue 3-4 (2009): 369-386, p. 374

²⁰⁵ Scheffers, Bart. “Tempering expectations: EU involvement with the Transdnestrian conflict”. *Security and Human Rights* 4 (2010): 293-302, p. 298

²⁰⁶ Council Joint Action 2006/120/CFSP of 20 February 2006 extending the mandate of the European Union Special Representative for Moldova. OJ L 49, 21.2.2006, p. 11–13, Article 1

²⁰⁷ Niemann, Arne and Tessa de Wekker. “Normative power Europe? EU relations with Moldova”. *European Integration online Papers* 14, Article 14 (2010), p. 13

²⁰⁸ *Ibid.*

preferences to Moldova's cooperation and compliance with EU's regulations, abstention from increasing tariffs etc.²⁰⁹ The autonomous trade preferences were in force up until 31 December 2015 and were replaced by the rules of the EU-Moldova Association Agreement.²¹⁰ These autonomous trade preferences played their role in connecting Transnistria more to the EU and Moldova. The Transnistrian companies benefitted from the autonomous trade preferences.²¹¹ These companies were able to comprehend what the access to the EU market can provide and could put pressure on local self-proclaimed government to cooperate with the EU or, in case of the lack of effectiveness of such pressure, to prepare the ground for smooth integration if the self-proclaimed government collapses.

While the autonomous trade preferences appeal to the business in Moldova, the EU also decided on the visa-free regime for Moldova nationals by means of the Regulation (EU) No 259/2014 of 3 April 2014.²¹² The visa-free regime provides with the visibility of the EU and demonstrates benefits for the population of the cooperation with the EU and being part of the European family. It also stimulates the country to cooperate more with the EU and to conduct necessary reforms, including reforms in the spheres of migration management, crime prevention, security, public order, human rights protection etc.²¹³

The conclusion of the EU-Moldova Association Agreement was the next and the biggest milestone in EU-Moldova cooperation, which also affected the conflict in Transnistria. The EU-Moldova Association Agreement was signed on 27 June 2014

²⁰⁹ Council Regulation (EC) No 55/2008 of 21 January 2008 introducing autonomous trade preferences for the Republic of Moldova and amending Regulation (EC) No 980/2005 and Commission Decision 2005/924/EC. OJ L 20, 24.1.2008, p. 1–8, Article 2

²¹⁰ Regulation (EU) No 581/2011 of the European Parliament and of the Council of 8 June 2011 amending Council Regulation (EC) No 55/2008 introducing autonomous trade preferences for the Republic of Moldova. OJ L 165, 24.6.2011, p. 5–7, Article 1

²¹¹ Prohnițchi, Valeriu, and Adrian Lupușor. "Transnistria and the Deep and Comprehensive Free Trade Agreement: a little stone that overturns a great wain?". Policy Notes, 2nd Series, No. 1 (February 2013). <https://bit.ly/3vSBY71> (Accessed 9 May 2021), pp. 4-5

²¹² Regulation (EU) No 259/2014 of the European Parliament and of the Council of 3 April 2014 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. OJ L 105, 8.4.2014, p. 9–11, Article 1

²¹³ EU-Republic of Moldova Visa Dialogue. "Action Plan on Visa Liberalisation". 16 December 2010. <https://bit.ly/3o8SoMj> (Accessed 9 May 2021), pp. 6-10

and fully entered into force on 1 July 2016.²¹⁴ A recital of the Association Agreement provides that the Parties recognise “the importance of the commitment of the Republic of Moldova to a viable settlement of the Transnistrian conflict, and the EU's commitment to support post-conflict rehabilitation”.²¹⁵ This wording exemplifies that the EU does not intend to commit itself to the conflict settlement but rather assist to it. The EU sees its role as more significant at the stage of post-conflict rehabilitation.

In addition, the EU-Moldova Association Agreement states that the Transnistrian conflict is one of the central issues of the political dialogue and cooperation between the EU and Moldova, as well as with other interested international actors, in accordance with full respect of the sovereignty and territorial integrity of Moldova.²¹⁶ The EU-Moldova Association Agreement also provides with relevant aims of the political dialogue, which include, *inter alia*, strengthening cooperation on international security, stability, crisis management, promotion of the principles of territorial integrity and independence.²¹⁷

However, the EU-Moldova Association Agreement plays bigger role in its economic aspect rather than political dialogue. Due to the autonomous trade preferences and Transnistria's close location to the EU, the Transnistrian economy has become hugely dependant on the foreign trade.²¹⁸ To put this reliance in numbers, in 2014 the export of goods from Transnistria to the EU constituted 38% of all Transnistrian export.²¹⁹ Thus, the EU had obtained significant leverage over the Transnistrian region, as well as Moldova had done so, given that the companies from Transnistria conducted trade with the EU due to companies' registration in Moldova on the other bank of Dniester.

²¹⁴ European Commission. “Republic of Moldova”. 17 April 2019. <https://bit.ly/3heM0S8> (Accessed 9 May 2021)

²¹⁵ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part. OJ L 260, 30.8.2014, p. 4–738, Preamble

²¹⁶ *Ibid.*, Article 8(1), (2)

²¹⁷ *Ibid.*, Article 3

²¹⁸ Prohnițchi, Valeriu, and Adrian Lupușor. “Transnistria and the Deep and Comprehensive Free Trade Agreement: a little stone that overturns a great wain?”. Policy Notes, 2nd Series, No. 1 (February 2013). <https://bit.ly/3vSBY71> (Accessed 9 May 2021), p. 10

²¹⁹ Lupușor, Adrian. “DCFTA in the Transnistrian Region: Mission Possible?”. Policy Brief, Expert-Grup. <https://bit.ly/3f9s0hl> (Accessed 9 May 2021), p. 4

Therefore, when the autonomous trade preferences were coming to an end due to the coming into force of the EU-Moldova Association Agreement, the issue of extension of the Deep and Comprehensive Free Trade Area (DCFTA) onto the territory of Transnistria arose. Naturally, the EU establishes several requirements for the other country, the goods originating there to be able to establish the DCFTA and those requirements and conditions are listed in the Title V (Trade and trade-related measures) of the EU-Moldova Association Agreement. Article 462 of the EU-Moldova Association Agreement specifically provides that the Title V of this Agreement does not automatically apply to the territory of Moldova over which it does not exercise effective control and that only when Moldova “ensures the full implementation and enforcement of this Agreement”.²²⁰ Given the fact that Moldova does not have effective control over the part of its territory, the Transnistrian self-proclaimed authorities were the ones who should guarantee the compliance with the requirements to be able to enjoy the benefits of the DCFTA to Moldova and, subsequently, to the EU. Yet, the formal guarantee should still come from Moldova officials.

In turn, the Transnistrian officials have agreed to drop customs on some goods coming from the EU, to “provide “certificates of origin,” and meet EU food safety standards”.²²¹ Subsequently, on 18 December 2015 the EU-Moldova Association Council adopted the Decision No 1/2015 on the application of Title V (Trade and trade-related measures) of the EU-Moldova Association Agreement to the entire territory of Moldova. Article 1 of this Decision stipulates the application of the Title V of the EU-Moldova Association Agreement on the entire territory of Moldova from 1 January 2016. In the preamble to the Decision No 1/2015 it is also stated that Moldova informs that it will be able to ensure the full implementation and enforcement of the Title V on the entirety of its territory.²²²

²²⁰ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part. OJ L 260, 30.8.2014, p. 4–738, Article 462(2)

²²¹ Waal, Thomas de. “An Eastern European Frozen Conflict the EU Got Right”. POLITICO. 16 February 2016. <https://politi.co/3uAZ9c9> (Accessed 9 May 2021)

²²² Decision No 1/2015 of the EU-Republic of Moldova Association Council of 18 December 2015 on the application of Title V of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, to the entire territory of the Republic of Moldova [2015/2445]. OJ L 336, 23.12.2015, p. 93–94, Recital 2

Thus, given the EU's soft power and its huge importance in the region as a trade partner, it has helped Moldova to get Transnistria closer and to build more interconnections. Even though such economic cooperation and Transnistria's concessions for the DCFTA cannot *per se* resolve the conflict, but the increase of cooperation and economic ties between both banks of Dniester decreases the probability of the escalation of the conflict as it becomes more and more expensive for Transnistria to break away from Moldova. In case of the resolution of the conflict, such cooperation would ease the reintegration of the region. Yet, current cooperation is far from ideal as the Transnistrian officials provide with minimal access for monitoring the compliance with the Title V of the EU-Moldova Association Agreement.²²³

Therefore, the Transnistrian conflict is a long-lasting frozen conflict, and it is not seen that in the nearest future it will come to resolution. Yet, it does not mean that actions shall not be undertaken in order to improve the situation in the region and potentially bring the conflict closer to the resolution. The EU also takes part in this process. First, the EU declares its commitment towards the territorial integrity of Moldova and supports it in the conflict. However, in the communication with Russia, as the main supporter of the Transnistrian self-proclaimed regime, the EU has not been so vocal about the conflict and seemingly does not want to make the Transnistrian conflict as a condition of the cooperation with the Russian Federation. Yet, the EU's support is more visible and significant in ensuring safety in the region and bringing together by increasing ties between Moldova and the Transnistrian region. One of the most successful examples is the establishment of the EUBAM, which is aimed to counter criminal activities along the borders of the Transnistrian region. It cut off many schemes of smuggling and made Transnistria more reliant on a legal trade, putting a foundation for deeper economic connections between the Transnistrian region and Moldova.

The EU also established the autonomous trade preferences for Moldova, including the Transnistrian region, also adding to more economic ties between Transnistria and

²²³ Montesano, Francesco S., Tony van der Togt, Wouter Zweers (2016). "The Europeanisation of Moldova: Is the EU on the Right Track?". Clingendael Report, July 2016. <https://bit.ly/3hetREg> (Accessed 9 May 2021), p. 19

Moldova and Transnistria and the EU. When the EU and Moldova signed the Association Agreement and the autonomous trade preferences were to be terminated, the Transnistrian region had already been heavily dependant on the economic cooperation with Moldova and the EU. Refusing to lose such preferences, Transnistria agreed to comply with the requirements of the EU-Moldova Association Agreement so that the DCFTA would also cover this region. Yet, the monitoring of Transnistrian compliance remains problematic.

By means of deepening the cooperation and connections between Moldova and the Transnistrian region, both the EU and Moldova hope that it would increase the probability of the conflict settlement and would provide smoother reintegration of the region.

3.2. EU's role in the resolution of the conflict in South Ossetia and Abkhazia

The analysis of EU's role in long and complex conflicts in the regions of South Ossetia and Abkhazia will start from 2008 – from the Russian-Georgian war. I have selected this point in the chronology of the conflict in South Ossetia and Abkhazia due to the fact that before the Russian-Georgian war “the EU played no active political role in the attempts at conflict management in Georgia” and limited itself to mere expressions of concern at the moments of escalation.²²⁴ South Ossetia and Abkhazia are the territories of Georgia, over which the latter had lost control after the collapse of the Soviet Union as they proclaimed independence. The war between Russia and Georgia was preceded by continuous escalation in the region, both in political and military terms. During the NATO Bucharest Summit on 3 April 2008, Georgia expressed its aspiration to become a member of the NATO.²²⁵ Such developments had inevitably deteriorated relations with Russia. Chief of the General Staff of Russia's

²²⁴ Sasse, Gwendolyn. “The European Neighbourhood Policy and Conflict Management: A Comparison of Moldova and the Caucasus”. *Ethnopolitics* 8, issue 3-4 (2009): 369-386, p. 378

²²⁵ NATO. “Bucharest Summit Declaration - Issued by the Heads of State and Government Participating in the Meeting of the North Atlantic Council in Bucharest on 3 April 2008”. Press Release (2008) 049. <https://bit.ly/3exr7Qp> (Accessed 9 May 2021), paragraph 23

Armed Forces stated that “NATO’s readiness to launch an “intensive dialogue” with Tbilisi increased tensions between Georgia and Russia”.²²⁶

On 1-2 August 2008, Georgian territory was bombarded by the South Ossetian forces.²²⁷ In response to that and other continuous acts of escalation, Georgia sent troops to the territory of South Ossetia.²²⁸ This was met by Russian invasion in Georgian territory on 8 August 2008.²²⁹ Swift development of events and continuing march of Russian troops required an immediate response and reaction from the international community, including the EU.

On the very first day of Russian invasion the EU immediately called for the ceasefire.²³⁰ On 10 August 2008, the Russian troops crossed South Ossetia and continued its offensive into the territory of Georgia.²³¹ On that day, the combined delegation of the EU, NATO and the United States went to Georgia as a mediation mission with the aim to help reach the agreement and establish ceasefire.²³² This mission helped to mediate the Six Point Agreement, which provided the ceasefire.²³³

These six points include the following:

- (1) Not to resort to force;
- (2) To end hostilities definitively;
- (3) To provide free access for humanitarian aid;
- (4) Georgian military forces will have to withdraw to their usual bases;
- (5) Russian military forces will have to withdraw to the lines held prior to the outbreak of hostilities. Pending an international mechanism, Russian peace-keeping forces will implement additional security measures;
- (6) Opening of international talks on the security and stability arrangements in Abkhazia and South Ossetia.²³⁴

On 15 and 16 August 2008 the Georgian and Russian presidents respectively signed the ceasefire agreement, which was brokered by the French President Nicolas Sarkozy.²³⁵

²²⁶ Bugajski, Janusz. “Expanding Eurasia: Russia’s European Ambitions”. CSIS, 2008, p. 56

²²⁷ Roudik, Peter. “Russian Federation: Legal Aspects of War in Georgia”. Law Library of Congress. 30 April 2012. <https://bit.ly/3vN58e6> (Accessed 9 May 2021)

²²⁸ *Ibid.*

²²⁹ *Ibid.*

²³⁰ Robinson, Matt. “EU, U.S. Back Georgian Call for Truce in S.Ossetia”. Reuters, 9 August 2008. <https://reut.rs/3f9sowj> (Accessed 9 May 2021)

²³¹ CNN. “2008 Georgia Russia Conflict Fast Facts”. cnn.com. <https://cnn.it/3exc6hB> (Accessed 9 May 2021)

²³² Deutsche Welle. “Russia Accuses Georgia of Aggression as EU Sends Mediators”. dw.com, 9 August 2008. <https://bit.ly/3fbAp3Y> (Accessed 9 May 2021)

²³³ Babayan, Nelli. “A Global Trend EU-style: Democracy Promotion in ‘Fragile’ and Conflict-Affected South Caucasus”. *Global Policy* 7, Issue 2 (May 2016): 217-226, p. 222

²³⁴ Council of the European Union. Council Conclusions on the situation in Georgia. General Affairs and External Relations Council meeting. Brussels, 13 August 2008. <https://bit.ly/2O1xKRC> (Accessed 9 May 2021), paragraph 2

²³⁵ CNN. “2008 Georgia Russia Conflict Fast Facts”. cnn.com. <https://cnn.it/3exc6hB> (Accessed 9 May 2021)

Even though the EU played a significant part in reaching the ceasefire, this was achieved mostly because of the active role of the French President but not the leaders of the EU. Yet, Nicolas Sarkozy acted in the settlement of this conflict also on behalf of the EU. This case demonstrates that the EU, comprising of many political leaders and historically big countries, can actively participate in the conflict resolution, at the forefront of it, in case there is a political will for such actions.

In the Council conclusions of 13 August 2008, the EU had not inserted strong phrases of condemnation of the Russian acts in Georgia and limited itself to the general phrases of unacceptability of military actions of such scale.²³⁶ It exemplifies the EU's neutrality and lack of common position on the conflict and who is to blame as the Member States had divided into three groups: neutrals (Germany, France), those who were blaming Russia (the United Kingdom, Sweden, Poland) and those who put blame on Georgia (Slovakia).²³⁷

These differences both benefitted and deteriorated EU's capability to act in this conflict. The neutrality helped France, which had been holding the presidency in the EU at that time,²³⁸ to act as a neutral party and broke the ceasefire agreement. If the EU and all its Member States had chosen one side, it would be more difficult for the EU to have a role of a peace broker. On the other hand, lack of unified position had prevented the EU from unanimous actions, restrictive measures against Russia.

Seeing no retribution from the EU and other international actors, the Russian president signed an order dated 26 August 2008 recognising the independence of South Ossetia and Abkhazia.²³⁹ Such blatant act of violation of the territorial integrity of Georgia had left the European countries with much less arguments to stay neutral and more reasons to impose restrictions against Russia. Yet, the EU limited itself to threats to impose sanctions but did not proceed with any.²⁴⁰

²³⁶ Council of the European Union. Council Conclusions on the situation in Georgia. General Affairs and External Relations Council meeting. Brussels, 13 August 2008. <https://bit.ly/2Q1xKRC> (Accessed 9 May 2021), paragraph 1

²³⁷ Valasek, Tomas. "What does the war in Georgia mean for EU foreign policy?". Centre for European Reform. Briefing note. August 2008. <https://bit.ly/3f4wIT1> (Accessed 9 May 2021), p. 1

²³⁸ *Ibid.*

²³⁹ CNN. "2008 Georgia Russia Conflict Fast Facts". cnn.com. <https://cnn.it/3exc6hB> (Accessed 9 May 2021)

²⁴⁰ Tran, Mark, Julian Borger and Ian Traynor. "EU Threatens Sanctions against Russia". the Guardian. 28 August 2008. <https://bit.ly/3ts2CII> (Accessed 9 May 2021)

The Council in its conclusions on the situation in Georgia dated 13 August 2008 also declared its commitment to support the peace in the region, including the establishment of a peacekeeping mission.²⁴¹ By means of the Council Joint Action 2008/736/CFSP of 15 September 2008, the EU established a European Union Monitoring Mission in Georgia (the “EUMM Georgia”).²⁴² The EUMM Georgia had been entrusted to provide civilian monitoring of Parties’ actions, to work on both long-term and short-term stability in Georgia and surrounding region in cooperation with other partners in the region.²⁴³ The Council Joint Action 2008/736/CFSP defined four key tasks of the EUMM Georgia, including stabilisation, normalisation, confidence-building and “contribute to informing European policy and to future EU engagement”.²⁴⁴

This Council Joint Action 2008/736/CFSP was further replaced by the Council Decision 2010/452/CFSP of 12 August 2010, which provided with rather similar wording, which defined the financial expenditures for the EUMM Georgia at the level of EUR 26 000 000 for a year.²⁴⁵ Currently, the EUMM Georgia is prolonged up until 14 December 2022 with a budget of EUR 44 823 402,79 for two years.²⁴⁶ It is of course expected that in case no significant changes happen in the region, the EUMM Georgia will continue to exist.

Overall, the EUMM Georgia is regarded more as a success.²⁴⁷ First, the EUMM Georgia provides the EU with necessary and vital information on the conflict, which helps the EU to build and sharpen up its policy towards the region. The EUMM Georgia

²⁴¹ Council of the European Union. Council Conclusions on the situation in Georgia. General Affairs and External Relations Council meeting. Brussels, 13 August 2008. <https://bit.ly/2Q1xKRC> (Accessed 9 May 2021), paragraph 3; Runner, Philipa. “EU Wants Peacekeepers “on the Ground” in Georgia”. EUobserver. 14 August 2008. <https://euobserver.com/foreign/26606> (Accessed 24 April 2021)

²⁴² Council Joint Action 2008/736/CFSP of 15 September 2008 on the European Union Monitoring Mission in Georgia, EUMM Georgia. OJ L 248, 17.9.2008, p. 26–31, Article 1

²⁴³ *Ibid.*, Article 2

²⁴⁴ *Ibid.*, Article 3

²⁴⁵ Council Decision 2010/452/CFSP of 12 August 2010 on the European Union Monitoring Mission in Georgia, EUMM Georgia. OJ L 213, 13.8.2010, p. 43–47, Article 14(1)

²⁴⁶ Council Decision (CFSP) 2020/1990 of 3 December 2020 amending Decision 2010/452/CFSP on the European Union Monitoring Mission in Georgia, EUMM Georgia. OJ L 411, 7.12.2020, p. 1–2, Article 1

²⁴⁷ Macharashvili, Nana, Ekaterine Basilaia, and Nikoloz Samkharade. “Assessing the EU’s Conflict Prevention and Peacebuilding Interventions in Georgia”. Ivane Javakhishvili Tbilisi State University, 24 March 2017. <https://bit.ly/3heD0Nc> (Accessed 9 May 2021), p. 24

provides weekly, monthly briefings for EU officials and overall “is seen as a good and reliable source of information”, given its credibility.²⁴⁸ This EUMM Georgia’s input shall not be underestimated as it may be rather difficult to have credible first-hand knowledge about the events occurring in the conflict zone, especially when one of the parties is Russia, which has mastered propaganda and manipulation.

Second, the absence of military actions in the region may also be regarded as a positive aspect of the EUMM Georgia. We cannot assume what the situation would be in case the EUMM Georgia was not present on the ground and, thus, it cannot be defined to what extent it is a merit of the EUMM Georgia. Yet, the constant presence of the mission in the region for more than 10 years has played its role in stabilisation.

Yet, one of the most significant losses of the EUMM Georgia is inability to be present on the whole territory of Georgia as self-proclaimed republics of South Ossetia and Abkhazia have refused to grant the access for the EUMM Georgia on their territories.²⁴⁹ It limits the EUMM Georgia’s capabilities to conduct monitoring and decreases the effectiveness of the overall successful mission.

Apart from establishing the EUMM Georgia, the EU appointed its Special Representative for the crisis in Georgia as previously EUSR for the South Caucasus worked on Armenia, Azerbaijan and Georgia.²⁵⁰ The EUSR’s mandate included assisting in conducting the talks between the parties, “to help establish the EU’s position and represent it, at his level, in those talks” and to facilitate the implementation of Six Points Agreement of 12 August 2008.²⁵¹ The mandate of the EUSR for the crisis in Georgia was extended several times and expired on 31 August 2011.²⁵²

²⁴⁸ *Ibid.*, p. 26

²⁴⁹ *Ibid.*, p. 26; EUMM. “The EUMM Monitor”. Issue 1, July 2016. <https://bit.ly/2Q7dfTM> (Accessed 9 May 2021), p. 1

²⁵⁰ Council Joint Action 2008/736/CFSP of 15 September 2008 on the European Union Monitoring Mission in Georgia, EUMM Georgia. OJ L 248, 17.9.2008, p. 26–31, Recital 4; Council Joint Action 2008/760/CFSP of 25 September 2008 appointing the European Union Special Representative for the crisis in Georgia. OJ L 259, 27.9.2008, p. 16–18, Article 1

²⁵¹ Council Joint Action 2008/760/CFSP of 25 September 2008 appointing the European Union Special Representative for the crisis in Georgia. OJ L 259, 27.9.2008, p. 16–18, Article 3

²⁵² Council Decision 2010/445/CFSP of 11 August 2010 extending the mandate of the European Union Special Representative for the crisis in Georgia. OJ L 211, 12.8.2010, p. 33–35, Article 1; Council Decision 2010/106/CFSP of 22 February 2010 extending the mandate of the European Union Special Representative for the crisis in Georgia. OJ L 46, 23.2.2010, p. 5–7, Article 1; Council Decision 2009/956/CFSP of 15 December 2009 amending Joint Action 2009/131/CFSP extending the mandate of the European Union Special Representative for the crisis in Georgia. OJ L 330,

The EUSR for the crisis in Georgia was replaced by the EUSR for the South Caucasus and the crisis in Georgia, basically returning to the concept of one EUSR for the whole South Caucasus region but with more emphasis on the Georgian crisis. The mandate of the new EUSR now covers, *inter alia*, developing the contacts in the region, the dialogue with main actors, contributing to the peaceful settlement of conflicts, facilitating “the development and implementation of confidence-building measures”.²⁵³ It also includes the mandate with respect to Georgia specifically, repeating the mandate of the EUSR for the crisis in Georgia in this aspect.

As a part of the competence of the EUSR as a representative of the EU in the region, he/she holds talks, discussions on behalf of the EU. The Geneva International Discussions is one of the most prominent examples of such talks being held on the issue of the conflict in Georgia.²⁵⁴ The EU, represented by its EUSR, co-chairs these discussions.²⁵⁵ The Geneva International Discussions also comprise of UN, OSCE, the United States, Russia and Georgia, the officials of South Ossetia and Abkhazia being present in their personal capacities.²⁵⁶ The Joint Incident Prevention and Response Mechanism is regarded as one of successful and tangible results of the Geneva International Discussions, which provides for “recommendations as to prevent future incidents and provides a platform to verify the accuracy of information in the aftermath of incidents”.²⁵⁷ At the recent meeting of the Incident Prevention and Response Mechanism, which was held on 5 March 2021, the parties discussed the “borderisation” process and challenges caused by COVID-19 pandemic.²⁵⁸

16.12.2009, p. 77–77, Article 1; Council Joint Action 2009/131/CFSP of 16 February 2009 extending the mandate of the European Union Special Representative for the crisis in Georgia. OJ L 46, 17.2.2009, p. 47–49, Article 1

²⁵³ Council Decision (CFSP) 2021/285 of 22 February 2021 amending Decision (CFSP) 2018/907 extending the mandate of the European Union Special Representative for the South Caucasus and the crisis in Georgia. OJ L 62, 23.2.2021, p. 51–52, Article 1(2)

²⁵⁴ Panchulidze, Elene. “Limits of Co-mediation: The EU’s Effectiveness in the Geneva International Discussions”. EU Diplomacy Paper 03/2020 (March 2020), p. 21

²⁵⁵ Macharashvili, Nana, Ekaterine Basilaia, and Nikoloz Samkharade. “Assessing the EU’s Conflict Prevention and Peacebuilding Interventions in Georgia”. Ivane Javakhishvili Tbilisi State University, 24 March 2017. <https://bit.ly/3heD0Nc> (Accessed 9 May 2021), p. 29

²⁵⁶ *Ibid.*, pp. 29-30

²⁵⁷ *Ibid.*, p. 31

²⁵⁸ Civil.ge. “98th IPRM Held in Ergneti”. 5 March 2021. <https://civil.ge/archives/403636> (Accessed 27 April 2021)

Thus, the significance of these Discussions cannot be overestimated, given the lack of many successful outcomes. Russia may and does obstruct discussions regularly, in the success of which it is not interested or interested only to pursue its line of developments. Yet, it presents the parties to the conflict with a forum to express their opinions and present some information, whilst co-chairs of the Geneva International Discussions (EU, OSCE, UN) are entrusted with an insurmountable task to assist Russia and Georgia to make progress, while the EU has remained the most active co-chair amongst aforementioned three ones.²⁵⁹

The EU directly engages with the people affected by the conflict by means of utilising different mechanisms. For instance, Confidence Building Early Response Mechanism (the “COBERM”) is one of such examples. COBERM is funded by the EU and aims to “stimulate people-to-people contacts across conflict divides”, enhance the tolerance, mutual respect, empower local actors, “address security and safety concerns of marginalized communities” and contribute to the good governance in the region.²⁶⁰ During 2010-2018 the EU had funded around 200 initiatives that addressed the aforementioned spheres.²⁶¹ Overall, COBERM was regarded as a successful mechanism used in the conflict by the EU as it provided the connections directly between the people and made EU presence more visible for local communities.²⁶²

Another example of EU’s direct engagement with local people is a support to internally displaced persons by means of addressing the issues of living conditions and integration of this group of people.²⁶³ The EU has spent more than EUR 100 million for that purpose.²⁶⁴ The EU also provided the assistance with living conditions to the

²⁵⁹ Macharashvili, Nana, Ekaterine Basilaia, and Nikoloz Samkharade. “Assessing the EU’s Conflict Prevention and Peacebuilding Interventions in Georgia”. Ivane Javakhishvili Tbilisi State University, 24 March 2017. <https://bit.ly/3heD0Nc> (Accessed 9 May 2021), p. 34

²⁶⁰ Delegation of the European Union to Georgia. “EU Assistance to People Affected by Conflict in Georgia – Overview”. October 2011. <https://bit.ly/33uD7vS> (Accessed 9 May 2021), p. 20

²⁶¹ UNDP in Georgia. “Confidence Building Early Response Mechanism (COBERM)”. <https://bit.ly/3heDyTg> (Accessed 9 May 2021)

²⁶² Macharashvili, Nana, Ekaterine Basilaia, and Nikoloz Samkharade. “Assessing the EU’s Conflict Prevention and Peacebuilding Interventions in Georgia”. Ivane Javakhishvili Tbilisi State University, 24 March 2017. <https://bit.ly/3heD0Nc> (Accessed 9 May 2021), p. 39

²⁶³ Delegation of the European Union to Georgia. “EU Assistance to People Affected by Conflict in Georgia – Overview”. October 2011. <https://bit.ly/33uD7vS> (Accessed 9 May 2021), p. 7

²⁶⁴ *Ibid.*, p. 8

population in Abkhazia and South Ossetia, which amounted to EUR 24,37 million and EUR 2,97 million respectively.²⁶⁵

Therefore, the EU, apart from engaging in the conflict resolution on a state-level and with self-proclaimed republics, but also with the locals affected by the conflict, investing funds in the initiatives and improvement of living conditions.

Finally, the EU-Georgia Association Agreement shall also be analysed in the context of the conflict resolution. First, the wording of the preamble to the Association Agreement is quite explanatory. It is stated that the parties recognise Georgia's commitment "to reconciliation and its efforts to restore its territorial integrity and full and effective control over Georgian regions of Abkhazia and the Tskhnavali region/South Ossetia" and recognise "EU's commitment to support a peaceful and lasting resolution of the conflict".²⁶⁶ Thus, the EU recognises its limitations and commits only to support a peaceful resolution of the conflict and does not claim that it is going to play a leading role in this process. Under Article 429 of the EU-Georgia Association Agreement, the provisions of the Title IV (Trade and trade-related measures) are not applicable to the regions which are not controlled by the Georgian government.²⁶⁷ This provision is similar to the one inserted in the EU-Moldova Association Agreement and opens up a possibility for similar steady economic integration of South Ossetia and Abkhazia. Yet, given more tensions and bigger influence of Russia, such outcome currently does not seem very plausible.

Moreover, the EU-Georgia Association Agreement may be seen as a tool to strengthen Georgia, its economy and by this to increase the probability to return the regions. The legal approximation is one of the mechanisms in the Association Agreement which is able to assist to this goal. Chapter 15 of the Title IV of the EU-Georgia Association Agreement provides with general provisions on approximation, assessment of it, necessity to ensure the effective approximation of domestic laws.²⁶⁸

²⁶⁵ *Ibid.*, pp. 12, 17

²⁶⁶ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part. OJ L 261, 30.8.2014, p. 4–743, Preamble

²⁶⁷ *Ibid.*, Article 429(2)

²⁶⁸ *Ibid.*, Articles 271, 273, 274

Therefore, in the conflicts in South Ossetia and Abkhazia (following the Russian-Georgian war of 2008), the EU has actively participated in the conflict resolution. As a response to the war between Georgia and Russia, the EU exercised its external competences in order to bring a ceasefire and to assist in reaching an agreement between the conflicting sides. Seemingly, the EU established itself at this stage as a rather neutral mediator. It meant that the EU did not proceed with imposing restrictive measures upon Russia, even after the latter's recognition of independence of South Ossetia and Abkhazia. The EU has been mostly engaged in keeping the established status quo and trying to prevent any further escalations. To this end, it has established the EUMM Georgia, which works on the stabilisation of the situation in the region. During 2008-2011 the EU also had the EUSR for the crisis in Georgia, which latter had been replaced by the EUSR for the South Caucasus and the crisis in Georgia. The EUSR, being a representative of the EU in the region, actively participates in different talks, discussions and tries to help the parties find a common ground, including such forum as the Geneva International Discussions. The EU has also been regularly engaged in providing support to the local community, especially to those in need, helping them to improve the living conditions or funding projects which bring the people from different sides of the conflict closer.

It may be concluded that the EU has been too neutral in this conflict, not exercising the mechanisms available to it towards Russia, giving the latter signals that such actions can be tolerated. Yet, such neutrality has opened the doors for other mechanisms, which do not bring the conflict resolution closer but keep it further from the escalation.

3.3. EU's role in the resolution of the Nagorno-Karabakh conflict

The Nagorno-Karabakh conflict is a long-lasting dispute between Armenia and Azerbaijan over the Nagorno-Karabakh region, which is currently recognised as a part of Azerbaijan, but a majority of population is Armenians.²⁶⁹ The conflict escalated in

²⁶⁹ BBC. "Armenia-Azerbaijan: Why Did Nagorno-Karabakh Spark a Conflict?". [bbc.com](https://bbc.in/3f3P5lq), 12 November 2020, sec. Europe. <https://bbc.in/3f3P5lq> (Accessed 9 May 2021)

the light of the collapse of the Soviet Union as in the late 1980s the Nagorno-Karabakh parliament voted to become a part of Armenia, being an autonomous region of Azerbaijan at that time.²⁷⁰ It sparked a war, which resulted in Armenians taking control over the region and establishing there a self-declared republic, “run by ethnic Armenians and backed by the Armenian government”.²⁷¹

In 2003, the EU appointed the EUSR for the South Caucasus (covering Armenia, Azerbaijan and Georgia) with objectives to assist in political and economic reforms, resolution of conflicts, prevention of conflicts and to enhance EU’s visibility in the region.²⁷² Yet, the EU omitted mentioning explicitly the Nagorno-Karabakh conflict. Such vague formulation of objectives and the mandate of the EUSR for the South Caucasus could not benefit the resolution of the Nagorno-Karabakh conflict. This conflict presents quite unique challenges for the EU as, contrary to other analysed conflicts, both sides of the Nagorno-Karabakh dispute are countries of the Eastern Partnership. The EU was placed in an interesting position on how to balance the formulations in different documents, which concluded with each country separately or concerning both countries. It may partly explain the vagueness in the wording.

Moving to the documents, concluded with Armenia and Azerbaijan separately, the Action Plans shall be analysed. Gwendolyn Sasse, analysing the EU Action Plan with Azerbaijan mentions “respect for sovereignty, territorial integrity and inviolability of international borders and the ‘compliance to international norms and European principles’”.²⁷³ In turn, with respect to Armenia the EU Action Plan “omits the references to territorial integrity, but emphasizes the principle of self-determination of peoples”.²⁷⁴ Esmira Jafarova also refers to the conflict resolution in the Action Plans as “ambiguous”.²⁷⁵ The challenge of balancing both countries’ positions significantly

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² Council Joint Action 2003/496/CFSP of 7 July 2003 concerning the appointment of an EU Special Representative for the South Caucasus. OJ L 169, 8.7.2003, p. 74–75, Article 2

²⁷³ Sasse, Gwendolyn. “The European Neighbourhood Policy and Conflict Management: A Comparison of Moldova and the Caucasus”. *Ethnopolitics* 8, issue 3-4 (2009): 369-386, p. 381

²⁷⁴ *Ibid.*

²⁷⁵ Jafarova, Esmira. “EU Conflict Resolution Policy Towards the South Caucasus”. *Connections* 10, no. 3 (2011): 59-80
 Karliuk, Maksim. “Legal Challenges of the EU-Belarus Relations”. *Kyiv-Mohyla Law and Politics Journal* 4(2018): 65-79, p. 64

limited the EU in exercising its external competence to assist the conflict resolution. Yet, the EU could have filled the role as a neutral mediator and could have been rather successful in this role if it were able to obtain the leverage over these countries and increase its influence.

It seems that the EU was predominantly trying to use “soft security” as means of conflict resolution, aiming to support reforms, development of democracy and considering that such developments would prevent the escalation of the conflict in the future.²⁷⁶

Following the creation of the Eastern Partnership, the EU moved to another step with Armenia and Azerbaijan, trying to improve the legal framework between those countries. The EU has worked with Armenia on concluding the Association Agreement, however, in September 2013 Armenia rejected the proposal to conclude the Association Agreement and the DCFTA and instead decided to join the Eurasian Economic Union under the auspices of Russia.²⁷⁷ Due to such geopolitical choice of Armenia, a legal framework different to the Association Agreement needed to be developed. On 24 November 2017, the EU-Armenia Comprehensive and Enhanced Partnership Agreement (the “CEPA”) was concluded²⁷⁸ and entered into force on 1 March 2021.²⁷⁹

With respect to the Nagorno-Karabakh conflict, the CEPA mentions in the preamble “the importance of the commitment of the Republic of Armenia to the peaceful and lasting settlement of the Nagorno-Karabakh conflict” in the light of established negotiation platforms and the need to refrain from the use of force.²⁸⁰ Therefore, the EU did not commit itself to participation in conflict resolution as well

²⁷⁶ *Ibid.*, pp. 65, 75

²⁷⁷ Vielmini, Fabrizio. “Armenia’s Shift towards the Eurasian Economic Union: a Rejoinder of Realpolitik”. ISPI, 24 October 2013. <https://bit.ly/3xXiDK8> (Accessed 9 May 2021)

²⁷⁸ Khvorostiankina, Anna. “The EU-Armenia Comprehensive and Enhanced Partnership Agreement: A New Instrument of Promoting EU’s Values and the General Principles of EU Law”. In *EU External Relations Law: Shared Competences and Shared Values in Agreements Between the EU and Its Eastern Neighbourhood*, edited by Stefan Lorenzmeier, Roman Petrov, and Christoph Vedder, 193–226. Cham: Springer International Publishing, 2021, p. 193

²⁷⁹ European Commission. “EU-Armenia CEPA Enters into Force”. Press release. Brussels, 28 February 2021. <https://bit.ly/3o9IFFG> (Accessed 9 May 2021)

²⁸⁰ Comprehensive and enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part. OJ L 23, 26.1.2018, p. 4–466, Preamble

as refrained to proclaim support for Armenian's position towards the conflict. Yet, the EU pursued its previous policy towards the Nagorno-Karabakh conflict by indirect measures such as "soft security", aiming to improve the democracy and rule of law in Armenia and to try to build stronger economic relations, despite visible hurdle of the Eurasian Economic Union.

For this purpose, Article 2 of the CEPA declares that "democratic principles, the rule of law, human rights and fundamental freedoms" form basis of the relations between the Parties and are key elements of the CEPA and also highlights the importance of the free-market economy and the good governance.²⁸¹ In turn, Article 344(3) of the CEPA makes the amounts of financial assistance granted from the EU to Armenia conditional upon the latter's progress with reforms. By virtue of this, the EU exercises the conditionality principle in the relations with other countries and grants access to more financial assistance only in case Armenia conducts necessary reforms. Such reforms are aimed at democratisation of the country, improvement of the rule of law, which should assist the resolution of the conflict with Azerbaijan. A similar approach is demonstrated with respect to the liberalisation of visa-regime for Armenians.²⁸² Even though such mechanisms are rather far-fetched, concerning conflict resolution, it remains one of the most significant EU's tools towards conflict resolution in the Nagorno-Karabakh. Yet, for the conditionality to be successful, the interest from the other country in the integration and closer relations with the EU is necessary. In the case of Armenia, the fact that it joined the Eurasian Economic Union demonstrates that Armenia does not have big incentives in that regard, which decreases the EU's leverage and effectiveness of the conditionality principle as such.

The relations with Azerbaijan also cannot be characterised as easy ones. The Partnership and Cooperation Agreement (the "PCA"), concluded in 1996, remains to this date the main treaty between the EU and Azerbaijan.²⁸³ It provides that "territorial integrity of the Republic of Azerbaijan will contribute to the safeguarding of peace and

²⁸¹ *Ibid.*, Article 2(1), (2), (3)

²⁸² *Ibid.*, Article 15(2)

²⁸³ European Council – Council of the European Union. "EU Relations with Azerbaijan". 25 August 2020. <https://bit.ly/3y7kk87> (Accessed 9 May 2021)

stability in Europe”, claiming that the Nagorno-Karabakh conflict should be important for the EU.²⁸⁴ Yet, no commitments were made. The PCA similarly refers to the democracy, market economy as essential elements of the partnership and states that the financial assistance from the EU to Azerbaijan is dependant, inter alia, upon Azerbaijan’s progress with respect to reforms.²⁸⁵ Similar to Armenia, such conditionality elements have not brought the democratic government to power. On 14 November 2016, the EU initiated the negotiations of a new comprehensive agreement to replace PCA which “should better take account of the shared objectives and challenges the EU and Azerbaijan face”.²⁸⁶

The EU also tries to connect with the people affected by the conflict. The EU supported the European Partnership for the Peaceful Settlement of the Conflict over Nagorno-Karabakh (the “EPNK”), which worked with the local actors, increasing the dialogue and trying to build a foundation for peace.²⁸⁷

Yet, another phase of the conflict between Armenia and Azerbaijan broke out on 27 September 2020, during which Azerbaijan had been victorious.²⁸⁸ The peace deal was brokered on 10 November 2020 by Russia, under which Azerbaijani kept the territories they overtook during the war and Russian troops were agreed to be sent as peacekeepers in the region.²⁸⁹

EU’s role in this recent war was close to absent, while Russia significantly increased its position in the region. Given the EU’s passiveness for the decades, it may be concluded that the EU is not interested to actively participate in the conflict between its partner countries. Even more so, Armenia and Azerbaijan may not need an increased

²⁸⁴ Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part. OJ L 246, 17.9.1999, p. 3–51, Preamble

²⁸⁵ *Ibid.*, Articles 2, 79

²⁸⁶ European Council – Council of the European Union. “EU to launch negotiations on a new agreement with Azerbaijan”. 14 November 2016. <https://bit.ly/2SFRuLF> (Accessed 9 May 2021)

²⁸⁷ International Alert. “European Partnership for the Peaceful Settlement of the Conflict over Nagorno Karabakh”. <https://bit.ly/2R5mUKY> (Accessed 9 May 2021)

²⁸⁸ BBC. “Armenia-Azerbaijan: Why Did Nagorno-Karabakh Spark a Conflict?”. [bbc.com](https://bbc.in/3f3P5lq), 12 November 2020, sec. Europe. <https://bbc.in/3f3P5lq> (Accessed 9 May 2021); BBC. “Armenia, Azerbaijan and Russia Sign Nagorno-Karabakh Peace Deal”. [bbc.com](https://bbc.in/3xWq7gp), 10 November 2020, sec. Europe. <https://bbc.in/3xWq7gp> (Accessed 9 May 2021)

²⁸⁹ Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation. <https://www.primeminister.am/en/pressrelease/item/2020/11/10/Announcement/> (Accessed 1 May 2021); BBC. “Armenia, Azerbaijan and Russia Sign Nagorno-Karabakh Peace Deal”. [bbc.com](https://bbc.in/3xWq7gp), 10 November 2020, sec. Europe. <https://bbc.in/3xWq7gp> (Accessed 9 May 2021)

role from the EU as any of these countries see their future being integrated with the EU. The EU continues its humanitarian assistance, providing around EUR 7 million to help the groups of people which have significantly suffered because of war, “including food and winter items, health and psychosocial support, medical equipment, and other urgent assistance”.²⁹⁰

Therefore, the EU’s role in the resolution of the conflict between Armenia and Azerbaijan over the Nagorno-Karabakh has been rather marginal. The EU has been trying to balance between its both partner countries, without expressing support to one of the parties. In turn, Armenia and Azerbaijan are also not interested in strong commitments with the EU as it can be seen that Armenia refused to sign the Association Agreement, chose the Eurasian Economic Union instead and Azerbaijan still has the PCA in force between it and the EU. If the EU wants to become one of the dominant powers in the South Caucasus, it should increase its presence there. For the time being, EU’s role in this conflict resolution is limited to the expressions of concern and humanitarian aid.

3.4. EU’s role in the resolution of Belarus’ conflict

In the context of Belarus, the internal conflict between Lukashenko’s regime and Belarusian people will be analysed and EU’s response towards this authoritarian regime. Lukashenko had first been elected as the President of Belarus in 1994²⁹¹ and remains at this position to date. His ruling has been followed by various unlawful actions against Belarus citizens.

The existing legal framework between Belarus and the EU demonstrates one of mechanisms of the EU in the conflict resolution. The Trade and Cooperation Agreement, concluded in 1989 between the then European Economic Community and the Soviet Union, currently remains in force²⁹² In 1995, the parties have concluded the

²⁹⁰ European Civil Protection and Humanitarian Aid Operations. “Armenia and Azerbaijan”. 12 February 2021. <https://bit.ly/3uyeiev> (Accessed 9 May 2021)

²⁹¹ Deutsche Welle. “Belarus Strongman Lukashenko Marks 25 Years in Power”. dw.com, 10 July 2019. <https://bit.ly/3hjPao1> (Accessed 2 May 2021)

²⁹² Karliuk, Maksim. “Legal Challenges of the EU-Belarus Relations”. *Kyiv-Mohyla Law and Politics Journal* 4(2018): 65-79, p. 68

Partnership and Cooperation Agreement, but the EU has not ratified it due to “Belarus’ lack of commitment to democracy and political and civil rights”.²⁹³ It demonstrates how the EU uses the potential improvement of the legal framework as a stimulation for the reforms in the country. Given that the EU still has not ratified the PCA with Belarus, it may be seen that this mechanism is ineffective. But the EU needs to stand solidly on its position in order to be able to bring other countries closer to the democratic standards by using such tools. A compromise with one country may cause losses with others. So, the consistency is necessary from the side of the EU on this matter.

The imposition of restrictive measures is another mechanism exercised by the EU against the Belarusian government. In 2004, the Council adopted the Common Position 2004/661/CFSP in response to the disappearance of well-known people in Belarus and subsequent obstruction of justice.²⁹⁴ The EU prohibited entering into its territory for persons who were responsible for the failure to investigate.²⁹⁵ In 2006, in response to the falsifications at the elections in 2004 and 2006, the Council Common Position 2006/276/CFSP was adopted.²⁹⁶ The EU imposed the restrictive measures in a form of a ban on entering the EU upon 33 officials, which played role in falsifying elections, including President Lukashenko.²⁹⁷ The imposition of sanctions upon the president, several ministers, members of parliament was a big statement from the EU to condemn actions of Lukashenko’s authoritarian regime and the demonstration of support towards Belarusian civil society.

Apart from punishing for the violation of democratic principles, the EU also tried to encourage the Belarusian government to make changes. By means of the Council Common Position 2009/314/CFSP of 6 April 2009, the EU suspended the application of travel bans concerning officials who played role in falsifying elections until 15 December 2009 and yet prolonged the application of the restrictive measures till 15

²⁹³ European Commission. “Belarus – Trade”. <https://bit.ly/3bwxLEX> (Accessed 9 May 2021)

²⁹⁴ Council Common Position 2004/661/CFSP of 24 September 2004 concerning restrictive measures against certain officials of Belarus. OJ L 301, 28.9.2004, p. 67–69, Recital 5

²⁹⁵ *Ibid.*, Article 1(1)

²⁹⁶ Council Common Position 2006/276/CFSP of 10 April 2006 concerning restrictive measures against certain officials of Belarus and repealing Common Position 2004/661/CFSP. OJ L 101, 11.4.2006, p. 5–10, Recitals 2-4

²⁹⁷ *Ibid.*, Article 1(1), Annexes II, III

March 2010.²⁹⁸ This was done “in order to encourage the adoption and implementation of further concrete measures towards democracy and respect for human rights and fundamental freedoms in Belarus”.²⁹⁹ The EU in this instance presented the restrictive measures as a flexible tool, by means of which the EU may punish or encourage, temporarily lifting the restrictive measures.

However, such measures were not able to change the policy of Lukashenko’s regime and the EU decided to react harsher. By means of the Council Decision 2010/639/CFSP of 25 October 2010, the EU froze the assets of persons liable for the falsifications during the 2006 elections and “the crackdown on civil society and democratic opposition” as well as the assets of bodies, entities associated with those persons.³⁰⁰

During the presidential elections of 19 December 2010, the unlawful practices continued, which caused another set of sanctions against persons responsible for falsifications and violations of human rights. It included the travel ban and freeze of assets.³⁰¹ The continuance of attacks on the people of Belarus resulted in the prohibition to sell to Belarus any arms, materials which might be used for internal repressions.³⁰² By October 2012, the restrictive measures covered 243 natural persons and 32 entities.³⁰³

In 2015, the situation in Belarus had improved a bit as several political prisoners had been released.³⁰⁴ The ease in the tensions was also followed by some positive developments in the cooperation between Belarus and the EU in the spheres of energy safety, higher education, digital market, Belarus’ constructive position with regard to

²⁹⁸ Council Common Position 2009/314/CFSP of 6 April 2009 amending Common Position 2006/276/CFSP concerning restrictive measures against certain officials of Belarus, and repealing Common Position 2008/844/CFSP. OJ L 93, 7.4.2009, p. 21–22, Articles 1, 2

²⁹⁹ *Ibid.*, Recital 3

³⁰⁰ Council Decision 2010/639/CFSP of 25 October 2010 concerning restrictive measures against certain officials of Belarus. OJ L 280, 26.10.2010, p. 18–28, Article 2(1)

³⁰¹ Council Decision 2011/69/CFSP of 31 January 2011 amending Council Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus. OJ L 28, 2.2.2011, p. 40–56, Articles 1, 2

³⁰² Council Decision 2011/357/CFSP of 20 June 2011 amending Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus. OJ L 161, 21.6.2011, p. 25–28, Article 1(2)

³⁰³ Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus. OJ L 285, 17.10.2012, p. 1–52. Annex

³⁰⁴ Reuters. “Belarus President Lukashenko Pardons Six Jailed Opposition Figures”. The Guardian, 24 August 2015. <https://bit.ly/3heDfb4> (Accessed 9 May 2021)

the conflict in Ukraine.³⁰⁵ To this end, the European Parliament issued a resolution welcoming these developments, highlighting the importance of the initiation of visa-liberalisation talks.³⁰⁶ Overall, the EU expressed its hope for the further development of the relations with Belarus, but also raised concerns on continuing violations of human rights and democratic principles, as well as called for conducting free elections.³⁰⁷

However, the cooperation from Belarus' side has not gone far from that moment and the latest stage of escalation has begun in August 2020. The presidential elections were again followed by significant falsifications, which caused massive protests on the streets of Belarus' cities.³⁰⁸ In the aftermath of the elections and clashes with protesters, the EU expressed its position that the elections were “neither free nor fair” and declared that the relations with the EU cannot improve without the progress in the spheres of rule of law and human rights.³⁰⁹

Given the fact that Lukashenko's regime had been continuing repressions and crackdown on peaceful protesters, the EU responded with a new set of restrictive measures, targeting overall 88 individuals and 7 entities, including Lukashenko, other high-ranked officials, Beltechexport, Dana Holdings (real estate developer, connected with Lukashenko) etc.³¹⁰ These sanctions prohibit the sale, transfer of weapons, equipment, which may be used for internal repressions in Belarus, as well as to provide any technical, financial brokering services or assistance thereto.³¹¹ The sanctions also include travel bans and freeze of assets for listed persons.³¹²

It may be argued that the magnitude of violations of Lukashenko's regime requires the imposition of harsher sanctions but not the update of the list for the set of

³⁰⁵ European Parliament resolution of 10 September 2015 on the situation in Belarus (2015/2834(RSP)), Recitals D, K

³⁰⁶ *Ibid.*, paragraphs 2, 13, 14

³⁰⁷ *Ibid.*, paragraphs 1, 3

³⁰⁸ Euronews. “Belarus Election: Protests Break out after Disputed Presidential Vote”. euronews.com, 9 August 2020. <https://bit.ly/33rtU7F> (Accessed 2 May 2021)

³⁰⁹ Council of the European Union. “Belarus: Declaration by the High Representative on behalf of the European Union on the presidential elections”. Press release. 11 August 2020. <https://bit.ly/33rof15> (Accessed 9 May 2021)

³¹⁰ Council Decision (CFSP) 2021/353 of 25 February 2021 amending Decision 2012/642/CFSP concerning restrictive measures against Belarus. OJ L 68, 26.2.2021, p. 189–218, Annex

³¹¹ Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus. OJ L 285, 17.10.2012, p. 1–52, Article 1

³¹² *Ibid.*, Articles 3, 4

sanctions imposed before. However, targeting Belarus' economy would adversely affect the population, which may be a reason why the EU does not pursue this way, declaring its strong support towards the people of Belarus in the fight for democracy.

The EU also presented its view on the relations with Belarus in the current circumstances in the Council conclusions of 12 October 2020. The Council decided to significantly decrease the relations, communications, cooperation with the government and to increase connections with the Belarusian people, providing financial assistance to non-state actors.³¹³ Thus, the EU has declared its strong support to the Belarusian people and committed to increase people-to-people contacts, supporting Belarusian civil society, youth, independent media. One of examples of such increase of support is EUR 24 million assistance package for “civil society, youth and small and medium-sized enterprises”.³¹⁴ The EU also initiated the development of a “comprehensive plan of economic support for a democratic Belarus”, to assist Belarus in case of transition of power in the country.³¹⁵

Thus, the relations between Belarus and the EU are rather difficult, due to the Belarusian government long-lasting rejection of democratic principles and the rule of law. Among the Eastern Partnership countries, Belarus remains the one which does not have an agreement in force concluded after its independence as the agreement concluded with the Soviet Union remains relevant. Constant violations of human rights, repressions, falsification of elections has been predominantly met by sanctions and isolation of the Belarusian government. The sanctions impose the travel bans, freeze of assets and the prohibition to sell, export or cooperate in any way with respect to the equipment which may be used against protesters. The list of sanctions, in light of different events, has been constantly updated by the EU.

³¹³ 67. Council of the European Union. Council conclusions on Belarus. Foreign Affairs Council meeting. Brussels, 12 October 2020. <https://bit.ly/3o9JdLK> (Accessed 9 May 2021), paragraph 8

³¹⁴ European Commission. “EU strengthens its direct support to the people of Belarus”. Press release. Brussels, 11 December 2020. <https://bit.ly/3vXTY6z> (Accessed 9 May 2021)

³¹⁵ *Ibid.*

The EU cannot interfere with Belarus and conduct fair elections by itself. The toolbox is limited in this regard to putting pressure on Lukashenko's regime and supporting Belarusian civil society, including financial assistance.

Armenia, Azerbaijan, Belarus, Georgia and Moldova all have either internal or external conflicts which are ongoing for at least several decades. The EU as the biggest economy and a moral leader in the region has been playing a part, to a different extent, in the resolution of those conflicts. The biggest role of the EU can be seen in the Transnistrian conflict, where the EU declares its support towards territorial integrity of Moldova and works on increasing safety and interconnectedness in the region. The EUBAM is one of the vivid examples of EU's successful policy in border control. In terms of increasing the connections between the sides of the conflict, the EU has supported Moldova in its attempts to increase economic ties between the Transnistrian region and Moldova, imposing first the regime of autonomous trade preferences and, subsequently, making Transnistrian authorities agree to comply with several requirements to enjoy the benefits of the DCFTA.

In the case of Georgia, EU's biggest role was to help reach a deal between Georgia and Russia during the 2008 war. The EU was not so unanimous in supporting Georgia in this war, which prevented the EU from adopting restrictive measures against Russia. The EU participated in the negotiations, sent the EUSR for the crisis in Georgia. Established the EUMM and policies to support the local population affected by the conflict. The conclusion of the EU-Georgia Association Agreement may also be seen as an instrument to bring the conflict resolution closer as it strengthens Georgia and increases cooperation between it and the EU.

Comparing to the aforementioned conflicts, EU's role in the Nagorno-Karabakh conflict is minimal. It is safe to say that the EU does not have almost any influence over this conflict. It may be explained by the fact that Armenia and Azerbaijan, contrary to Moldova and Georgia, are not interested in European integration and do not need and want strong EU's presence in the region.

Finally, the conflict in Belarus stands out comparing to previous ones as it does not concern the territorial disputes but constitutes a conflict between an authoritarian government and the Belarusian population. The EU has been adamant in supporting Belarusian civil society, currently concentrating on people-to-people cooperation, avoiding close connections with the government. It has been constantly reacting to the escalation of the conflict by imposing restrictive measures against high-ranked officials. Yet, Lukashenko's regime is still in power, but the EU constantly puts pressure on it.

CONCLUSIONS

The Treaties provide the EU with competence to act externally, develop policies with neighbouring countries, conclude international agreements, impose restrictive measures and conduct other actions in the field of CFSP. Apart from that, the EU by virtue of Article 8(1) of the TEU is obliged to develop neighbourhood policy. Such policy shall be consistent with the values on which the EU is based, including rule of law, democracy and respect for human rights. It is also beneficial for the EU to actively conduct its external policy as a safer and more prosperous neighbourhood area, free from significant conflicts, leads to a safer and more prosperous EU. The Eastern Partnership constitutes an example of such EU external policies. It forms a part of the broader ENP and comprises of following countries: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

Unfortunately, each of these countries has either frozen or ongoing conflicts of different nature and magnitude, which were analysed in this thesis. Following conflicts were analysed: the Revolution of Dignity, the annexation of Crimea and the armed conflict in Eastern Ukraine with respect to Ukraine, the Nagorno-Karabakh conflict between Armenia and Azerbaijan, the Transnistrian conflict in Moldova, the conflict over South Ossetia and Abkhazia in Georgia and the conflict between Lukashenko's authoritarian regime and Belarusian people.

The EU played a role in the resolution of these conflicts, albeit of different effectiveness and magnitude. One of the most influential legal mechanisms exercised by the EU were restrictive measures. For a certain period of time, ban travel was imposed against officials of self-proclaimed Transnistria. For more than a dozen years, the EU has been imposing restrictions against Belarus' officials for the violation of human rights, falsification of elections. These measures include travel bans, freeze of assets and the prohibition to sell, export or cooperate in any way with respect to the equipment which may be used against protesters. The sanctions currently apply to the incumbent President of Belarus Oleksandr Lukashenko. In another conflict between the government and its people, in Ukraine, the EU applied restrictive measures (travel

ban and freeze of assets) only after the end of the Revolution of Dignity and also cover the then-sitting President Viktor Yanukovich. Individual restrictive measures were also applied against self-proclaimed leaders of Crimea and Donetsk and Luhansk regions, as well as against many high-Russian officials who have been liable for the breach of territorial integrity of Ukraine or benefitted from it. Yet, restrictive measures do not apply to the main person to blame, *i.e.*, Russian President Vladimir Putin.

The imposition of individual restrictive measures is an effective tool in conflict resolution as it may prevent some people who would consider joining the illicit activities or punish those already taking part in them. Yet, the full potential of this mechanism is yet to be discovered. Restrictive measures should also apply to the “ultimate beneficiaries” of the conflict. In case of the Russian invasion of Ukraine, the sanctions should cover Vladimir Putin, Dmitriy Medvedev and connected oligarchs, who have many financial assets and interests in the EU. Cutting these links could bring more leverage than punishing executors, even when they are high-ranking officials but do not have ultimate decision-making authority. Recently, the European Parliament issued a resolution warning about the imposition of such sanctions against oligarchs in case of the Russian invasion. However, Russia invaded Ukraine seven years ago and such measures should have occurred earlier.

Sectoral restrictive measures were only used in the case of the annexation of Crimea and armed conflict in Eastern Ukraine. The EU has imposed measures to isolate Crimea, prohibiting the import of goods originating there, financing any business located in Crimea etc. It may be regarded as an adequate response towards Crimea as it prohibits relations with the region occupied by Russia, while those relations would be conducted under the Russian legislation, legitimising occupation. Business as usual is not acceptable in such situations. The EU also applied sectoral sanctions against Russia in the spheres of finance, energy, defence and dual-use goods. These measures were aimed to weaken the Russian economy in some of its key spheres and to prohibit any potential aiding and abetting to its military power. It may be argued that such EU actions are not proportionate, given the extreme magnitude of Russia’s violations of international norms. The aforementioned European Parliament’s resolution of 26 April

2021 shall also be regarded here as in this resolution the EU warns to stop buying Russian gas and to exclude it from the SWIFT payment system. Yet, for many years the EU has had all reasons to impose such measures. Currently, the EU repeats its previous mistakes by acting in reaction to escalation and not in prevention of it.

Given Russia's role, Ukrainian case may be compared with a Georgian one. In the latter respect, the EU failed to impose any restrictive measures against Russia, even after Russia recognised the independence of South Ossetia and Abkhazia. Such inaction might have been regarded by Russia as EU's tolerance of such actions, which were further been repeated in Ukraine but to a greater extent.

Apart from punishing liable persons, entities, bodies, the EU has also been trying to bring the conflict to resolution by means of different missions. The EUBAM has resulted in the decrease of smuggling and criminal activities in the Transnistrian region, the EUMM Georgia has assisted to the stabilisation in the region and regularly provides the EU with first-hand knowledge about the conflict, which is necessary for developing the policy towards it. Mediation missions were sent to Ukraine and Georgia to help to reach an agreement between the parties to the conflict and in Georgia it resulted in a vital conclusion of the Six-Point Agreement, which stopped Russian invasion.

The EU has been indirectly assisting the countries in the conflict by means of respective agreements. Association Agreements concluded with Ukraine, Moldova and Georgia provide those countries with a roadmap to improve their respective legislation, to strengthen the political and economic connections with the EU, which should lead to those countries becoming more prosperous and stronger, which would assist in their abilities to protect their interests in the conflicts. It is an example of the EU exercising so-called "soft security", promoting the rule of law, democracy and supporting reforms. These aims are also elaborated in the CEPA and PCA concluded with Armenia and Azerbaijan respectively.

The EU-Moldova Association Agreement provides a different dimension of conflict resolution. The EU and Moldova have ensured that the Transnistrian region would become dependant on trade relations with them, which have provided with the leverage over self-proclaimed authorities. They agreed to abide by several rules of the

Association Agreement to be able to enjoy the benefits of the DCFTA. Economic dependence is an important background for subsequent reintegration. On the other hand, the conclusion of an agreement with Belarus has become another influence tool. Trade and Cooperation Agreement, concluded in 1989, currently remains in force between the EU and Belarus. The signed PCA has not been ratified by the EU since the mid-90s due to Belarus' violations of human rights, creating another point of pressure on the government by means of limiting the economic cooperation.

People-to-people cooperation, humanitarian aid may also be regarded as an important EU's tool. The EU has initiated many programs directed to promoting connections between people from different sides of the conflict, providing financial assistance to the youth, civil society, strengthening research cooperation etc. Even though such measures are not directly related to the conflict resolution, it improves conditions in the conflict zones as well as EU's image.

At last, EU's statements, declarations form a testament of EU's soft power in the conflict resolution. EU's support towards the protesters during the Revolution of Dignity assisted in the subsequent recognition of the post-revolution government. EU's policy of non-recognition of the annexation of Crimea, as well as self-proclaimed republics in Ukraine, Moldova, Georgia. Without EU's strong declarations on these matters, the conditions could have been much worse.

The Russian Federation often comes as a common thread of many of the highlighted conflicts, being either a party or a strong supporter of one side. The EU has necessary legal instruments to try to decrease Russia's adversary role in those conflicts, but it also needs to have a political will for this and to act decisively. Donald Tusk once said that "we should believe in the strength and vitality of the values which constitute the EU and which neighbouring states can believe in and aspire to join".³¹⁶ This is exactly what the EU can and should extrapolate and demonstrate.

³¹⁶ Pidd, Helen. "Poland's PM Donald Tusk Wants More Countries from East to Join EU". The Guardian, 8 April 2011. <https://bit.ly/3o20u9n> (Accessed 9 May 2021)

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