

EU “Sanctions” and Russian Manoeuvring: Why Brussels Needs to Stay its Course while Shifting Gears

by Antonio Bultrini

The EU will soon be called upon to decide on the economic measures targeting trade exchanges with Russia, triggered by Moscow’s annexation of Crimea and due to expire on 31 July 2020. While the measures are likely to be renewed, their mere reiteration is no longer satisfactory in terms of policy effectiveness. More imaginative and effective approaches are needed by the EU while not compromising on its values.

The EU’s restrictive measures were initially adopted in 2014 and were subsequently reinforced following the outbreak of conflict in the Donbass region of Eastern Ukraine. They have since been periodically renewed. Several other states have adopted similar although not identical measures, which have produced adverse effects on the Russian economy but marginal improvement on the ground.

Efforts by Russia and others to remove “sanctioning” regimes have picked up pace recently. Most recently, Russia has

sought to exploit the current COVID-19 crisis to weaken the front of countries “sanctioning” Moscow. In March 2020, Russia co-signed a letter addressed to the UN Secretary General and Security Council, in which signatory states complained that “unilateral coercive measures” were affecting their ability to respond to the pandemic, urging a lifting of “sanctions”.¹ Russia also tabled a draft resolution within the UN General Assembly along similar lines, but the resolution was not adopted, with UN member states instead coalescing around another text which does not include calls for the lifting of “sanctions”.²

¹ UN General Assembly and Security Council, *Letter dated 25 March 2020 from the representatives of China, Cuba, the Democratic People’s Republic of Korea, the Islamic Republic of Iran, Nicaragua, the Russian Federation, the Syrian Arab Republic and the Bolivarian Republic of Venezuela to the United Nations addressed to the Secretary-General and the President of the Security Council (A/74/768)*, 25 March 2020, <https://undocs.org/A/74/768>.

² Edith M. Lederer, “UN Adopts Resolution Urging Global Cooperation on COVID-19”, in *AP News*, 3 April 2020, <https://apnews.com/7ebca4>

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Questions have also been raised about the aid mission dispatched by Moscow to Italy during the most critical phase of the pandemic. Some considered this to be a ploy aimed at acquiring political capital to weaken the “sanctioning” process in Brussels.³ Independently from the veracity of such claims, such moves were not overlooked in Ukraine, with authorities in Kiev officially appealing to foreign partners not to ease pressure on Russia.⁴

The restrictive measures in question are commonly but inaccurately described as “sanctions”. Strictly speaking, sanctions are imposed by an organisation on its members. In the context of the Ukraine crisis, the decision by the Parliamentary Assembly of the Council of Europe, of which Russia is a member, to withdraw certain rights previously enjoyed by the Russian delegation is an example of such sanctions.⁵ The mixed package

of restrictive measures adopted by the EU, of which Russia is not a member, are instead mostly comprised of economic countermeasures, retorsions (particularly in the diplomatic realm) and non-recognition measures. Their targets, duration and date of approval differ. Measures targeting individuals are due to expire in September 2020 for example.⁶

Although originally adopted in response to the illegal annexation of Crimea and the destabilisation of Ukraine,⁷ in March 2015, the EU decided to link the restrictive measures against Russia to the complete implementation of the Minsk II ceasefire and de-escalation agreement.⁸ This has not happened

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³ Russian authorities denied it: Henry Foy and Michael Peel, “Russia Sends Italy Coronavirus Aid to Underline Historic Ties”, in *Financial Times*, 23 March 2020, <https://www.ft.com/content/b1c5681e-6cf9-11ea-89df-41bea055720b>. Italy’s support for the EU line did not dither even under the previous government: Nona Mikhelidze, “Italy and Russia: New Alignment or More of the Same?”, in *IAI Commentaries*, No. 19|28 (April 2019), <https://www.iai.it/en/node/10235>.

⁴ Colum Lynch, “Ukraine to World: This Is Not the Time to Go Wobbly on Sanctions”, in *Foreign Policy*, 1 April 2020, <https://bit.ly/2JuKyce>.

⁵ On this parallel situation and its recent, surprising turn, see Andrew Drzemczewski, “The (Non-)Participation of Russian Parliamentarians in the Parliamentary Assembly of the Council of Europe: An Overview of Recent Developments”, in *Europe des droits & libertés/ Europe of Rights & Liberties*, March 2020, <https://www.europedeslibertes.eu/article/the-non-participation-of-russian-parliamentarians-in-the-parliamentary-assembly-of-the-council-of-europe-an-overview-of-recent-developments>.

⁶ The details can be seen in the website of the Council of the European Union: *EU Restrictive Measures in Response to the Crisis in Ukraine*, <http://europa.eu/!cB99XU>. The case has been made that some crucial figures are still spared by EU individual measures: see International Centre for Policy Studies (ICPS), *Sanctions against Russia. Current Status, Prospects, Successes and Gaps in the Multilateral International Sanctions Regime against the Russian Federation*, Kyiv, ICPS, 2020, p. 32-40, <http://www.icps.com.ua/en/our-projects/publications/sanctions-against-russia-current-status-prospects-successes-and-gaps-in-the-multilateral-international-sanctions-regime-against-the-russian-federation>. Cf. also Katrin Bennhold, “Germany Wants E.U. to Sanction Head of Russian Military Intelligence”, in *The New York Times*, 28 May 2020, <https://www.nytimes.com/2020/05/28/world/europe/germany-russia-cyberattack-sanctions.html>.

⁷ See for example European Council, *Conclusions*, Brussels, 20-21 March 2014 (EUCO 7/1/14 REV 1), paras. 29-33, <https://www.consilium.europa.eu/media/29198/141749.pdf>.

⁸ European Council, *Conclusions*, Brussels, 19-20 March 2015 (EUCO 11/15), paras. 9-10, <https://www.consilium.europa.eu/media/21888/european-council-conclusions-19-20-march-2015-en.pdf>. On the Minsk II Agreement see Naja Bentzen, “Ukraine and the Minsk II Agreement. On a Frozen Path to Peace?”, in

and has since led to the systematic extension of the measures targeting Russia, in addition to other measures.

EU measures rest on solid legal grounds. In short, they correspond to lawful measures that states are authorised to take in reaction to serious breaches of fundamental norms of international law. This breach legitimises *lawful* retaliations by any state and is not restricted to the injured state in question (Ukraine in this case), particularly when the UN Security Council is unable to address the crisis.

There is broad agreement among international law experts that Crimea’s forcible annexation by Russia and the latter’s military support to the insurgents in Eastern Ukraine seriously violate the prohibition of the use of armed force in international relations.⁹ Besides, non-recognition and non-assistance measures in reaction to these breaches are obligatory from a legal standpoint, particularly regarding Crimea’s annexation.

The policy logic behind the EU measures is likewise very strong: such flagrant violations of the territorial integrity of a state on the European continent, for the first time since the second World War, simply cannot go

EPRS Briefings, January 2016, [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2016\)573951](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2016)573951), and the text in *Financial Times*, 12 February 2015, <https://www.ft.com/content/21b8f98e-b2a5-11e4-b234-00144feab7de>.

⁹ See, among many others, Mika Hayashi, “Russia: The Crimea Question and Autonomous Sanctions”, in Masahiko Asada (ed.), *Economic Sanctions in International Law and Practice*, London/New York, Routledge, 2020, p. 231 f.

unpunished. No reaction would have been interpreted as a sign of weakness, sending a very dangerous message for both European security and the future of the rules-based order which the EU supports.

As to the effectiveness of these restrictive measures, this aspect has given rise to a lot of debate, not least since the economic measures imposed on Russia imply a cost for both sides.¹⁰ It has also been argued that Russia has by now somehow adapted to EU economic measures and these are no longer effective in extracting a cost for Russian actions.¹¹ Independently from the above, the steps taken by Moscow to seek a relaxation or lifting of these measures seem to indicate a sustained Russian interest in achieving this objective.

Ultimately, EU measures have two aims. The first relates to upholding such key principles as territorial integrity and the prohibition of the use of armed force to change internationally recognised boundaries. The second partly flows from the first but is not as obvious, although by no means less

¹⁰ On the economic impact for EU states see Francesco Giumelli, “The Redistributive Impact of Restrictive Measures on EU Members: Winners and Losers from Imposing Sanctions on Russia”, in *Journal of Common Market Studies*, Vol. 55, No. 5 (September 2017), p. 1062-1080. On Russia’s retaliation see Masha Hedberg, “The Target Strikes Back: Explaining Countersanctions and Russia’s Strategy of Differentiated Retaliation”, in *Post-Soviet Affairs*, Vol. 34, No. 1 (2018), p. 35-54.

¹¹ Henry Foy, “Russia: Adapting to Sanctions Leaves Economy in Robust Health”, in *Financial Times*, 30 January 2020, <https://www.ft.com/content/a9b982e6-169a-11ea-b869-0971bfffac109>.

important: the immediate and strong reaction by the EU, that “Moscow clearly underestimated”,¹² could not revert Crimea’s forcible annexation but it probably did prevent further and highly dangerous military escalations, particularly after the outbreak of the conflict in the Donbass region.¹³

For how long are these measures going to remain in place? Demands for a road map allowing to gradually remove the economic measures in exchange for real progress are growing.¹⁴ This is also considered, including on the Ukrainian side, as a means to provide Russia with incentives to act in compliance with its obligations under international law.¹⁵

An “exit strategy” would be fraught with challenges, such as the lack of a comprehensive policy towards Russia at the EU level, and perils, particularly the risk of appearing weaker (at a time when another mounting crisis between Russia and Ukraine, in the Kerch Strait and the Azov sea, needs to be closely monitored).

¹² Sabine Fischer, “Dimensions and Trajectories of Russian Foreign Policy”, in *IAI Papers*, No. 20|08 (April 2020), p. 10, <https://www.iai.it/en/node/11574>.

¹³ See, in particular, Erica Moret et al., *The New Deterrent? International Sanctions Against Russia Over the Ukraine Crisis. Impacts, Costs and Further Action*, Geneva, Programme for the Study of International Governance (PSIG), 2016, <https://repository.graduateinstitute.ch/record/294704>.

¹⁴ International Crisis Group (ICG), “Peace in Ukraine I: A European War”, in *ICG Europe Reports*, No. 256 (27 April 2020), <https://www.crisisgroup.org/node/13848>.

¹⁵ Cf. ICPS, *Sanctions against Russia. Current Status, Prospects, Successes and Gaps...*, cit., p. 41 ff.

While a “de-sanctioning” road map, with the removal of specific restrictive measures being explicitly tied to the achievement of verifiable objectives (but also to a clearly communicated determination to restore restrictive measures if progress is reversed), does appear desirable, it is highly unlikely, in current circumstances, that Russia would accept to simply return Crimea to Ukraine.

Should the EU then accept a *fait accompli* in Crimea? Of course not. Such an acceptance would deal a fatal blow to key international and European standards and would also send a wrong message elsewhere, at a time, for example, when Israel is contemplating the (illegal) annexation of large parts of the West Bank, Western Sahara is still in a limbo and the situation in Hong-Kong is deteriorating.

The EU could instead put forward a comprehensive bridging solution without compromising on its key principles: in return for a gradual removal of sanctions and a “Finnish” solution for Ukraine, leaving out NATO membership, Russia would disengage from the Donbass (alongside much needed conciliatory steps by Ukraine itself¹⁶), would accept to reopen Crimea’s annexation and would consequently consent in particular to the holding of a new referendum, under international supervision and in full compliance with international standards, since there would be no other way to achieve an international law-compliant

¹⁶ ICG, “Rebels without a Cause: Russia’s Proxies in Eastern Ukraine”, in *ICG Europe Reports*, No. 254 (16 July 2019), especially p. 14 ff., <https://www.crisisgroup.org/node/11060>.

arrangement for Crimea.

This is a good opportunity, at a time when these are in short supply, for the EU to finally demonstrate its ability to be an *effective* principled actor on the world stage. Starting with the crisis in Ukraine, the most serious security crisis to have taken place on the European continent in recent decades, the EU could provide an example of the operationalisation of its concept of “principled pragmatism” outlined in the 2016 EU Global Strategy while not sacrificing – and actually even helping to reinvigorate – a rules based international order.

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- 20 | 44 Stefano Cont, *European Defence in the Post-COVID World*
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