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Title	Weapons, humanitarian assistance, sanctions: a legal analysis of the EU's immediate response to the Russian invasion of Ukraine of 2022
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Publication date	2022
Original Citation	Lonardo, L. (2022) 'Weapons, humanitarian assistance, sanctions: a legal analysis of the EU's immediate response to the Russian invasion of Ukraine of 2022', European Law Review, 3, pp. 410-423.
Type of publication	Article (peer-reviewed)
Link to publisher's version	https://dialnet.unirioja.es/servlet/articulo?codigo=8509258
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Download date	2026-11-04 12:22:12
Item downloaded from	https://hdl.handle.net/10468/13475

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Weapons, humanitarian assistance, sanctions: A legal analysis of the EU's immediate response to the Russian invasion of Ukraine of 2022

Abstract

This analysis offers a doctrinal overview of the main legal instruments employed by the EU in the wake of the Russian invasion of Ukraine and considers whether the EU's legal response is revolutionary in comparison to its response to previous crises. To this aim, the article considers the ways in which the EU has intervened in three areas: the financing of the transfer of weapons to Ukraine, the humanitarian assistance for people fleeing Ukraine, and the sanctions against Russia and Belarus. The analysis argues that the EU's response shows political cohesion, but it is not legally revolutionary, neither in the instruments adopted, nor in the actors adopting them. The EU constitutional structure withstood the impact. It enabled the Member States to adopt measures foreseen by EU law to face the emergency, without the need for explicit or implicit constitutional amendments. Furthermore, the analysis shows that the response was led by Member States engaging with the decision-making processes within the EU as opposed to decision-making through structures outside the Treaties.

Introduction

The Russian invasion of Ukraine is a defining moment for Europe,[1] emotionally, strategically, and politically. It generated in the people of Europe a collective belief that they are on the right side of history. It triggered in Ukrainians and many others a sense of anger, and enthusiasm to fight back.[2] Thousands of foreigners have joined the Ukrainian military resistance, something reminiscent of international brigades participating in the Spanish Civil War.[3]

Strategically, the invasion calls into question the principle of self-determination. It is aimed at coercing Ukraine into a Russian sphere of influence.[4] Militarily, land acquisition by conquest and the threat of nuclear war throws Europe back to the darkest hours of the 20th century. Since the EU promises peace, it is hard to avoid the feeling that Putin has declared war on what in Russian is collectively referred to as the 'West'.[5]

Politically, the war has momentous geopolitical consequences. It has already resulted in important policy shifts and accelerated existing policy trends. There were talks of Swedish (and

The author thanks Dr Stephen Coutts, Prof Maria Cahill, Prof Steve Hedley, Dr Antonio Missiroli, and Prof Takis Tridimas for the discussion on these topics, and Shane Goodman for the assistance. The article considers developments until early April 2022.

[1] This analysis uses the word invasion to refer to the military operations launched by Russia on 24 February 2022. The European Council styled them as 'aggression' in *European Council conclusions, 24 February 2022*(European Council, 2022).

[2] J. Elster, "What Motivates Soldiers to Fight, asks Jon Elster" PRIO Blogs (13 March 2022), *https://blogs.prio.org/2022/03/what-motivates-soldiers-to-fight-asks-jon-elster/* [Accessed 10 April 2022].

[3]M. Ellingham, R. Olearchyk and W. Wallis, "Zelensky's call for volunteers to defend Ukraine heeded by thousands from abroad" *The Financial Times* (4 March 2022), *https://www.ft.com/content/2a877400-50df-4878-8815-605405e92c68* [Accessed 10 April 2022].

[4] Similar threats were issued by Russia against Sweden and Finland.

[5] M. Wolf, "Russia's war will remake the world" *The Financial Times* (15 March 2022), defining the war in Ukraine as 'an assault simultaneously on a peaceful country, on a democracy and on the world order'.

for a moment, of Finnish) NATO membership,[6] Germany doubled its defence budget,[7] and there were three new applications for EU membership (Ukraine, Georgia, and the Moldova). It has economic repercussions for the devastated Ukraine, for the Russian economy, and for the economies of European countries dependent on Russian imports for their energy needs.[8]

Honing in on the European Union, its role is best understood in the context of the interests of the various actors in the conflict. Since Putin's public justification for the invasion concerns NATO, and since the US administration made it immediately clear, and has so far maintained the position, that it would not intervene militarily,[9] the EU was initially rather side-lined and its role was, so to say, indirect. The EU as such was not involved in the previous round of peace negotiations, which lead to the so-called Minsk agreements.[10]

The EU has since given a substantial response in two ways: by assisting Ukraine and by sanctioning Russia. EU assistance has taken place through the disbursement of a significant amount of EU funding – either to allow Member States to transfer weapons to Ukraine, or to support Member States' asylum systems and civil protection efforts. Sanctioning Russia may instead be a case of 'altruistic punishment',[11] altruistic because it may come at a net cost for the EU.

Legal questions are pushed into the background by humanitarian, strategic, and political considerations.[12] There are nonetheless issues of international law concerning the legality of the use of force, the legality of the conduct of hostilities, and accountability for violations, issues of domestic law concerning the implementation of legal obligations stemming from EU and international commitments, and then issues of EU law. This article engages with selected issues stemming from the latter category but touches also upon the other categories, as they are all inextricably linked. For example, the qualification of Russian activities under international law is relevant because of the consequences deriving from it for the EU.[13] Similarly, EU actions

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[6] M. Ålander and M. Paul, "Moscow Threatens the Balance in the High North" Stiftung Wissenschaft und Politik (31 March 2022), *https://www.swp-berlin.org/en/publication/moscow-threatens-the-balance-in-the-high-north* [Accessed 10 April 2022].

[7] M. Sheahan and S. Marsh, "Germany to increase defence spending in response to 'Putin's war' – Scholz" Reuters (27 February 2022), *https://www.reuters.com/business/aerospace-defense/germany-hike-defense-spending-scholz-says-further-policy-shift-2022-02-27/* [Accessed 10 April 2022].

[8] "Russia's war in Ukraine has caused at least $68bn in physical damage" *The Economist* (5 April 2022), *https://www.economist.com/graphic-detail/2022/04/05/russias-war-in-ukraine-has-caused-at-least-68bn-in-physical-damage* [Accessed 10 April 2022].

[9] Biden, Remarks 24 February 2022 https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/24/remarks-by-president-biden-on-russias-unprovoked-and-unjustified-attack-on-ukraine/ [Accessed 10 April 2022] 'Our forces are not and will not be engaged in the conflict with Russia in Ukraine'.

[10] Of 5 September 2014 between Ukraine, Russia, the People's Republic of Donetsk and the People's Republic of Lugansk and of 12 February 2015 between those parties plus Germany and France. Similarly, the EU did not broker peace agreements in other cases of 'frozen conflicts' (in Georgia and in Moldova). Thus, one may recall the trip of President Sarkozy in Georgia in 2008, to stop another invasion: that invasion of Georgia which put Russia and Europe, for the first time after the end of the Cold War, on a trajectory of conflict which we now know was irreversible

[11] To use the expression by Fehr and Gächter, "*Altruistic Punishment in Humans"* (2002) Nature 415, pp. 137–140.

[12] For this reason and due to space limits, this article does not address the question of enlargement (in which the political questions are more than the legal ones) and the question of what happens if a settlement is reached (on which answers are bound to be purely speculative at the time of writing).

[13] In addition to points discussed in the rest of the article, one may recall that the EU is actively supporting the investigations of the International Criminal Court's prosecutor on the Situation in Ukraine. See e.g. F. Hoffmeister, "The Order of the International Court of Justice of 16 March 2022 and the European Union's Foreign Policy Reaction" EU Law Live (30 March 2022), *https://eulawlive.com/op-ed-the-order-of-the-international-*

have consequences under international law (the provision of weapons to Ukraine may breach the law of neutrality, restrictions to trade must comply with WTO law,[14] etc); foreign investment screening of Russian assets by Member States must comply with EU law;[15] and the procedures for the freezing of assets are in fact hybrid ones, mandated by EU acts but carried out by EU authorities in cooperation with Member States authorities and through an international transatlantic cooperation (e.g. the EU Commission 'freeze and seize' task force, composed also of national contact points from each Member State, Eurojust and Europol works with the 'Russian Elites, Proxies, and Oligarchs' task force together with the G7 countries).[16]

Regarding the provision of weapons, this article argues that the EU is complying with international and EU law in authorising Member States to provide weapons to Ukraine). It then argues that the decision to provide weapons to Ukraine is not revolutionary: the EU has decided to assist Ukraine indirectly – by financing the Member States, not Kiev. It does so through legal instruments which do not, explicitly or implicitly, alter its competences. This is much less momentous that the implicit constitutional amendment necessitated by the Next Generation EU agreement, and the explicit constitutional amendment for the establishment of the European Stability Mechanism. On the provision of temporary protection, this article seeks to convey the benefits for Member States and for people fleeing Ukraine. Again, this is beneficial for Member States and indirectly, for Ukrainians. Unlike the relocation decisions adopted under Article 78(3) TFEU to face the mass influx of immigrants into southern Europe during the summer of 2015, its adoption was consensual, and the implementation of the mechanism is unlikely to face political opposition. Regarding sanctions, the analysis contends that they are the most significant development in terms of size and ambition. Three important lessons from the case law are discussed: on the standing required to challenge the measures, on the level of scrutiny by the Court, and on the opportunity to seek damages. The analysis then considers the distinctive aspects of this legal response in comparison to previous ones. The response shows political cohesion, but it is not legally revolutionary because there is no constitutional fluidity. Closely following on from this, the analysis shows that the response was led by the decision-making of Member States *through* the EU.

The EU is complying with international and EU law in authorising Member States to provide weapons to Ukraine and the decision is not revolutionary

For the first time in its history, the EU has decided to finance the provision of military equipment designed to deliver lethal force. This was authorised four days after the beginning of the conflict, through two assistance measures,[17] which were adopted in the context of the

court-of-justice-of-16-march-2022-and-the-european-unions-foreign-policy-reaction-by-frank-hoffmeister/ [Accessed 10 April 2022].

[14] For an argument that they do have consequences under international law, see D. Pauciulo, "Considerazioni Sulle Misure Coercitive Adottate Nei Confronti Della Federazione Russa E Della Bielorussia Alla Luce Del Diritto Del Commercio Internazionale" Società italiana di Diritto internazionale e di Diritto dell'Unione europea (19 March 2022), *http://www.sidiblog.org/2022/03/19/considerazioni-sulle-misure-coercitive-adottate-nei-confronti-della-federazione-russa-e-della-bielorussia-alla-luce-del-diritto-del-commercio-internazionale/* [Accessed 10 April 2022].

[15] European Commission, COM(2022/C 151 I/01).

[16] "Freeze and Seize: EU's Task Force to sanction Russian and Belarusian oligarchs steps up work with international partners" EU Neighbours East (18 March 2022), *https://euneighbourseast.eu/news-and-stories/latest-news/freeze-and-seize-eus-task-force-to-sanction-russian-and-belarusian-oligarchs-steps-up-work-with-international-partners/* [Accessed 10 April 2022].

[17] The first finances the provision of lethal force (Article 1(3) Decision 2022/338 on an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force [2022] OJ L60/1). The second finances the provision of non-lethal equipment

European Peace Facility (EPF),[18] an assistance mechanism that is part of the Common Security and Defence Policy (CSDP). Contrary to the rhetoric from the EU institutions, the assistance measures do not finance Kiev: they finance the actions of Member States.

The EPF is an instrument that finances operations with military or defence implications. The costs are borne by all Member States. This is the innovative feature of the EPF (and of its predecessor, the Athena mechanism):[19] it streamlines budget management in so far as, contrary to the general rule of the CSDP, costs are not borne only by the specific Member States or third countries participating in a CSDP military operation. It can finance actions to strengthen the capacities of third states and regional or international organisations relating to military and defence matters. Assistance to third countries is another innovation of the EPF (not present in the Athena mechanism).

The assistance measure on the provision of lethal force must comply with Common Position 2008/944/CFSP,[20] which allows Member States to grant export licences for the export of military equipment if eight criteria are met.[21] The first, second, and fourth criteria are clearly met: respect for human rights and international law in the recipient country, and no use of the military equipment by the recipient to assert territorial claims in another country. The third criterion is clearly not met: weapons should not be exported if they would 'provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination'. However, this is offset by the fifth criterion: 'Member States shall take into account the potential effect […] on their defence and security interests as well as […] those of friendly and allied countries'. The remaining three criteria concerning the status of technological advancement of the recipient country are all clearly met.

Is such a decision to provide equipment designed to deliver lethal force wise? Arguably, the EU response should focus on restrictive measures and humanitarian assistance rather than being involved more directly within military operations. Firstly, the US position of not putting boots on the grounds to avoid an escalation has merits, even though both Europeans and the US may soon need to reconsider this stance. Secondly, the evolution and respective roles of NATO and the EU suggest that EU security action should focus on humanitarian actions and trade measures. Thirdly, the EU as such has virtually no expertise in the substantive core of military matters.

Member States are not prohibited from assisting Ukraine under either EU law or the North Atlantic Treaty: arguably, they are obliged to do so under EU and international law. Article 8(1) TEU read in conjunction with Article 3(5) TEU establishes that the EU shall share EU values, including respect for UN Charter, in the neighbourhood. This is also made explicit in

(Article 1(3) Decision 2022/339 on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces [2022] OJ L 61/1).

[18] Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528.

[19] P. Koutrakos, "The European Peace Facility and the EU's Support to the Ukrainian Armed Forces" (5 March 2022, *EU Law Live*)

[20] Common Position 2008/944 defining common rules governing control of exports of military technology and equipment [2008] OJ L 335/99.

[21] Article 2 Common Position 2008/944 /CFSP defining common rules governing control of exports of military technology and equipment [2008] OJ L 335/99.

Article 1(2)(c) of the EU-Ukraine Association Agreement, which, however, does not contain a mutual assistance clause.[22]

The measures appear to be permitted under the EU-Russia agreement of 1994 (Article 99(1)(d) – as interpreted by the Court in *Rosneft*[23]). Finally, Articles 40 and 41 of the Draft articles on State Responsibility oblige States to bring to an end a grave breach of international law (Article 41(1)) and not to recognise situations created by those breaches (Article 42(2)[24]).[25]

The question then becomes one of international law: is Russia in breach of international law? While two cases relating to the conflict are pending before the International Court of Justice,[26] and only provisional measures to halt hostilities were ordered,[27] some reflections can be offered at this stage.[28] The public justification for the war waged by Russia in Ukraine is contained in Putin's speech of 24 February 2022.[29] Russia invoked Article 51, also noting the invitation by the People's Republics of Donetsk and Luhansk of Russian troops onto their territory, and compliance with the Treaties of Friendship, Cooperation and Mutual Assistance between Russia and those republics (recognised only by Russia).[30] Self-defence was invoked as necessary to defend the two republics in the Donbass from Ukrainian genocide, and in response to NATO expansion in violation of promises made to Russia. If the Russian claim is not accepted, and it is not acting in self-defence, then its actions violate Article 2(4) of the UN Charter, which prohibits the use of force (except when it used in self-defence or with UN Security Council authorisation). Both individual and collective self-defence appear to be unacceptable justifications. There was no action by NATO or the US which suggested that there was an imminent attack (or indeed that there would be an attack at all) against Russia, such as to generate a right to individual self-defence, be it anticipatory or pre-emptive.[31] There was an armed conflict in the Donbass (since 2014), but not against Russia. If there was force used by Ukraine against Russians in Ukraine, the use of force to protect nationals abroad (in and of itself a moot excuse under international law) would appear to be disproportionate. The

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[22] As recalled in Decision 2022/339/CFSP, 'enhanced cooperation in the area of CSDP and alignment with the CFSP between the Union and Ukraine was one of the outcomes' of the bilateral summits of 2020 and 2021.
[23] *PJSC Rosneft Oil Company v Her Majesty's Treasury and Others* (C-72/15) EU:C:2017:236 at [117].
[24] On which see E. Kassoti, "The Legality under International Law of the EU's Trade Agreements covering Occupied Territories: A Comparative Study of Palestine and Western Sahara" (CLEER Papers 2017/3) 18.
[25] Article 42 of the Draft Articles on the Responsibility of International Organisations would only be applicable if the breach was committed by an international organisation as opposed to a state, but the commentary to that Article suggests that international organisations have duties corresponding to those of states under Article 41 Draft Articles on the Responsibility of States for Internationally Wrongful Acts.
[26] Since 2022, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*) and since 2017, Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (*Ukraine v. Russian Federation*).
[27] ICJ, Order of 16 March 2022 in Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*).
[28] The UN General Assembly 'Deplore[d] in the strongest terms the aggression by the Russian Federation against Ukraine' in Resolution GA/12407 of 2 March 2022.
[29] "Message from the President of the Russian Federation" Office of the President of the Russian Federation (24 February 2022), *http://kremlin.ru/events/president/news/67843* [Accessed 10 April 2022], later notified to the UN Security Council UNSC 'Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General' (24 February 2022) UN Doc S/2022/154.
[30] Presumably with the mutual defence clause contained in Article 4 thereof.
[31] M. Schmitt, "Russia's "Special Military Operation" and the (claimed) right of self-defense" Lieber Institute (28 February 2022), *https://lieber.westpoint.edu/russia-special-military-operation-claimed-right-self-defense/* [Accessed 10 April 2022].

same applies for Ukrainian legislation which has posed problems for minority rights:[32] the use of force is a disproportionate reaction. Collective self-defence is equally implausible. The fact that there was an invitation by the Donbass republics is irrelevant unless those entities are considered states. Russia is the only State that recognises them, giving rise to suspicions that the recognition is merely a pretext to achieve in two steps what the law forbids in one (namely, invading a sovereign country).

Is the decision to finance the provision of lethal force revolutionary? It is not, because while it is the first time that the EU has acted in this manner, the measure was undoubtedly adopted pursuant to powers the EU already has, and thus we are not witnessing the acquisition of new EU competences. The decision *permits* Member States to transfer weapons by financing that transfer (which is then organised by the competent national authority in each Member State, usually this would be the defence ministers). This can be contrasted with the response to Covid through the Next Generation EU instrument, when the EU introduced centralised borrowing to fund recovery spending by Member States. Similarly, it can be contrasted with the constitutional amendment needed to establish a European Stability Mechanism. Both of these cases are discussed later in this article.

Is the decision binding on Member States? Considering that there is no mechanism for judicial enforcement, as the Court does not have jurisdiction, the decision is best understood as an expression of significant political unity. In particular, the decision does not oblige the transfer of military equipment. Such a conclusion is confirmed by the wording and objective of the measure, which merely established an assistance mechanism (Article 1 Decision 2022/338 CFSP). This allowed for a U-turn of what appeared to be Poland's initial decision to provide fighter jets.[33] Similarly, Hungary stated that it will not allow the transfer of weapons through its territory (contrary to what the decision requires in Article 5). The fact that the decision is not 'mandatory' for Member States,[34] may be taken to entail that the measure is not attributable to the EU. In addition to international law repercussions not discussed here, this lack of attribution would entail that a claim for damages under Article 340 TFEU would be inadmissible.[35]

The decision of the EU to provide Ukraine with lethal force is nonetheless remarkable as it is the first time that this has happened: 'it is an action that moves away from the soft end of security, an area where CSDP has been carried out in relative comfort since its inception'.[36] The decision to provide lethal force is also significant as it casts a shadow on the eternal debate over the characterisation of the EU as 'civilian power'.[37] But in the absence of the deployment

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[32] Article 25 of the Law of Ukraine on ensuring the functioning of the Ukrainian language as the state language, commonly referred to as the State Language Law, requires print media outlets registered in Ukraine to publish in Ukrainian. Publications in other languages must also be accompanied by a Ukrainian version, equivalent in content, volume, and method of printing. See: https://zakon.rada.gov.ua/laws/show/2704-19#Text [Accessed 10 April 2022].

[33] "Poland "does not envisage" sending fighter jets to Ukraine despite Blinken remarks" (7 March 2022, *Notes from Poland*) https://notesfrompoland.com/2022/03/07/poland-does-not-envisage-sending-fighter-jets-to-ukraine-despite-blinken-remarks/

[34] To use the expression of the General Court in *Dr. K. Chrysostomides & Co. LLC and Others v Council of the European Union and Others* (T-680/13) EU:T:2018:486at [186]. This judgment concerned a Council's decision approving a macroeconomic adjustment programme in Cyprus.

[35] *Ledra Advertising Ltd v European Commission and European Central Bank* (T-289/13) EU:T:2014:981; [2017] 1 C.M.L.R. 25 at [43].

[36] P. Koutrakos (n 19).

[37] K. Smith, "Beyond the civilian power EU debate" (2005) 17 *Politique Europeenne* 3, pp. 63-82.

of an EU military force, NATO is best equipped to provide the core elements of military security.

Humanitarian assistance (including temporary protection to Ukrainians)

On 4 March 2022 the Council adopted a decision (the 'Temporary Protection Decision')[38] implementing Directive 2001/55/EC (the 'Temporary Protection Directive')[39] to help people who are fleeing Ukraine. By April 2022, the UN had estimated that over 4 million people left the country, of which most entered the EU through Poland, Slovakia, Hungary and Romania.[40] In addition to, and in support of, the Temporary Protection Decision, the EU has also deployed the Asylum, Migration and Integration Fund,[41] and the Union Civil Protection Mechanism[42] has been activated by Poland, Slovakia, and Moldova. This mechanism was already active in Ukraine before the invasion.[43]

The protection applies to the following categories of individuals: Ukrainians and non-Ukrainians residing in Ukraine before 24 February 2022 (and their family members)[44] and stateless persons and other people who benefitted from international protection in Ukraine before 24 February 2022 (and their family members).[45]

As is made clear by Recital 6 of the Temporary Protection Decision, 'the expectation is that half of the Ukrainians coming to the Union […] will join family members or seek employment in the Union, whilst the other half will request international protection'. Since Ukrainians nationals were already exempt from the requirement to be in possession of a visa when crossing the external borders of Member States for short stays,[46] the greatest benefits of temporary protection are for the latter category.

The Temporary Protection Decision benefits Member States by reducing the formalities to a minimum, thus not burdening the national authorities responsible for processing international protection applications. This is in turn beneficial to applicants, who can lodge their application

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[38] Recital 2, Implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection [2022] OJ L 71/1.

[39] Directive 2001/55/ECon minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L 212.

[40] "Operational Data Portal, Ukraine Refugee Situation" UN High Commissioner for Refugees *https://data2.unhcr.org/en/situations/ukraine* [Accessed 10 April 2022].

[41] Regulation 2021/1147 of the European Parliament and of the Council establishing the Asylum, Migration and Integration Fund [2021] OJ L 185/1.

[42] Regulation 2021/836 of the European Parliament and of the Council of 20 May 2021 amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism [2021] OJ L 185/1.

[43] This mechanism facilitates EU Member States (and other associated countries) to offer medical supplies and equipment, ambulances, beds, tents, generators, and other much emergency relief items. It was also used in support of Lithuania to face migratory influxes from Belarus in 2020. C Scissa, "Misure emergenziali al confine tra UE e Bielorussia: uno scontro tra 'titani' con gravi ripercussioni per i migrant" (2022) 7(1) European Papers 43.

[44] Article 2(1) and 2(3) TPDecision.

[45] Article 2(2) TPDecision. For the consequences of this differentiation, see D Vitiello, The Nansen Passport and the EU Temporary Protection Directive: Reflections on Solidarity, "Mobility Rights and the Future of Asylum in Europe" (2022) 7(1) European Papers 15.

[46] For stays of no more than 90 days in any 180-day period, by virtue of Annex II to Regulation 2018/1806 of the European Parliament and of the Council of 14 November 2018 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 [2018] (OJ L 303/39.

without urgency (the Temporary Protection Decision is valid for an initial period of one year, extended automatically by six monthly periods for a maximum of one year).[47] This seems to imply that they can lodge an application even after travelling to another Member State of their choice.[48] It would appear that this Member State is the one responsible for examining an asylum application as per Article 18 of the Temporary Protection Directive, even though this provision is not free from interpretative difficulties.[49]

The status of temporary protection confers fewer rights than the status of international protection. It is, as the name implies, time-limited. It does not mandate the reception of a certain number of persons. It thus imposes significantly fewer burdens on the Member State of relocation than other instruments that the Council could have adopted: in particular, the Council could have adopted another solidarity measure, namely a relocation Decision under Article 78(3) TFEU. The decision to opt for the Temporary Protection Directive as opposed to a relocation decision 'is an essentially political choice'.[50] In the light of the political unity existing at the time of adoption of the Temporary Protection Decision, it appears at the moment unlikely that Member States will refuse to comply with this mechanism, contrary to what happened with the relocation decisions adopted to face the 2015 surge of immigrants in through the Mediterranean Sea.[51]

EU sanctions

The EU has adopted heavy restrictive measures swiftly, overcoming initial reticence by certain Member States to impose sanctions against Russian banks and luxury goods. In extreme synthesis, the EU adopted individual restrictive measures such asasset freezes and travel restrictions against hundreds of Russians and Belarusians; restrictions against dozens of Russian and Belarusian companies (including SWIFT bans for some banks); economic sanctions against sectors of the Russian and Belarusian economies (including transports, space, banking, oil refining and metallurgical industries), trade restrictions for certain products (such as weapons, dual-use goods, construction products and luxury goods); a ban on certain Russian media companies; restrictions on economic relations with the non-government-controlled areas of Donetsk and Luhansk, and even though it is not a restrictive measure for the purposes of EU law, the EU has also partially suspended the EU-Russia agreement on visa facilitation.[52]

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[47] Article 4 Temporary Protection Directive.

[48] On a plausible reading of Recital 16 of the Temporary Protection Decision: 'Ukrainian nationals, as visa-free travellers, have the right to move freely within the Union after being admitted into the territory for a 90-day period. On this basis, they are able to choose the Member State in which they want to enjoy the rights attached to temporary protection'.

[49] F.R. Partipilo, "The War in Ukraine and the Temporary Protection Directive: tackling a short-lived conflict or a protracted humanitarian disaster?" EU Law Live (16 March 2022), *https://eulawlive.com/op-ed-the-war-in-ukraine-and-the-temporary-protection-directive-tackling-a-short-lived-conflict-or-a-protracted-humanitarian-disaster-by-francesca-romana-partipilo/* [Accessed 10 April 2022].

[50] *Slovakia and Hungary v Council* (C-643/15) ECLI:EU:C:2017:631 at [257].

[51] *Slovakia and Hungary v Council* (C-643/15) ECLI:EU:C:2017:631, and *Commission v Poland, Hungary and Czech Republic* (C-715/17, C-718/17, and C-719/17) EU:C:2020:257.

[52] Decision 2022/333 on the partial suspension of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation [2022] OJ L 54/1..

The measures have been adopted in five successive waves[53] on 25 February, 28 February, 2 March, 15 March and 8 April. In addition to these sanctions, the EU had adopted further measures in response to the recognition by Russia of the two separatist republics in the Donbass prior to the invasion (on 23 February[54]). The sanctions involving Russia and Russian individuals are here collectively referred to as the '2022 sanctions'.

The 2022 sanctions against Russia are contained in acts amending the March 2014 and July 2014 measures ('the 2014 sanctions'), and are therefore contained in the consolidated version of those acts.[55] Compared to the 2014 sanctions, the 2022 sanctions are heavier because they are broader: they target more sectors of the Russian economy and more individuals. They were also adopted in quick succession and not, as in 2014, by gradually increasing the pressure on Russia over the course of four months.

The 2022 sanctions against Belarus were adopted as amendments to the 2006 CFSP Common Position and implementing Regulation,[56] with which restrictive measures were adopted against some Belarusian officials. These were adopted on 2 March[57] and 9 March 2022.[58]

Three reflections may be made at this stage. Firstly, it would appear that on the basis of Article 263(4)TFEU, the hundreds of natural and legal persons targeted by the measures have standing to challenge provisions of the measures in so far as these are addressed to them. The time limitation for this is two months of the publication of the measure (Article 263(6)TFEU). The challenge could take the form of a direct action[59] or of a preliminary ruling.[60] Individuals, however, do not have standing to challenge measures on behalf of other applicants, nor to

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[53] For the details of the initial ones, see the summary by C. Challet, "A Revolution within the EU's Common Foreign and Security Policy: EU Sanctions Adopted in Reaction to Russia's Aggression" EU Law Live (5 March 2022).

[54] Council Decision (CFSP) 2022/264 of 23 February 2022 amending Decision 2014/512/CFSP OJ 2022 L 42, p. 95; Council Regulation (EU) 2022/262 of 23 February 2022 amending Regulation (EU) No 833/2014 OJ 2022 L 42, p. 74. Council Decision (CFSP) 2022/265 of 23 February 2022 amending Decision 2014/145/CFSP OJ 2022 L 42, p. 98; Council Implementing Regulation (EU) 2022/260 of 23 February 2022 implementing Regulation (EU) No 269/2014 OJ 2022 L 42, p. 3.
Council Decision (CFSP) 2022/267 of 23 February 2022 amending Decision 2014/145/CFSP OJ 2022 L 42, p. 114; Council Implementing Regulation (EU) 2022/261 of 23 February 2022 implementing Regulation (EU) No 269/2014 OJ 2022 L 42, p. 15. Council Decision (CFSP) 2022/266 of 23 February 2022 OJ 2022 L 42, p. 109; Council Regulation (EU) 2022/263 of 23 February 2022 OJ 2022 L 42, p. 77.

[55] Council Decision 2014/145/CFSP of 17 March 2014 OJ 2014 L078 and Council Regulation (EU) 269/2014 of 17 March 2014 OJ 2014 L 078, p. 6.); Council Decision 2014/512/CFSP of 31 July 2014 OJ 2014 L 229, p. 13; Council Regulation (EU) 833/2014 of 31 July 2014 OJ 2014 L 229, p. 1

[56] Common Position 2006/276 concerning restrictive measures against certain officials of Belarus and repealing Common Position 2004/661/CFSP [2006] OJ L 101/5; Regulation 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus [2006] OJ L 134/1.

[57] Decision 2022/356 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus [2022] OJ L 67/103;
Regulation 2022/355 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus [2022] OJ L 67/1.

[58] Decision 2022/399 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine [2022] OJ L 82/9; Regulation 2022/398amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine [2022] OJ L 82/1.

[59] As it was done in *RT France v Council* (T-125/22)

[60] Via national implementing measures. For examples of measures taken to implement sanctions against Russian media outlets, see https://rm.coe.int/note-rt-sputnik/1680a5dd5d.

challenge measures of general application:[61] although at least some of these measures of general application can be challenged by Russia itself in EU courts. Russia can challenge measures prohibiting sales, supplies, transfers etc 'to any natural or legal person, entity or body in Russia'.[62] This is because a third country is a natural person for the purposes of Article 263 TFEU (as the Court held in its judgment in *Venezuela*[63]), and thus has *locus standi* to challenge a measure of direct concern to it, provided that the measures are regulatory acts and do not require implementation (conditions deemed fulfilled in *Venezuela* for a similarly worded measure).[64]

Secondly, the legality of the measures, when challenged, is scrutinised by the CJEU on a case-by-case basis. The Court monitors that their adoption respects procedural requirements such as the duty to state reasons as well as substantive requirements such as respect for the fundamental rights of the addressees. Measures affecting fundamental rights are subject to a proportionality check. It is established case law that the Council is allowed broad discretion in foreign policy choices.[65] In light of the 'primordial importance of maintaining peace'[66] only 'manifestly inappropriate'[67] measures would be struck down. The Court has indeed been very reticent to scrutinise the *merits* of the allegation (the evidence to substantiate grounds for listing a natural or legal person), limiting itself to checking that the Council complied with the *procedural* requirement of providing the reasons for listing. The Council can therefore exercise broad discretion when it decides to sanction persons because it considers them to fall under one of the categories foreseen by the sanctions (broadly speaking: persons responsible for, supporting, or benefitting from the actions undermining Ukraine's independence or from the Russian regime, legal persons whose goods in Crimea were expropriated after 2014's annexation, and persons contracting with the separatist republics in the Donbass).[68] The Court is prepared to accept that the Council relies on presumptions: for example, the presumption that a person supports a regime by virtue of their business position,[69] or benefits from the regime by virtue of family ties. Other forms of association with the Russian regime, mentioned in the annex to amended Regulation 269/2014 (such as public statements, institutional affiliation, political affiliation, or indeed presumptions), would need to be subject to a case-by-case assessment but appear overall to be in line with what was deemed acceptable in previous case law. For the hundreds of Russian individuals sanctioned by the EU, it may thus be very hard to show that they should not be listed, especially considering that, unlike in the procedure for terrorist sanctions, the Council does not have to rely on a decision by a national or third country authority to substantiate targeting an individual.[70]

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[61] As were those targeting the Russian oil sector in 2014, 'the scope of which is determined by reference to objective criteria', *Rosneft* (C-72/15) EU:C:2017:236 at [99].
[62] For example, this is how the prohibition of selling technology and material related to gas and oil extraction is formulated, in Article 3(1) of Regulation Regulation (EU) No 833/2014 as amended on 15 March 2022.
[63] *Bolivarian Republic of Venezuela v Council of the European Union* (C-872/19 P) EU:C:2021:507 at [50].
[64] *Venezuela* (C-872/19 P) EU:C:2021:507 at [92].
[65] *Rosneft* (C-72/15) EU:C:2017:236 at [113].
[66] *Bank of Industry and Mine v Council* (C-358/15) EU:C:2016:338 at [57].
[67] *Rosneft* (C-72/15) EU:C:2017:236 at [146].
[68] Article 3 of amended Regulation 269/2014.
[69] C. Beaucillon, 'Opening Up the Horizon' 408; for the use of presumptions in the 2014 sanctions, Arkady Romanovich Rotenberg v Council of the European Union (T-720/14) EU:T:2016:689 where the Court declared valid sanctions against an individual who was 'both the owner of a company building a bridge between Crimea and Russia (both commercial and financial support, and material support), and the chair of a publishing house running a public campaign explaining to Crimean children that they are Russian' (Beaucillon 409).
[70] See *Yanukovych v Council* (C-599/16) EU:C:2017:785 at [51].

When it comes to sanctions against Russian media outlets, guidance may come from a previous case (stemming from the 2014 sanctions) in which the Court held that fighting propaganda was a worthy objective and that to achieve this aim, it was not disproportionate to limit the freedom of expression of Kiselev,[71] the director of a Russian newspaper and 'central figure of the government propaganda supporting the deployment of Russian forces in Ukraine'.[72] With the 2022 sanctions, the EU prohibits broadcasting any content of the Russia-sponsored media outlets Sputnik and RT.[73] RT France, an entity addressee of the measure, has already challenged the sanction.[74] The judgment in *Kiselev* is particularly relevant for the case of RT,[75] as the Court held that the Council could address restrictive measures 'not only to persons who are responsible for the actions and policies of that government as regards Ukraine or to the persons who implement those actions or policies, but also to persons providing active support to those persons'.[76] Thus, an asset freeze was not a disproportionate interference with the freedom of expression of Mr Kiselev. Could a similar conclusion be reached in the case of RT? One could answer positively by considering both the overriding public interest the EU is pursuing (compliance with the UN Charter) and the nature of the 'expression' on which RT is relying (which, the EU contends, amounts to propaganda).[77] One could also offer a negative answer, by distinguishing *Kiselev* to argue that the sanctions against RT and Sputnik are manifestly disproportionate. Their effect differs: the European branches of RT and Sputnik are put out of business entirely and thus sanctions affect their freedom to conduct business in a way that has the potential to affect the very existence of those entities. The evidence on which the Council could rely also differs: unlike the situation in *Kiselev*, there are no decisions by national authorities that may constitute solid evidence that RT engaged in propaganda activities.[78]

Thirdly, individuals unlawfully included in the sanctions could seek damages based on Article 268 TFEU and Article 340(2) TFEU. In *Bank Refah*, the Court held that it has jurisdiction to hear actions for the non-contractual liability of the EU for alleged damages stemming from CFSP Decisions providing for restrictive measures. EU courts have exclusive jurisdiction to award such damages.[79] The action will be admissible 'even if no prior action for annulment or for failure to act has been brought and if no preliminary ruling declaring the offending act invalid has been obtained',[80] but this does not mean that the action for non-contractual liability can be used to circumvent limits put to an action for annulment or failure to act, and therefore the action for damages cannot serve as restitutory claim.[81] Thus, the Court has rejected the admissibility of an action for non-contractual liability based on damages allegedly resulting

[71] *Dmitrii Konstantinovich Kiselev v Council of the European Union* (T-262/15) EU:T:2017:392 at [113].
[72] Council Implementing Regulation (EU) No 284/2014 of 21 March 2014 implementing Regulation No 269/2014 (OJ 2014 L 86, p. 27).
[73] Art. 2f. Regulation 833/2014, as amended on 1 March 2022 by Council Regulation (EU) 2022/350
[74] T-125/22 R, in which the applicant requested an interim suspension of the measures. The request for provisional measures was rejected on 30 March 2022.
[75] B. Baade, "The EU's 'Ban' of RT and Sputnik" (8 March 2022, *Verfassungsblog*) https://verfassungsblog.de/the-eus-ban-of-rt-and-sputnik/ [Accessed 10 April 2022].
[76] *Kiselev* (T-262/15) EU:T:2017:392 at [113].
[77] War propaganda is prohibited by Article 20 ICCPR.
[78] *Kiselev* (T-262/15) EU:T:2017:392 at [107].
[79] K. Lenaerts, *EU Procedural Law*, (Oxford, Oxford University Press, 2014), p. 483.
[80] Lenaerts, *EU Procedural Law,* p. 489. For the validity of this statement in the context of EU restrictive measure, see A. Carrozzini and L. Lonardo, "Non-Contractual Liability For EU Sanctions: Towards the Normalization of CFSP" (2021) 3(26) *European Foreign Affairs Review* 459, 468.
[81] T. Tridimas, "Economic Sanctions, Procedural Rights and Judicial Scrutiny: Post-Kadi Developments" (2010) 12 *Cambridge Yearbook of European Law,* pp. 455, 461.

from a 'measure which has become definitive, which the party concerned could have challenged by means of an annulment'.[82]

It is established case law that the non-contractual liability of the EU 'presupposes the existence of a set of circumstances comprising actual damage, a causal link between the damage claimed and conduct alleged against the institution, and the illegality of such conduct'.[83] As to the first condition, the existence of an actual and certain damage affecting personal assets of the claimant is a matter of fact, to be proved by the one alleging it.[84] Damages claimed can be material or non-material.[85] As to the second condition, the damages must be a sufficiently direct consequence of the breach. Again, this requirement is to be proven by the claimant and is subject to a case-by-case assessment. As to the third condition, for discretionary measures such as sanctions, there must be a sufficiently serious breach of an obligation of EU law, that is that 'the institution concerned [must have] manifestly and gravely disregarded the limits on the exercise of its powers'.[86] This requires a case-by-case assessment also. In the context of restrictive measures, the Court held that the inadequacy of the statement of reasons for listing is not, in itself, sufficiently serious so as to automatically give rise to the non-contractual liability of the European Union.[87] Three cumulative conditions must instead be met, namely that the EU acts upon which a restrictive measure is based are vitiated for want of any, or any sufficient, statement of reasons, that the Council has not provided information capable of establishing that the measure is well founded, and that the individual concerned by that measure expressly raises a plea to that effect in an action for damages.[88] The calculation of damages awarded follows the rationale of putting the claimants in the *status quo ante*. For non-material damages, the Court only gave hints of the factors to be considered, such as the duration of the damage, its severity, and the impact on third parties' behaviour.

The response to the invasion of Ukraine: revolutionary policy, conservative law

The EU's response shows political cohesion but it is not legally revolutionary, neither in the instruments adopted, nor in the actors adopting them. The EU constitutional structure withstood the impact. It enabled the Member States to adopt measures foreseen by emergency as well as non-emergency legal bases in EU law,[89] without the need for explicit or implicit constitutional amendments. Closely following from that, the analysis also showed that the response was led by decision-making of Member States through the EU, as opposed to decision-making through structures outside the Treaties.[90]

Concerning the instruments utilised by the EU to respond, their adoption showed, at least before Hungary's Orban re-election in early April 2022, unprecedented political unity, firmly

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[82] *Holcim (France) v Commission* (T-86/03) EU:T:2005:157 at [49–51].
[83] *Lütticke v Commission* (C-4/69) EU:C:1971:40 at 10.
[84] K. Lenaerts, *EU Procedural Law*, p. 494.
[85] Non-material damages in the context of sanctions were awarded for the first time in *Safa Nicu Sepahan Co. v Council of the European Union* (T-384/11) EU:T:2014:986; K. Havu, "Damages Liability for Non-Material Harm in EU Case Law" (2019) 44 *European Law Review* 492.
[86] *Safa Nicu* (T-384/11) EU:T:2014:986 at[174].
[87] See *Bank Refah Kargaran v Council of the European Union* (C-134/19 P) EU:C:2020:793 at [33] and *HTTS Hanseatic Trade Trust & Shipping GmbH v Council of the European Union* (C-123/18 P) EU:C:2019:694 at [103].
[88] *Bank Refah Kargaran v Council of the European Union* (C-134/19 P) EU:C:2020:793 at [65].
[89] For the distinction in another context see B. De Witte, "EU emergency law and its impact on the EU legal order" (2022) 59 *Common Market Law Review* 3.
[90] On which see E. Spaventa, "Constitutional Creativity or Constitutional Deception" (2021) 58 *Common Market Law Review* 6.

anchored in the EU constitutional structures and powers. Unlike what happened in response to past emergencies and crises,[91] the EU's reaction to the invasion of Ukraine shows no signs of constitutional fluidity. By this it is meant that the Member States have not enacted explicit or implicit Treaty amendments.[92] The Member States did not take action stretching Treaty provisions beyond their literal meaning.[93] The EU constitutional structure withstood the impact, enabled the Member States to face the emergency, and the EU legal order has not been changed as a result. This can be contrasted, among others,[94] with the 2020 Next Generation EU plan as a response to the Covid-19 pandemic. Within that, the 'own resources decision'[95] has been welcomed as a landmark change in EU constitutionalism, and this may be a correct assessment in so far as the EU has mobilised resources independently for the first time.[96] In the case of European Stability Mechanism, an international agreement between Eurozone countries adopted to provide a source of financial assistance to Member States in difficulty, was accompanied by Treaty amendment.[97]

Considering the actors, the response to the invasion took the form of decision-making by Member States *through* the EU, rather than through legal engineering by setting up new, *ad hoc* bodies. The European Council on 24 February firmly determined the political direction of the EU. Member States within the Council then adopted the main instruments discussed in this analysis. The European Peace Facility is an off-budget measure administered within the EU; humanitarian response mechanisms are also implemented by Member States, but the EU is the forum in which they are adopted. Similarly in the case of sanctions, while these are implemented in practice by national authorities, it is the EU which creates 'institutional nodes'[98] and a coordinated process through which Member States react. In the past, Member States acted collectively also outside the Treaties. To tackle the financial crisis of the past decade, governance of the Eurozone took place through activities involving the creation of institutions outside the EU Treaty framework, and parallel to EU institutions.[99] This has given rise to strong doubts of constitutionality.[100] This was the case for the European Stability Mechanism, a Treaty between Eurozone countries which established an international financial institution in Luxembourg, the functioning of which the European Commission and the

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[91] For the distinction between emergency and crisis, I. Govaere and S. Poli, 'Introduction' in id (eds), *EU Management of Global Emergencies Legal Framework for Combating Threats and Crises* (Brill 2014).
[92] The notion of constitutional fluidity is explained in T. Tridimas, '"Indeterminacy and Legal Uncertainty in EU Law" in J. Mendes (ed.), *EU Executive Discretion and the Limits of Law* (Oxford: Oxford University Press, 2019).
[93] For how they might have done that, see L. Lonardo, 'EU Law against Hybrid Threats: A First Assessment' (2021) 6(2) European Papers 1075, 1094.
[94] See the examples of emergencies in I. Govaere and S. Poli (n 91).
[95] Council Decision(EU,Euratom)2020/2053of14Dec.2020onthesystem of own resources of the European Union and repealing Decision 2014/335/EU, Euratom, O.J. 2020, L 424/1
[96] C. Fasone and P. Lindseth, "Europe's Fractured Metabolic Constitution: From the Eurozone Crisis to the Coronavirus Response" Luiss School of Government Working Paper Series SOG-WP61/2020 and P. Leino-Sandberg and M. Ruffert, "Next Generation EU and its constitutional ramifications: A critical assessment" (2022) 59 *Common Market Law Review* 2, pp. 433, 437.
[97] European Council Decision of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with
regard to a stability mechanism for Member States whose currency is the euro, OJ 2011, L 91/1 of 6 April 2011.
[98] B. Laffan, "Brigid Laffan: Europe voices collective will and flexes muscle" *The Irish Times* (5 March 2022), https://www.irishtimes.com/opinion/brigid-laffan-europe-voices-collective-will-and-flexes-muscle-1.4818453 [Accessed 10 April 2022].
[99] B. De Witte and T. Martinelli, 'Treaties between EU Member States as Quasi-Instruments of EU Law' in M. Cremona and C. Kilpatrick (eds), EU Legal Acts—Challenges and Transformations (OUP 2015) 157, 170–81
[100] *Pringle v Government of Ireland* (C-370/12) EU:C:2012:756; [2013] 2 C.M.L.R. 2.

European Central Bank take part.[101] Conceivably, in the case of Ukraine, some Member States could have used the European Intervention Initiative. This multilateral agreement is a platform for governance and coordination, which aims at 'facilitating the emergence of a European strategic culture and at creating the preconditions to conduct coordinated and jointly prepared future commitments',[102] and provides a credible alliance of states with capabilities for carrying out joint military operations. NATO is another option which, due to the reticence of the US to intervene overtly, also proved politically unfeasible.

Conclusion

The invasion of Ukraine may force a rebirth of European strategic thinking. More generally, the security architecture as it emerged after the Second World War and as evolved after the end of the Cold War may need to be re-thought.

However, the hour of Europe, preconised by the then Luxembourg's foreign minister Jacques Poos at the time of the breakup of Yugoslavia, has not yet come. Of course, the political unity shown by the EU Member States (and the West more broadly)[103] in the wake of the invasion is astonishing. Within the EU, the belief that Putin has 'crossed a red line' and is 'wrong' seems widely shared (the quotations are from Marine Le Pen,[104] but similar language was used by other prominent politicians who were previously orbiting around Putin).[105] This is still the case even though, after his re-election in early April 2022, Orban has appeared to be prepared to adopt (perhaps to increase his political leverage) positions that stray from the common ones of the other Member States.[106]

In any case, as a matter of law, the actions taken have been less revolutionary than the sentiments that the political statements evoke. The EU's reaction did not display significant elements of novelty either in the instruments adopted or in the institutional actors adopting them. The response was firmly anchored in the EU constitutional framework. The EU was well-equipped to face the emergency. No ingenious operations of legal engineering were designed to equip Member States with an apparatus enabling them to intervene: the Member States acted through the EU instead.

The question is, of course, whether this unity through the EU creates a model or if it will represent a pattern. To this, no answer is possible at this stage and may be the object of future research.

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[101] e.g. Article 13(3) and (4) ESM Treaty, entrusting the Commission to ensure that the memoranda of understanding concluded by the ESM are consistent with EU law.

[102] French Ministry of Defence, 'European Intervention initiative' https://www.defense.gouv.fr/english/dgris/international-action/l-iei/l-initiative-europeenne-d-intervention

[103] M. Del Pero, "Tre sfide epocali per l'Alleanza ritrovata" ISPI Online (18 March 2022), *https://www.ispionline.it/it/pubblicazione/tre-sfide-epocali-lalleanza-ritrovata-34176* [Accessed 10 April 2022].

[104] "Marine Le Pen "ne regrette rien" de ses liens avec Poutine mais estime qu'il a franchi "la ligne rouge" BFM (1 March 2022), *https://www.bfmtv.com/politique/elections/presidentielle/en-direct-presidentielle-marine-le-pen-est-face-a-bfm-a-partir-de-20h50_LN-202203010602.html* [Accessed 10 April 2022].

[105] See a 'compilation' by Politico: V. Jack, "Putin's European pals have to eat their words" Politico (26 February 2022), *https://www.politico.eu/article/vladimir-putin-european-pals-eat-their-words-marine-le-pen-eric-zemmour-matteo-salvini-milos-zeman-alex-salmond-gerhard-schroder-boris-johnson-jean-luc-melenchon-francois-fillon-viktor-orban/*[Accessed 10 April 2022].

[106] J. Askew, "Hungary 'helping Putin' in the war, says Ukraine's foreign ministry" (7 April 2022, Euronews) https://www.euronews.com/2022/04/07/hungary-helping-putin-in-the-war-says-ukraine-s-foreign-ministry [Accessed 10 April 2022]