

Ukraine, Russia and the need for more flexibility in EU foreign policy-making

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Key points

After the illegal annexation of Crimea and Russia's indirect responsibility for the downing of Malaysia Airlines flight MH17 in eastern Ukraine, what will it take before the EU can effectively confront a conflict on its borders and prove to both its own citizens and third countries that it has a meaningful role to play in foreign policy? With numerous competing national interests and some member states unwilling to pay different prices for collective action, any sector-wide EU sanctions are likely to lack serious bite. In an effort to paper over the cracks, the following recommendations should be taken into account.

Recommendations

- The High Representative, supported by the EEAS, should use the policy space between the institutions and the member states by initiating collective action and ensuring that the EU's ample toolbox is better used by institutions and member states alike. Such efforts should start with activating the EEAS' Crisis Platform to coordinate EU and national capabilities.
- Member states should show more solidarity with their fellow Council members and reach out more pro-actively to the EEAS as a hub to coordinate joint action.
- The Council should decide by QMV to define collective action on the basis of a European Council decision (or a proposal by the High Representative following a request from the European Council) regarding the EU's strategic interests and objectives vis-à-vis Russia and Ukraine.
- When national interests are considered to be important but not vital, the constructive abstention mechanism should be invoked by those member states that, for diplomatic reasons, object to the partial or full interruption or reduction of economic and financial relations with Russia, but that at the same time do not wish to derail consensus in the Council on the adoption a CFSP decision. This decision should form the legal basis for the subsequent adoption of implementing acts by the Council, deciding by QMV on the necessary restrictive measures.
- As chair of the Foreign Affairs Council, the High Representative should remind individual member states of their duty of loyal cooperation under the CFSP and nudge them towards constructive abstention from decision-making. This would allow solidarity among member states and collective action by the EU to prevail over internal divisions.

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The downing of Malaysia Airlines flight MH17 over eastern Ukraine has unleashed a storm of grief and anger in the EU and around the world. Heads of state and government have joined the public outcry and called for tough action against those directly and indirectly responsible for this heinous crime. The EU's reaction, however, has been lame so far by comparison.

The joint statement of the presidents of the European Council and the Commission; the few statements by High Representative Ashton; the minute's silence to pay tribute to the victims and the passionate speeches by ministers at the opening of the Foreign Affairs Council of July 22nd cannot mask the disappointingly low level of consensus among member states on how to punish those responsible.

The conclusions of that Council meeting amount to a convoluted way of saying: For now there will be no new sanctions other than those restrictive measures already agreed to. Instead, the process of black-listing "individuals or entities who actively provide material or financial support to or are benefiting from the Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Eastern-Ukraine" has been accelerated - in line with a decision already taken on July 16th.

This is too little, too late. After Crimea and MH17, how many red lines have to be crossed before the EU is able to overcome its cowardice and effectively counter such disdain for international law and the lives of innocent civilians in a conflict on its borders?

Admittedly, the Council did issue a threat to impose so-called 'Level-3' economic sanctions against Russia, "covering access to capital markets, defence, dual use goods and sensitive technologies, including in the energy sector". The adoption of such sanctions is conditional on Russia blocking independent inquiries into the downing of the Malaysian plane and failing to prevent arms supplies cross its border with Ukraine. Whereas the Kremlin has largely complied with the former condition, it has opted for a further escalation of the conflict by amassing

more troops on the border with Ukraine and increasing its direct involvement in fighting between the Ukrainian military and separatist insurgents. This should trigger robust retaliation from the European Union in the form of full-blown 'Level-3' sanctions. The credibility of the EU as a foreign policy actor is at stake here.

Unfortunately, in all probability the EU will again manage no more than to keep up appearances. Consensus in the Council remains elusive as long as one or two member states break rank to protect their national economic and/or political interests, e.g. energy for Germany, Italy and a host of Central and Eastern EU member states; the sale of two warships for France; financial interests for the UK; and cross-border economic cooperation for Finland. With numerous competing national interests and some member states unwilling to incur different costs for collective action, it is expected that officials will struggle to find a balance and that concessions agreed to will prevent any sector-wide sanctions from having serious bite. The EU therefore risks not satisfying popular demand to effectively punish those indirectly responsible for MH17. Conversely, the Kremlin's contempt for the EU may only grow if its own minimal efforts at window-dressing (e.g. paying lip-service to a peace plan for eastern Ukraine) allow it to escape the full force of sanctions.

So far, the highest profile failure on the part of member states to reach a common position on a foreign and security policy issue arose out of the 2002-03 Transatlantic crisis over military intervention in Iraq. Back then, the internal disunity led to extensive soul-searching. In an effort to paper over the cracks, the European Security Strategy was adopted and the High Representative's post was beefed up, complete with the creation of a European External Action Service (EEAS). However, more often than not, the EU still fails to coordinate a common policy response (proportionate) to external crises, even when the structures and the instruments to address them (technical support, a civilian crisis response capability, sanctions, Battlegroups and EEAS public diplomacy) are at hand.

The need for more flexibility in CFSP

In order to overcome the inability of the EU to punch its weight as an international actor, the EU should start by reviewing its strategic interests and challenges. The next High Representative should update and upgrade the 2003 European Security Strategy. The world and the EU's neighbourhood have changed. So has the position of the Union itself in the world. Moreover, the EU's projection of power is certainly not defined in security terms only. The implementation of the EU's external action has taken on a much more comprehensive approach; joining up the different strands of its external relations policies (security, humanitarian relief, development cooperation, trade, sanctions, etc.). The European Council should endorse the next High Representative's proposal for a new 'EU Global Strategy' (see, e.g., <http://www.euglobalstrategy.eu/>) and re-evaluate it on a yearly basis.

But strategising alone will not save EU foreign policy. The next High Representative, supported by the EEAS, should optimise the policy space between the institutions and the member states by initiating collective action and making sure that the EU's ample toolbox is better used by institutions and member states alike. Such efforts should start by activating the 'Crisis Platform' within the EEAS to coordinate EU and national capabilities in response to crises of all types (something that did not happen in the wake of the crash of flight MH17). Member states, for their part, should show more solidarity with their fellow Council members and reach out more pro-actively to the EEAS as a hub to coordinate joint action.

The crux of the matter remains that the success of the Common Foreign and Security Policy (CFSP) ultimately hinges on the ability of the member states to find consensus on issues that touch upon the core of their sovereignty as independent actors on the international stage. Whereas this process of coordination, which is 'lubricated' by the High Representative and the EEAS, often results in a race to the bottom for the lowest common denominator - a certain flexibility has been introduced into the CFSP over time

to keep the member states "united in diversity" (as the old motto of the EU goes):

- the constructive abstention mechanism;
- the introduction of qualified majority voting (QMV); and
- the extension of enhanced cooperation to CFSP by the Lisbon Treaty.

In its decision-making process on sector-wide sanctions against Russia, two of the above-mentioned modalities could be applied. First, the Council could in principle decide by QMV to define a collective action on the basis of a European Council decision (or on a proposal that the High Representative has presented following a specific request from the European Council) relating to the Union's strategic interests and objectives vis-à-vis Russia and the stability of Ukraine. The basic decision could be adopted as early as in the last week of July, when the European Council is set to convene for an extraordinary summit. To be sure, this procedure does not undermine the centrality of consensus for the adoption of CFSP decisions because it represents a clearly stated 'derogation' from the general unanimity requirement. Any member state is therefore entitled to pull the 'emergency brake' and block a CFSP proposal for "vital and stated reasons of national policy". This is a situation in which the second modality could be used.

When national interests are considered to be important but not "vital", the constructive abstention mechanism might provide a safety valve for EU foreign policy. The mechanism should be invoked by those member states that for diplomatic reasons object to the interruption or reduction, in part or completely, of economic and financial relations with Russia, but that at the same time do not wish to derail consensus in the Council on the adoption a CFSP decision. This decision should form the legal basis for the subsequent adoption of implementing acts by the Council, deciding by QMV on the necessary restrictive measures. The initiative for invoking the constructive abstention mechanism lies in principle with the respective member states (representing no more than one-third of the member states comprising one third of the EU's population).

However, as permanent chair of the Foreign Affairs Council, the High Representative should remind individual member states of their duty of loyal cooperation under the CFSP and nudge them towards constructive abstention from decision-making so as to allow solidarity among member states and collective action by the EU to prevail over internal divisions.

The above-mentioned modalities provide the thin edge of the wedge that infuses more flexibility into CFSP decision-making.¹ Their operational scope should be expanded by the European Council, tasking the High Representative to propose decisions to be adopted by the Council by QMV. Taken together, these modalities should enable the EU to increase its visibility, efficiency, effectiveness and credibility as an international actor.

Constructive abstention

In a mechanism that is unique under the Treaties, Article 31(1) leaves room for a member state to abstain from Council decision-making in the field of CFSP. The second subparagraph clarifies that, “[w]hen abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration”. The latter is not an obligation but rather offers each member state with a discretionary power to offer an explanation for its position. The provision further states that, in the case of an abstention, the member in question

shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, [that] Member State shall refrain from any action likely to conflict with or impede Union action based on that decision, and the other Member States shall respect its position.

¹ For more analysis and recommendations on the three above-mentioned modalities and the use of core groups, see the pages below, drawn from “Differentiated Integration in CFSP”, in S. Blockmans (ed.), *Differentiated Integration in the EU: From the Inside Looking Out* (CEPS, 2014), 46-56, (<http://www.ceps.eu/book/differentiated-integration-eu-%E2%80%93-inside-looking-out>).

Although not giving support to the adopted decision, the abstaining member state can therefore not be relieved of the general duty of loyal cooperation in CFSP matters: it “shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations” (Article 24(3) TEU). The rules of CFSP decision-making leave no doubt about the prevalence of external solidarity over internal divisions. The Treaty does not permit that the member state abstaining from the implementation of a properly adopted CFSP decision disregard its binding consequences. All EU member states, whether giving or withholding their support, need to respect the resulting commitments for the EU as a whole and must therefore refrain from any action that goes against that decision.²

In general terms, the mechanism of constructive abstention aims to reconcile the position held by the majority of member states with the reservations and concerns of some. It has been observed that while the possibility of keeping a ‘constructive distance’ from certain decisions – as, indeed, the possibility of their obstruction – facilitates the formation of common positions on CFSP matters, it also drains the CFSP’s potential impact when the adopted decisions require active implementation by as many member states as possible.³ In fact, Article 31(1), second subparagraph TEU, determines that if such constructive abstentions “represent at least one third of the Member States comprising at least one third of the population of the Union, [then] the decision shall not be adopted.” Under the pre-Lisbon Treaty regime, Council members representing one-third of the weighted vote used for calculating QMV could block a CFSP decision (cf. Article 23(1), second subparagraph former TEU). Now, a double threshold is required for a blocking minority:

² Second subparagraph of Article 31(1) TEU.

³ See C. Törö, “The Latest Example of Enhanced Cooperation in the Constitutional Treaty: The benefits of flexibility and differentiation in European Security and Defence Policy decisions and their implementation”, 11 *European Law Journal* (2005), 641-656.

one-third of the member states, representing at least one-third of the EU population. The Lisbon Treaty has thus widened the legal scope to accommodate member states' interests in abstaining from CFSP decision-making by unanimity.

It appears that this instrument for flexibility in CFSP decision-making still has to gain popularity. So far, the mechanism has only been used once, in February 2008, when Cyprus abstained when the Council adopted the Decision establishing the EULEX Kosovo mission.⁴ Cyprus argued "for an explicit decision of the UN Security Council [to mandate] the EU mission in Kosovo"⁵ - an entity it does not recognise as a sovereign and independent state. This important case shows that the constructive- abstention mechanism provides a form of flexibility that can prevent the type of decision-making *impasse* in the CFSP that QMV and enhanced cooperation are designed to avoid.⁶ The High Representative and the EEAS should promote the practical relevance of the mechanism more actively.

Qualified Majority Voting

Since its inception, intergovernmentalism has been the governance mode *par excellence* in CFSP. Yet, limited but significant exceptions to the unanimity rule have slowly 'spilled over' from adjacent fields of EU external action into CFSP. The Treaty of Nice⁷ introduced three types of decisions that the Council adopts by QMV, pursuant to the

current Article 31(2) TEU: i) when adopting a decision defining a Union action or position on the basis of a European Council decision relating to the Union's strategic interests and objectives (cf. Article 22(1) TEU); ii) when adopting any decision implementing a decision defining a Union action or position; and iii) when appointing an EU Special Representative in accordance with Article 33 TEU.⁸ To be sure, these QMV constellations did not and do not undermine the continued centrality of unanimity for the adoption of CFSP decisions, because they represent clearly stated 'derogation[s]' from the general unanimity requirement laid down in Article 31(1) TEU.⁹ In each of these cases, any member state is entitled to pull the 'emergency brake' and block a CFSP proposal "for vital and stated reasons of national policy" (see below). The Treaty of Lisbon has inserted a fourth instance of QMV in CFSP decision-making by the Council, i.e. when adopting any decision defining a Union action or position, on a proposal that the High Representative has presented "following a specific request from the European Council, made on its own initiative or that of the High Representative".

The opportunity of opening up more avenues for QMV was also enshrined in a new *passerelle* clause: Article 31(3) TEU enables the European Council to extend the cases of QMV by unanimously adopting a decision stipulating that the Council shall act by qualified majority in other cases, with the exception of decisions having military or defence implications (Article 31(4) TEU). This new and generous licence for extending the QMV mechanism enables the European Council to adjust the CFSP decision-making order in response to future needs and considerations of member states. However, the condition of full concurrence of national positions among the heads of state and government guarantees that the doors to the passage from unanimity to QMV will be

⁴ Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, OJ 2008 L 42/92.

⁵ See Council Secretariat, Council doc. CM 448/08 of 4 February 2008, point 2, on file with author.

⁶ See M. Cremona, "Enhanced Cooperation and the European Foreign and Security and Defence Policy", in J.M. Beneyto (ed.), *Unity and Flexibility in the Future of the European Union: the Challenge of Enhanced Cooperation* (Madrid, CEU Ediciones 2009), 75, at 87, who also points to Jaeger's argument that enhanced cooperation is "less negative" than constructive abstention. See T. Jaeger, "Enhanced Cooperation in the Treaty of Nice and Flexibility in the Common Foreign and Security Policy", 7 *EFAR* (2002), 297, at 302.

⁷ See Article 23(2) former TEU.

⁸ See P. Eeckhout, *EU External Relations Law*, 2nd ed. (Oxford, Oxford University Press 2012), at 488-9.

⁹ As before the Lisbon Treaty, procedural decisions are to be taken by a simple majority. See Article 31(5) TEU.

firmly guarded and remain shut when contrary to the vital national interests or opposition of any member state.¹⁰ Moreover, in some member states (e.g. the UK and Germany), the government will not be able to agree to use this *passerelle* without prior approval by its parliament.¹¹

As already noted, there are two exceptions to the use of QMV in CFSP matters. First, it does not extend to decisions having military or defence implications (Article 31(4) TEU). Secondly, every member state has a veto right and can pull the so-called ‘emergency brake’ (Article 31(2) TEU):

If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. If he does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity.

On the basis of the foregoing, one may conclude that the general rule of unanimity makes it difficult for the EU to forge common foreign and security policies on matters of both general and specific interest. Especially on questions about the use of force or interference in the internal matters of third states, a ‘common’ foreign and security policy is unlikely to emerge from the divisions that separate member states. It is unlikely that EU member states are ready to give up their veto power in return for more extended use of QMV in highly sensitive areas of international relations. QMV in CFSP will realistically work only in situations in which either none of the member states has particularly strong preferences or when there

are no major divisions within the Council. In these cases it is reasonable to assume that the Heads of State and Government could reach the consensus needed to request a proposal from the High Representative and that no member state would consider its interests vital enough to justify slamming the emergency brake. For the sake of a more efficient and effective CFSP, the High Representative and the EEAS should nevertheless be tasked by the European Council to draw up a list of strategic interests and objectives of the EU external action that should be decided by QMV in the Council.

Extension of enhanced cooperation to CFSP

Enhanced cooperation, which was designed in the pre-Amsterdam IGC to allow some member states, using the EU framework and institutions, to cooperate further among themselves in cases where the others do not wish to do so, has been extended by the Lisbon Treaty to cover the entire realm of CFSP (Article 331(2) TFEU), including defence.¹² The Lisbon Treaty also removed the ‘emergency brake’ procedure, albeit not completely. Furthermore, the Treaty provided for a new *passerelle* which allows participants in an enhanced cooperation to decide in the Council to switch from unanimity to QMV and from a special legislative procedure to the ordinary legislative procedure (Article 333(2) TFEU), except in defence matters (Article 333(1) TFEU).

Nevertheless, these innovations might not provide the flexibility that several member states had hoped for. After all, enhanced cooperation in CSFP is characterised by its narrow scope, cumbersome procedures and strict establishment requirements. As Piris has pointed out,

the effect of these slight improvements will be somewhat reduced by the increase in the minimum number of participants from eight to nine member states [...]; the

¹⁰ Contribution by Csaba Törö to the EPIN Conference devoted to “The External Dimension of EU Variable Geometry”, held in Brussels on 6 May 2013.

¹¹ See J.-C. Piriş, *The Lisbon Treaty: A Legal and Political Analysis* (Cambridge, Cambridge University Press 2010), at 262.

¹² Pre-Lisbon, it only covered the implementation of a CFSP action, which had already been decided upon. Compare Articles 27A to 27E former TEU.

requirement of unanimity in the Council for authorising any kind of enhanced cooperation in CFSP, without any exception for an enhanced co-operation that would aim at implementing CFSP decisions which have already been adopted (whereas until the Lisbon Treaty there had been QMV in such a case); [and] the requirement of the consent of the European Parliament (where MEPs from all member states have a right to vote) for launching an enhanced co-operation, even for cases where the co-decision procedure does not apply (whereas, until the Lisbon Treaty, in cases where co-decision did not apply the European Parliament was only to be consulted) [...].¹³

Moreover, some of the pre-conditions for the launch of an enhanced cooperation in CFSP continue to apply: it is a 'last resort' mechanism (Article 20(2) TEU) and there is no undermining the internal market (Article 326 TFEU). Taken together, these factors explain why the mechanism has not been used in practice in the area of CFSP. Instead, member states, in particular the smaller ones, have sought refuge in alternative forms of closer cooperation, created in a more flexible and informal way outside the framework of the treaties, i.e. without the burdensome decision-making procedures and without the exacting requirements for 'enhanced cooperation', helped by the fact that the CFSP – and thus the determination where the limits of the powers shared with the EU precisely lie – falls outside of the jurisdiction of the Court of Justice.

Coalitions of member states

Close foreign policy cooperation among a limited number of EU member states is generally looked upon with suspicion as it is associated with *directoires* of large member states (e.g. the UK, France and Germany in the context of the E3+3 negotiations with Iran).¹⁴ However, under certain conditions,

the specialisation and division of labour among EU member states, big *and* small, can strengthen the effectiveness and legitimacy of EU foreign policy, especially in cases where there is a lack of interest or political will among all member states.¹⁵ Indeed, as long as such more or less structured coalitions of member states work towards the attainment of the Union's external action objectives (cf. Article 21 TEU) and policies, the extra efforts, money and other national resources devoted by 'core groups' to specific foreign policy matters (regional or thematic) can help to i) alleviate the stress on an understaffed and cash-strapped European External Action Service (EEAS),¹⁶ ii) assist in the operationalisation of EU foreign policy, and iii) increase the visibility and credibility of the EU as an international actor.

In practice, several types of coalitions of member states have been formed:

- permanent (e.g. Benelux¹⁷) and *ad hoc* (e.g. the UK and France pushing the EU on lifting the ban on arming opposition forces in Syria¹⁸);
- institutionalised (e.g. Visegrad Group)¹⁹ and loosely organised (e.g. the EU Core

making process", 40 *JCMS* (2002), 331-344. See further, S. Lehne, "The Big Three in EU Foreign Policy", *Carnegie Paper*, July 2012; and S. Blockmans, "Beyond Entrenchment over Iran: Can the EU offer a framework for regional security?", *CEPS Commentary*, 3 September 2012.

¹⁵ S. Keukeleire, "EU Core Groups - Specialisation and division of labour in EU foreign policy", *CEPS Working Document* No. 252, October 2006.

¹⁶ See S. Blockmans, "EEAS Reloaded: Recommendations for the 2013 Review", *CEPS Commentary*, 12 December 2012.

¹⁷ Article 3(2) sub d and Articles 24-27 of the 2008 Benelux Treaty attribute an external relations competence to the institutions of the Benelux. See also Ministry of Foreign Affairs of the Netherlands, Press release, "Verhagen: new impetus for Benelux foreign policy", 9 April 2008; and A. Rettman, "Benelux countries urge EU unity on Syria", *EU Observer*, 15 March 2013.

¹⁸ See C. McDonald-Gibson, "Syria arms embargo lifted: Britain and France force EU to relax ban on supplying weapons to rebels", *The Independent*, 28 May 2013.

¹⁹ See (<http://www.visegradgroup.eu>), the collaborative framework consisting of Poland, Czech

¹³ Piris, *op. cit.*, at 89-90.

¹⁴ See, e.g., C. Gégout, "The Quint: Acknowledging the existence of a big four-US *directoire* at the heart of the European Union's foreign policy decision-

Group on Somalia, created early 2004, consisted primarily of the UK, Italy, Sweden and the European Commission, and was endorsed by the Council);²⁰

- regional (e.g. Baltic Council of Ministers),²¹ , inter-regional (e.g. the partnership framework of the Baltic and Benelux countries²² and that of Nordic, Baltic and Visegrad countries),²³ and thematic (e.g. mediation or reconciliation efforts).²⁴

From this overview it becomes clear that these types of coalitions of member states have the potential to reinforce the CFSP. The challenge, however, is to make sure that these groupings do not obstruct but rather buttress the structures (in particular the HR, EU Special Representatives and the EEAS), procedures, policies and actions of the EU in the foreign and security field by:

- pooling more intensively the coalition members' views, efforts, measures and policies to support a more coherent and effective CFSP;
- adopting new measures to further the external action objectives of the EU, particularly through measures by member states in policy domains where

Republic, Slovakia and Hungary intent joining up on, inter alia, foreign policy towards the Western Balkans. See Ministers of Foreign Affairs of the Visegrad Group (V4) and Western Balkans, "Joint Statement of the Visegrad Group on the Western Balkans", Warsaw, 25 October 2012.

²⁰ See GAERC, "Somalia - Council conclusions", Press release 7033/06 (Presse 68), Brussels, 20 March 2006.

²¹ See (<http://www.mfa.gov.lv/en/policy/4595/cooperation-among-the-baltic-states/>), also for a link to the "Terms of Reference" of the Baltic Council.

²² See P. Vaida, "Baltic and Benelux formins discuss EU foreign policy in Estonia", *The Baltic Course*, Vilnius, 12 September 2011.

²³ See Co-Chair's Statement, "Meeting of Foreign Ministers of the Visegrad, Nordic and Baltic states", Gdańsk, 20 February, 2013, (<http://www.visegradgroup.eu/documents/official-statements/meeting-of-foreign>).

²⁴ E.g. the Swedish-Finnish initiative to set up a European Institute of Peace. See J. Claes, "Toward a European Institute of Peace", *Peacebrief* No. 141, 21 February 2013.

the EU as such has few or no competences or capabilities, but where some coordination with the EU is useful or essential;

- preparing the ground for new EU initiatives and decisions in CFSP;
- concretising, implementing and assuring the follow-up of CFSP decisions;
- initiating, broadening or deepening the dialogue, mediation or negotiation with third parties (in particular those not recognised by the EU, e.g. *de facto* states, terrorist groups), allowing less formal and more frequent, flexible and purposive interaction, in addition to the efforts conducted by the EU;
- strengthening the coordination with external actors (e.g. third states, other regional organisations, UN agencies, NGOs), in a systematic way compatible with that by the EEAS; and
- implementing any other tasks that the Council or the High Representative may assign to a particular coalition of EU Member states.²⁵

In short, the existence of core groups of EU member states should not be seen as a problem for the development of a CFSP *per se*. As shown above, it could rather be part of the solution in overcoming the constraints in CFSP decision-making. There are, however, two other 'constitutional' obligations that should guide such core groups' activities: i) the fact that member states are under a legal obligation to loyally cooperate with the EU institutions (European Council, Council and Commission, supported by the EEAS acting under the authority of the High Representative); and, in the slipstream of this: ii) the duty to ensure the (vertical) consistency of EU external action (arguably the latter requires consultation and coordination with HR + EEAS). Respect for these principles should prevent EU external policies and actions from being diluted, undermined, rendered less visible, and re-nationalised by core groups' activities.

²⁵ This list of tasks and functions is inspired on the longer one developed by Keukeleire, *op cit*.