

Thomas Gehring, Kevin Urbanski, Sebastian Oberthür

Corresponding author: Thomas Gehring (thomas.gehring@uni-bamberg.de)

Beyond Intergovernmental Coordination: EU Corporate Foreign Policy Action and the Crisis over Ukraine

1. Introduction

Since 2014, the European Union (EU) finds itself in the midst of an international crisis over the status and territorial integrity of Ukraine that might have the potential of creating a new conflict among great powers in Europe (Smith 2014, Ferreira-Pereira and Vieira 2014). Moreover, the EU seems to be a major Western player in this conflict– not its member states, nor the United States. The EU seems to behave as a great regional power in its own right that is capable of confronting the newly empowered Russia that is gradually recovering from its defeat upon the breakdown of the Soviet Union in 1990. And Russia seems to take the EU serious as a regional power in Europe (Dragneva and Wolczuk 2012, Aslund 2013). This is puzzling for those many observers holding the widely shared belief that the shortcomings of its intergovernmentally organized Common Foreign and Security Policy preclude decisive EU action on issues of high politics.

This paper examines how the EU could become in the current Ukraine crisis a high politics actor in its own right that can both conceptually and empirically be distinguished from its member states. It thus contrasts with the almost throughout held view that the EU does not constitute a relevant international actor in the area of high politics. Realists and Neorealists point to the fact that high politics issues touching international security and state survival differ fundamentally from the many low politics issues that have been integrated over the past decades in numerous communitarized EU policies (Hoffman 1996) or focus on the nascent European defence policy (Posen 2006). Intergovernmentalists point to the fact that the member states have refused to empower the EU to act decisively in the area of foreign and security policy and have retained tight control of military means and decision-making processes (Moravcsik 1998, Wagner 2003). Constructivists emphasize that the member states are since long working together in a tightened institutional framework (Smith 2004) and that the EU frames member states foreign policies (Kratochvil et al. 2011), but they implicitly agree that the EU is not capable of acting in its own right.

Investigating EU actorness in the Ukraine crisis raises the thorny issue of EU actorness at large. Integration theory has not come up with a convincing solution of the problem of how the EU might become an international actor in its own right whose action may be readily distinguished from those of its member states. Well-known and widely applied sets of

indicators for identifying EU actorness in international relations, such as the famous triad of opportunity, presence and capability (Bretherton and Vogler 2006: 24-35) or the quad of recognition, authority, autonomy and cohesion (Jupille and Caporaso 1998), lack an elaborated theory of the mechanisms by, and conditions under which the EU might acquire actorness and how it matters for third parties. These conceptions are largely inductively generated from EU activities without drawing on general theories of the social sciences or international relations. Treating the EU as an entity 'sui generis' (Wunderlich 2012) generally raises the n=1 problem of European Union studies (Risse-Kappen 1996, Rosamond 2005). Some rare and early attempts to relate the general problem of emerging EU actorness to social science theories (Sjöstedt 1977, Kenis/Schneider 1987) are little understood and have never been applied to EU high politics.

In section 2, the paper develops a concept of genuine EU actorness in areas of high politics. It first identifies a sphere of high politics based upon neorealist assumptions of world politics and argues that the EU will acquire actorness in the area of high politics, if it is capable of executing in its own right external actions that are apt to significantly modify the security situation of relevant other actors, in particular states beyond its own membership. Second, it examines how the EU might acquire such capacity to act. Drawing on sociological theories of corporate action, it shows that organizations generally acquire the ability to act in their own right, if they acquire the capability of defining their own purposeful actions and strategies, and if they get control of relevant governance resources whose use may affect third parties. We argue that the EU comprises highly capable decision-making apparatuses both in the area of low politics and CSFP-related high politics, while it can dispose of relevant governance resources only in the former field. Third, we examine several pathways through which the EU might nevertheless exert influence on addressees, in particular on states beyond its own jurisdiction. We show that cross-pillar sources might provide the EU with high-politics action capability.

The paper then examines empirically EU high-politics external action regarding Ukraine. In section 3, we examine EU action vis-à-vis Ukraine which developed around the partnership and cooperation agreement of 1994 and the recently concluded Association Agreement of 2013. Both agreements were predominantly driven by low-politics considerations, later European Neighbourhood Policy, and drew on low-politics action capability, in particular relating to its trade competence. Yet, the gradual integration of Ukraine into the economic sphere rendered the EU by accident a direct competitor of Russia over Ukraine and thus produced considerable unintended high politics effects that led to the current crisis. In section 4, we explore the EU response to the Russian annexation of the Crimean peninsula and the current military conflict in Eastern Ukraine. We observe that the EU has, under its CSFP, has used sanctions imposed on Russia as deliberate foreign policy measures, and that the EU disposes of sufficient action capability to implement the bulk of these sanctions in its own right.

The paper concludes that the EU can become a highly capable high-politics actor in its own right, despite the still intergovernmentally organized CSFP decision-making apparatus, if it mobilizes its tremendous low-politics action capability to create, intentionally or by accident, foreign policy effects.

2. A Resource-based Concept of the EU as a High-politics Actor of International Relations

2.1. Conceptualizing High-politics Action

Why should other actors accept the EU as a relevant actor in its own right in the area of high politics? The answer to this question provides an external ('objective') criterion for appraising EU actorness in areas of high politics. Internal discourse about its status and ambition as an international actor (Larsen 2004,) does surely not suffice to induce other international actors, in particular other states, to accept this hybrid entity ('sui generis') as a relevant additional actor alongside its member states. While new states, however weak, tend to be accepted automatically as new players in the international state system, non-state actors face difficulties in being accepted. And even a state is not accepted as relevant actors in any international setting. Hence there must be good reasons to treat the EU as additional actor as relevant in a given area of concern, in particular when considering its well-known weakness of its CFSP.

An entity will be accepted as a relevant actor in an area of international relations, if its own action is capable or likely to affect the framework conditions of other actors significantly. International action is about pursuing interests and developing options, be it through conflict or cooperation and mutual accommodation. A state gains an interest in taking into account action by another entity, whether state or non-state, that actually shapes and influences its own foreign policy options, while it is well-advised to disregard those actors that are not relevant for its own policy choice. Acceptance of an action as relevant does not presuppose formal acceptance of the respective actor. State actors can be expected to take serious even action of highly undesired actors, if they are capable of affecting their policy choices, as illustrated by political behavior of Western governments vis-à-vis the Islamic State, or Israel's treatment of the Hamas government in the Gaza strip. Denying the actorness of such hybrid entities would simply preclude defining appropriate response strategies. And vice versa: taking too serious the claims and promises, (e.g. a security guarantee) of would-be actors without relevant action capability might be misleading and even dangerous and would also preclude adoption of policy strategies fitting realities. We may conclude that the EU will become a high politics actor in its own right, if, and only if, it acquires the ability to exert significant influence on the high politics options of other actors, in particular other states.

Identifying EU actorness in high politics areas requires distinguishing high politics from low politics. While this once popular distinction (Haas 1958, Hoffmann 1996) has gone somewhat out of use conceptually, it is still highly relevant for the appraisal of EU actorness. While the member states has transferred supranational decision-making powers to the EU even in some areas that touch upon the core of state sovereignty, like monetary policy of internal security (Jachtenfuchs/Genschel 2013), they have retained tight intergovernmental control of high politics issues addressed by Common Foreign and Security Policy. Likewise, internal organization of state governments assigns high politics issues to separate ministries of foreign affairs and defense, while numerous other (low) politics issues are assigned to other ministries and state offices. And appraising the EU as an economic giant and a political dwarf implicitly draws on the distinction between these spheres of politics. However, to identify the essence of the division of high and low politics, it does not suffice to draw on the functional

division of labor between state administrations or EU policies. We need some idea of the nature of high politics and why and how it differs from low politics in international relations.

Theoretical Neorealism of International Relations provides a clear and comparatively well-defined notion of high politics in the international system (Waltz 1979, Mearsheimer 2001). The international system is conceived of as anarchical, implying first and foremost the absence of a central entity that is capable of enforcing international rules and contracts. Anarchy does not imply steady or frequent war, but the absence of a capable and centralized enforcement agent, which results a continuing security threat (Milner 1991). As a consequence, states develop a hierarchy of interests, with security first and other policies, e.g. economic prosperity or protection of the environment, only if, and to the degree that, they do not undermine security interests. There is a compelling reason for this hierarchy of interests: If security and state survival are in fact seriously endangered, other state activities and the provision of public goods become indeed a matter of secondary importance. To protect themselves against external threats in an anarchical environment, states are assumed to improve their security situation either through internal armament or through the formation of alliances. While this briefly sketched neorealist perspective might seem difficult to apply to the current situation in Europe after more than 60 years of European integration and after the End of the Cold War, the current Ukraine crisis might remind us that external security is not guaranteed forever. Yet, other approaches also employ the concept of anarchy to depict security problems and an at least possibly hostile system of international politics (see Buzan 1993, Buzan et al. 1998). We introduce this perspective here to derive a clear notion of high politics as opposed to low politics, not to provide an accurate description of the security situation in Europe.

The EU will acquire actorness in the area of high politics, if it is capable of exerting in its own right external actions that are apt to significantly modify the security situation of relevant other actors, in particular states beyond its own membership. While it may seem to provide an overly narrow definition of high politics, it is theoretically well founded and provides a sufficiently sharp analytical standard for assessing actorness in this specific policy area that is, after all, treated significantly differently by the member states than the communitarized policy areas. Relating high politics to traditional realist perceptions of security avoids overly expanding the notion of security to almost all areas of international concern, as the 'securitization' literature tends to do (Balzacq 2008). It also side-steps the deliberate blurring of low politics action and high politics effects that dominated early functionalist and neofunctionalist thinking.

2.2. EU Actor Capability

How might the European Union become an actor in its own right capable of acting separately from its member states even though it depends entirely on resources derived from these states and their societies? This core issue of corporate action is not unique to the EU; it applies to all types of organizations, be it shareholders companies, states, international or non-governmental organizations. The sociological theory of corporate action (Coleman 1990) elucidates how organizations may become corporate (as opposed to individual) actors. Thus, we conceive of the EU as an organization that has been founded and is maintained by its

members to realize common interests - like any other public or private, domestic or international organization.

There can be no doubt that the European Union constitutes a separate entity of international relations alongside its member states. It has been founded and is maintained by its members to realize common interests like any other public or private, domestic or international organization (Sjöstedt, 1977; Kenis and Schneider, 1987). From a theoretical point of view, it is thus not more than the sum of its parts, as is often assumed (Van Schaik, 2013), but something else in addition to its Member States. Its main function is the making of collectively accepted decisions to advance mutually desired co-operation (Abbott and Snidal, 1998). Its decision-making procedures amount to a formal or informal 'constitution' (Coleman, 1990, pp. 325–70) that determines the conditions of decision-making and assigns participation rights to Member States and other actors. Its *acquis communautaire* – that is, the sum of all valid EU rules – reflects past organizational decisions that shape and influence subsequent ones.

To become an actor in its own right, the EU, like any other organization, must gain some autonomy in goal formation and decision-making. It requires a decision-making centre and the ability to define its goals and as a prerequisite of purposive action. Without a significant autonomy in goal formation, the EU could not act intentionally (Koch 2009). Intentionality distinguishes purposive action from mere presence (Bretherton and Vogler 2006: 27-29). Organizational autonomy in goal formation can derive from institutionalized knowledge on how to improve a given area of international relations (Sjöstedt 1977: 25-27), because EU policies are based on a collectively agreed and firmly established idea of how to change (improve) a given status quo. Organizational autonomy will increase, if the specific group of intra-organizational decision-makers differs from the members of the organization on whose behalf the decision is made (similarly Sjöstedt 1977: 23). Both sources of autonomy reflect organizational influence on decisions and preclude that decisions are simply attributed to the member states as a group, even if these actors participate in decision-making according to organizational rules. Accordingly, an organization fulfils its decision-making function by processing information according to its own rules. Its *decision-making procedures* amount to a formal or informal 'constitution' (Coleman 1990: 325-370) that determines the conditions of decision-making and assigns participation rights to member states and other actors. Its *substantive rules* reflect past decisions of the organization within which new decisions have to be fitted. Hence, the EU *acquis communautaire*, i.e. the sum of all valid rules, provides a highly dynamic structure for the internal decision process that shapes and influences organizational decisions.

In areas of low politics, the EU has developed both a capable decision-making apparatus and the ability to develop goals and strategies for external action. Low politics issue-areas are communitarized. That is, decisions are made in a highly sophisticated and generally well-organized decision process according to a number of specific procedures involving in particular Commission, Council and Parliament. Typically, the Council authorizes the opening of international negotiations related to communitarized policies upon recommendation by the Commission, while the Commission conducts the negotiations (Delreux 2009). Agreements are ratified either by the Council upon consultation of the European Parliament, or jointly by Council and Parliament (Eeckhout 2013). All these decisions are subject to legal oversight by the European Court of Justice. The EU is also capable of defining comparatively clear

strategies for their external action on low politics issues. When authorizing the beginning of negotiations on an international agreement on trade, environmental protection or development, the Council tends to elaborate substantive guidelines in the form of a negotiation mandate. Typically, determining EU negotiation positions will take into account the current state of the *acquis communautaire*, because international obligations will finally have to be implemented into this *acquis*.

In areas of high politics, the EU has also developed a considerable capacity to make collective decisions and develop common goals and strategies. CSFP and CSDP remain and under tight control of the member states. With few exceptions, decisions are adopted unanimously by the member states and supranational agents play a minor formal role. The intergovernmental organization of these policies surely burdens speedy decision-making. However, the member states have empowered the EU to take decisions on matters of foreign and defence policy according to specified procedures and the EU has developed an impressive coordination apparatus to prepare collective decisions in these areas (see generally Irondelle et al. 2011). Moreover, the EU has appeared to be capable of defining specific positions on numerous foreign and security policy issues, as illustrated by its numerous diplomatic declarations defining EU positions on international developments and actions of other international actors. It has also adopted a number of more general documents like the European Security Strategy that define the EU perspective on certain issues, problems and instruments and thus provide a framework for future action (Meyer 2006). Moreover, the EU has sent out more than twenty military and civilian missions with specified mandates and tasks (Grevi et al. 2009). We may conclude that decisive action in areas of high politics is not generally hindered by the lack of capacity to make decisions and define suitable goals and strategies.

To become an actor in its own right, an organization must also gain control of meaningful governance resources. Corporate action presupposes that an organization controls a significant amount of governance resources (Coleman, 1990, pp. 45–53). An organization cannot get direct hold of target actors and their behaviour. It will act if its decisions constrain, orchestrate or in other ways shape and influence the behaviour of relevant actors in its environment (Sjöstedt, 1977). Without control over governance resources, its decisions would be irrelevant for other actors. Relevant governance resources have been transferred by the Member States onto the organization in order to realize desired co-operation gains (Coleman, 1974). While organizational action is predominantly addressed toward internal actors (Kenis and Schneider 1987), it can have external effects on third parties. EU decisions related to its key policies are primarily intended to overcome collective action problems *among the member states and their citizens* and commit in the first place its member states and actors operating under their jurisdiction to adjust their behaviour. Yet, behavioural adjustments of internal actors may produce effects for external actors, including non-member states. Hence, establishment of the customs union intended to promote internal trade allows manipulating external tariffs and thus provides the EU with an instrument to affect third parties. Accordingly, the EU can produce external effects on third parties only through commitment of internal actors to its rules and decisions. This briefly sketched sociologically informed concept of EU action capability is compatible with the concept of legal personality under international law (Frid, 1995, pp. 19–27; Scheffler, 2011, pp. 22–80) and strengthens inductively generated capability-related concepts of EU actorness (Allen and Smith, 1998).

In areas of low politics, the EU has acquired control of a tremendous amount of governance resources related to its many communitarized policies that enable it to act externally. The member states have handed over to the EU the exclusive competence on matters of single market policy, including a customs union with a uniform external tariff system and the removal of trade restrictions, in particular through harmonization of EU standards on products and services (Young 2011). Having lost unilateral control over decisions in this area, the member states have, from the beginning, empowered the EU with the exclusive competence to conduct international trade negotiations. As a consequence, the EU has become a major international trade power that dominates international trade negotiations, while the member states alone have lost control over a sufficient amount of governance resources to conduct their own trade policies (Woolcock 2010). Likewise, the member states gradually transferred an increasing amount of legislative competencies in other policy areas, e.g. environmental, social affairs health, visa and internal security to the EU. Whenever the EU enacts a new piece of internal legislation in these policy areas, the member states implicitly hand over legislative powers to the EU and sacrifice unilateral legislative power on the respective issues. As a corollary, the EU automatically gains external action competencies on the respective issues according to the AETR-doctrine developed by the European Court of Justice beginning in 1970 and now enshrined in the Lisbon Treaty, because international agreements on such issues require EU legislation and cannot be implemented at the member states unilaterally any more (Eeckhout 2013: 70-119). In addition, the EU has acquired the power to develop its own development policy that links developing countries, in particular former colonies of its member states, to the EU and its single market (Schrijver 2009), as well as the power to conclude association treaties with other countries, and it controls a budget in which a considerable amount of money is earmarked for external relations. Against this backdrop, we assume in the following that the EU has gained control of a considerable amount of governance resources in low politics issue areas, in particular related to the single market and trade policy.

In contrast, the EU largely lacks control of a significant amount of governance resources in the area of high politics. This area is specifically enshrined in the Common Foreign and Security Policy (CSFP) and the Common Security and Defence Policy (CSDP). Due to the exclusively external focus of these policies, they do not have an immediate internal corollary from which the EU could derive control of relevant governance resources, as has happened in the areas of low politics. Moreover, the member states have so far refrained from explicitly transferring a significant amount of governance resources to the EU. While the EU conducts military and civilian crisis intervention missions since around 2000, the EU does not control the necessary resources (personnel, equipment), but relies on resources of the member states (Merlingen 2012). As a consequence, the member states retain the full range of choice, whether to submit their resources to the EU, or to another suitable organization (e.g. NATO, UN, OSCE), or to act unilaterally or in an ad hoc coalition of the willing, or not to act at all. Moreover, in difficult and risky situations, they tend to act via NATO and not ESDP. Against that backdrop, we assume in the following that the EU has not gained control over a significant amount of governance resources in the area of high politics.

To sum up, the EU, like any other organization, will become an actor in its own right alongside its member states, if it gains control of a significant amount of governance resources and acquires the capacity to make collective decisions and define its own goals and strategies. In the low politics areas of its encompassing portfolio, it meets both

conditions and has become a highly important actor of international relations. In the high politics areas, it has acquired the capability to define its own goals and strategies and to decide upon action, but it lacks control over relevant governance resources.

2.3. Cross-pillar Sources of EU High-politics Action Capability

In the final step, we bring together the three key variables developed above, namely i) a collective decision-making apparatus and strategies that are indispensable for purposive action; ii) action capability or governance resources controlled by the EU; and iii) the ability to affect the environment of other actors in international relations significantly. All three variables can be related either to low politics or to high politics as defined above. From that, we can derive the following eight possible pathways of EU actorness, as depicted in table 1. Many of them have cross-pillar characteristics (Stetter 2004, 2007).

Table 1: Pathways of EU external action

	decision-making/ strategy according to	action capab- ility related to	effects occur in
1.	low politics	low politics	low politics
2.	high politics	low politics	low politics
3.	low politics	high politics	low politics
4.	high politics	high politics	low politics
5.	high politics	low politics	high politics
6.	low politics	low politics	high politics
7.	low politics	high politics	high politics
8.	high politics	high politics	high politics

Pathway 1 is highly relevant for EU actorness in general, but not for the inquiry of this paper. It depicts a situation in which all three variables are related to low politics issue areas. The EU controls significant governance resources in areas of low politics, it employs them to act purposively to achieve effects related to the given low politics area, and it is capable of significant effects on other international, actors in the given issue-area. It occurs, for example, when the EU employs its internal action capability originating from its complete control of the single market to negotiate trade agreements, whether multilateral in the world trade organization or bilateral with key trading partners, such as the case of TTIP; or when it uses its increasing regulatory activity in environmental affairs to act as an important actor in numerous international environmental institutions and negotiation rounds. Finally, this category includes situations in which the EU uses its trade and single market powers to achieve progress in other low politics areas, such as development. The bulk of the EU's standing as an international actor in its own right probably falls into this category. In many low policy areas other international actors, in particular other states, must deal with the EU,

because the EU has a lot to offer that is not under control of the individual member states any more.

Pathway 8 reflects the situation of a typical high politics actor and supports the widespread impression that the EU is not (yet) such an actor. All three variables are related to high politics. Such an actor can draw on high politics resources, employ them for high politics strategies and purposes and generate high politics effects on other actors. A typical example is a state capable of military action that can pursue its foreign policy and security interests by threatening to use (not necessarily by using !) these resources. In case of the EU, this category is largely empty because of its lack of control over significant high-politics governance resources. The EU cannot draw on any significant amount of high politics resources to pursue its high politics goals by changing the behavioral framework conditions of target actors so significantly that security interests of these actors is either seriously threatened or protected. Since the member states have deliberately retained control of virtually all relevant high politics governance resources, it is member states that might act in high politics areas, whether unilaterally or coordinated within the comparatively loose CSFP framework. The widespread opinion that the EU does not constitute a high politics actor in its own right is implicitly or explicitly based upon the immediate conclusion that an actor without control of high politics governance resources cannot realize high politics goals and generate high politics effects.

However, high politics effects might also be generated by mixed pathways in which action capability, strategy and outcome do not fall into the same category. Of particular relevance is pathway 5. It depicts a situation in which the EU deliberately employs its far-reaching low politics action capabilities for high politics purposes and is capable of realizing, at least potentially, high politics effects on target actors. In this case, decisions on strategy and action are taken within the CSFP framework, while decisions are not implemented by the member states, but within the communitarized EU policies involving the supranational decision-making apparatus. Whereas the member states are largely in control of the collective CSFP decision-making apparatus, the governance resources mobilized that create external effects are beyond their immediate control, because they have already been transferred to the EU. A typical example of this cross pillar pathway is the use of economic sanctions as a form of restrictive measures that provides an instrument of EU foreign policy drawing on low politics governance resources (see section 4 and Giumelli 2013). They are likely to address a particular addressee, e.g. a sanctioned state. Accordingly, possible high politics effects are reflected in changing high politics framework conditions of this particular addressee.

Highly interesting is also pathway 6. It depicts a situation in which the EU employs its low politics governance resources for low politics external action purposes, but generates high politics effects on other actors. In contrast to pathway 5, EU action likely to fall entirely within the communitarized low politics areas, because not only action resources, but also strategy and decision-making are closely associated with a particular low politics area. Therefore, external action following this pathway is likely to largely or fully sidestep the CSFP apparatus and strategic high politics considerations. Accordingly, high politics side effects of an otherwise low politics action are likely to be unintended, unless they result from an effective attempt to deliberately side-step the intergovernmental CSFP apparatus by the supranational decision-making apparatus related to communitarized policies. Unintended consequences of otherwise motivated action are typically diffuse and may affect third parties beyond the

particular addressee of an EU action. To grasp high politics effects produced by otherwise motivated EU external action, we have to investigate how relevant actors beyond the target country are affected (see section 3). And we may assume that unintended negative side effects are more relevant than positive ones, because they negatively affect the security situation of an affected actor and are therefore likely to trigger counteraction. In contrast, positive side-effects are likely to be simply consumed and do not require any particular counteraction-.

The remaining four pathways are of little relevance for the present analysis. Pathway 2 reflects a failure of high politics action. If the EU mobilizes its low politics action capability for high politics purposes, but realizes only low policy effects, it has not been capable of significantly affecting the high politics behavioral framework conditions of target countries. As an example, the EU might offer economic advantages to a target country in order to affect its foreign policy alliances, while generating only economic, rather than foreign policy changes. In contrast, pathways 3, 4 and 7 are unlikely to reflect major aspects of actual EU external action, because they presuppose EU control of significant governance resources.

The EU may become a high politics actor in international relations through cross-pillar effects, even though it does not control a significant amount of high politics governance resources. It may do so either by intentionally employing its extensive low politics action capability for high politics purposes, or by generating (probably largely unintended) high politics effects through its low politics external action. Understanding the nature of the EU as a great power in high politics requires understanding the cross-pillar implications and effects of these two distinct pathways.

3. Great Power Politics without Intention: The EU and its Ukraine Policy

In this section, we examine the nature and extent of EU external governance vis-à-vis Ukraine and seek to elucidate how the EU became Russia's chief foreign-policy competitor in the crisis over Ukraine. We systematically assess the three key variables identified above, namely i) the relevant decision-making system within the EU, that conducted the process, i.e. whether an action was motivated and organized by CSFP high politics or by communitarized low politics; ii) the action capability which the EU mobilized to act externally and to create external effects; iii) and the effects created by its external action. It appears that established patterns of low politics association with third party countries created a decision situation for Ukraine which strongly affected Russian perceptions of geopolitics. We conclude that the EU became a high politics actor by accident, because institutional procedures of corporate action sidestepped the intergovernmental decision-making body of CFSP and thereby prevented an adequate processing of security related information coming from the broader environment. As the target of association policy was Ukraine and not Russia, especially the Commission was blind for unintended consequences beyond the scope of monitoring implementation of its policy.

Relations between Ukraine and EU have developed around two major treaties, namely the Partnership and Cooperation Agreement of 1994 and the Association Agreement of 2013 (cf. EEAS 2015). It is widely agreed that these two agreements have added nuts and bolts to

external interaction between the EU and Ukraine, although the EU's relations with Ukraine, like external relations among countries, have developed over time and consist of a stream of more or less important steps by either side. For this reason, we examine relations under the two agreements in turn.

3.1. EU-Ukraine Relations under the Partnership and Cooperation Agreement (PCA) of 1994

The PCA constitutes the first important step in the development of EU-Ukraine relations. It has been developed in the aftermath of the major political turnover in Eastern Europe of the early 1990s. The breakdown of the Soviet Union rendered Ukraine an independent state that soon developed its own external relations with neighboring countries, including Western Europe. The Western European countries and the EU began to develop and intensify their relations with central European countries that had been released from Soviet domination under the Warsaw Pact, including Poland, Czechoslovakia, and Hungary. By 1994, the EU had concluded PCAs with these countries, that even opened the perspective of their future (and in 2004 realized) accession to the EU.

While not being devoid of a political drive, the PCA with Ukraine corresponded fundamentally to an agreement of economic nature and was primarily a roadmap for gradual economic approximation (Ferreira-Pereira and Vieira 2014: 4). It explicitly refers to, and implicitly replaces, the Agreement between the European Communities and the Soviet Union on trade and commercial and economic relations of 1989, as far as Ukraine is concerned. Its objectives, as outlined in article 1, were to promote trade and investment and harmonious economic relations between the parties and so to foster their sustainable development; to provide a basis for mutually advantageous economic, social, financial, civil scientific technological and cultural cooperation: to support Ukrainian efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy. In addition, it also sought to provide an appropriate framework for the political dialogue between the parties allowing the development of close political relations. To realize these purposes, the PCA provides further for considerable projection of EU rules as it introduced far-reaching and binding commitments which required changes in the domestic legislation of Ukraine (see Lavenex and Schimmelfennig 2009). How binding these commitments were, varied between the specific provisions. The trade provisions of Title III were fairly precise and imposed clear, enforceable obligations. Other provisions, for example in the area of labor co-operation, amounted to no more than "best endeavor" clauses and compliance with these depended on the overall disciplinary framework of the PCA. It is important to note that the approximation of Ukrainian legislation to the EU was among the main priorities and determinant features of the PCA regime. Article 51 contains a list of areas which were to be included in the approximation process. As formulated, the article provided for a voluntary endeavor on the part of Ukraine to make its legislation compatible with the EU. Thus, it stopped short of a "hard" obligation for adoption of the *acquis*, which would have materialized should have Ukraine become an official candidate for membership (Dimitrova and Dragneva 2009: 855). In spite of its comparatively low degree of obligation, the PCA comprised some conditionality. Defining respect for the principles of market economy as an essential element of the EU-Ukraine partnership combined with a suspension clause (article 102), this amounted to a complex suspension procedure in the case of a failure to comply

with democratic principles and market mechanisms (ibid. 856). Moreover, the PCA was evolutionary in nature. While stopping short of providing Ukraine with an accession perspective, it opened the perspective of establishing a comprehensive free trade zone in the future (article 4).

The PCA negotiation process was completely organized by the institutions and under the provisions of the European Communities, i.e. the first pillar of the Maastricht institutional arrangement. On 5 October 1992, the Council of Ministers had authorized EU negotiations of PCAs with the newly independent states of the former Soviet Union (cf. Bull. EC 10-1992, 1.4.19), and negotiations were conducted by the Commission, because the major part of the agreement fell under EU trade policy, i.e. an exclusive EU competence with its particularly strong role for the Commission, or would affect other EU policies. Moreover, the treaty was ratified on behalf of the EU by the EU institutions. The ratification decision reflected a complicated legal basis and referred to a number of different treaty provisions, including art 113 (trade policy) (see Council and Commission decision 98/149/EC, ECSC, Euratom of 26 January 1998, OJ L49 of 19/02/1998: 1). The PCA was not classified an association agreement according to article 310 TEC (today: article 217 TFEU), which would have implied exclusive EU competence, because the agreed obligations and procedures were below threshold (cf. Kuijper, 2008: 1342). As a consequence, establishing relations with Ukraine through the PCA did not fall under the exclusive competence of the Community, and the member states were involved in their own right alongside the EU.

Despite the high politics nature of the political turnover within the former Soviet Union and Eastern Europe, the nascent CSFP decision-making apparatus was not at all involved in the PCA negotiation process. Indeed, CSFP became active only *after* the PCA had been negotiated and signed. A first decision defining a common position dates of 28 November 1994 (94/779/CFSP). Adopted “to ensure the consistency in the European Union’s external activities as a whole”, it envisages four objectives for relations with Ukraine: (1) Development of a strong political relationship, (2) support of democratic development, (3) economic stabilization and reform, and (4) assistance for the process of nuclear disarmament and nuclear safety. We cannot exclude that, prior to November 1994, foreign policy papers may have been circulated. For example, Wehrschütz (1995:79-80; 1999) cites a EU/WEU paper of unknown date claiming that “EU support could turn out to be crucial for the success of the efforts deployed by Ukraine [...] to overcome its current difficulties and to transform itself into a democratic state applying the principles of the market economy”. Only after its conclusion, the PCA became hesitantly embedded in a broader strategy of the relations between the EU and its member states on the one hand and Ukraine on the other hand, based upon the common strategy on Ukraine adopted by the European Council 1999 (1999/877/CFSP) which envisaged a “strategic partnership” with Ukraine and identified the following objectives: Support for the democratic and economic transition process in Ukraine; ensuring stability and security and meeting common challenges on the European continent; and support for strengthened cooperation between the EU and Ukraine within the context of EU enlargement.

The nature of the PCA as a mixed agreement underlined its low politics characteristics. The treaty required ratification not only by the EU, but also by its member states and entered into force on 1 March 1998. It has been formally concluded “between the European Communities and their Member States, and Ukraine”. Mixed agreements constitute a typical low politics

institutional device that is widely used in areas such as international environmental relations or international economic relations (cf. Heliskoski 2001) but not in areas of high politics. Allowing for parallel membership of the EU and its member states, they respond to the fact that obligations of international treaties frequently touch upon the boundaries between competencies that have been transferred to the EU and competencies that are still controlled by the member states. The status of the PCA as a predominantly economic treaty is reinforced by the fact that more than thirty trade related provisions became already operative on 1 February 1996 under an interim agreement concluded between the EC and Ukraine without the member states.

Mirroring the low-politics decision-making apparatus, the EU drew entirely on its low politics action resources. To assess EU action capability, we need to identify why Ukraine as a country in transition concluded such a treaty with the EU and even considered complying with its conditions and obligations, especially given the fact that Ukraine at the time of the PCA negotiations was governed by Leonid Kravtchuk whose administration refrained from economic reforms because of the fear they might ignite social and political dislocations (Popadiuk 1996: 6). In fact, the EU could and did offer in particular three advantages which it controlled and which it might withdraw in case of significant non-compliance. First and foremost, it could grant Ukraine easier access to the single market. The EU is not only in exclusive control of the common tariff system that separates the single market from the world market; it has also exclusive competence for an uncounted number of European product standards that constitute trade restrictions for imports from third countries. Accordingly, countries desiring to facilitate access of their producers to the single market must negotiate with the EU, not its member states. Indeed, the hard core of the PCA established a regulatory framework for bilateral trade according to GATT/WTO rules. The EU granted Ukraine preferential treatment and most favored nations status. It has been estimated that about 50% of Ukrainian products fell generally under these privileges, although many Ukrainian products did not meet European quality requirements at once. Second, the EU provided strong incentives for adjusting the Ukrainian domestic regulatory system to EU standards. This would allow better exploiting commercial and economic privileges that are generally offered under the PCA. Moreover, the EU rule-set is applicable to so many European countries that it provides a European standard solution to numerous regulatory problems that would ensure compatibility with domestic regulation virtually all over Europe. Third, the EU offered technical and financial assistance for Ukraine in the process of transition and rule-adjustment, financed from its regular budget under the TACIS programme administered by the Commission (Wehrschütz 1999). All this provided the EU with significant external action capability, because it was highly attractive for Ukraine and comparable states, even in the absence of any hidden high-politics considerations. In contrast, resort to any high-politics action resources controlled by the EU was totally absent from the treaty and its implementation process and did not at all contribute to the attractiveness of the treaty for Ukraine.

EU action capability constituted the center of the PCA that was not complemented by major additional hard core obligations of the member states under the treaty. Surely, the member states could and did on a bilateral basis provide additional support financial and technical assistance in the Ukrainian transition process. Since their bilateral relations with Ukraine were also subject to the PCA provisions, their bilateral assistance might also have made conditional upon Ukrainian compliance with its obligations of transition to democracy, rule of

law and a market economy. However, in the absence of specific obligations of the EU member states, this was certainly not the major incentive for Ukraine to conclude the PCA.

The PCA produced effects on Ukraine in low politics areas. First, regarding the export of European rules and the smooth transformation to a competitive market economy, the PCA was quite successful. Ukraine has been making considerable efforts to bring its market legislation in line with EU standards and laws in line with commitments made in the PCA, even during the politically inhospitable environment of some administrations (Emerson et al. 2006: 51). In other areas, such as environmental protection or democratization, rule adaptation was more selective or considerably slower (Buzogány 2009). Second, trade relations between EU and Ukraine flourished (see figure 1). Progressive liberalization and evolution of the bilateral trade regime led to larger volumes of trade between the two sides. An important step was made with the recognition of the Ukrainian economy as a “market economy” in December 2005, which lowered the severity of special protective measures still allowed under the PCA. Ukraine’s accession to the WTO in 2008 resulted in the abolition of quantitative restrictions or equivalent trade barriers and liberalization of trade in steel and textiles. It allowed the start of the negotiations on a “deep and comprehensive” free trade agreement as part of the new Enhanced Neighbourhood Agreement.

Table 1 Exports and imports of Ukraine 1990–2007

	1990	1993	1996	1999	2003	2007
Exports	100	100	100	100	100	100
Russian Fed.	54.6	34.8	38.7	20.4	18.7	21.9
EU	5.6	6.4	11.1	20.5	19.8	30.6
Imports	100	100	100	100	100	100
Russian Fed.	58.0	45.1	50.1	48.0	37.6	25.3
EU	5.3	8.2	15.4	23.1	25.2	44.9

Source: Adapted from Dimitrova and Dragneva 2009: 859.

However, EU-Ukraine relations under the PCA also produced some moderate high politics effects on the relationship between Ukraine and Russia. They provided Ukraine with the option of integration into the Western economic sphere as an alternative to integration into the Eastern sphere (Langbein and Wolczuk 2012). Already Ukraine’s first President Leonid Kravchuk pursued a foreign-policy strategy that sought to stir his country out of the Russian orbit and to realign with the European Community. Kravchuk believed that Ukraine’s place was at the center of Europe and that “the distance between Brussels and Kiev must be removed” (Associated Press 1992). Hence, Ukraine hesitated to integrate itself fully into the institutional mechanisms of the Community of Independent States (CIS) and their institutional mechanisms. CIS member states inherited the USSR system of standards (GOST) which was not recognized in the rest of the world. For example, one of the early multilateral CIS agreements provides for the recognition of the USSR standards as international standards for the CIS countries. The agreement also provided for policy co-ordination in standardization, metrology and certification through the special Intergovernmental Council (Dragneva and De Kort 2007). As a consequence of intensified EU-Ukraine relations, Ukrainian trade figure show an impressive turn from the East to the West. The EU steadily increased in relevance for Ukrainian imports and exports, while, as a corollary, Russia has increasingly lost its dominant position. Ten years after the Conclusion of the PCA, the EU

was by far more important for Ukrainian trade than Russia (see also European Commission 2014). This does not mean that this effect of the gradual dissolution of Ukraine from the Russian-dominated Eastern economy was intended by the EU. To the contrary, the EU had negotiated a very similar PCA with Russia that provided the blueprint for the PCA with Ukraine (Balfour 2012: 52) and was signed only ten day after the latter.

To conclude, the first stage of EU external politics vis-à-vis Ukraine is predominantly located at the level of low politics, whereas some effects have high-politics implications. The PCA, including its negotiation and conclusion, can be entirely associated with the low-politics decision-making apparatus of the European Communities. It was not triggered by EU grant foreign policy strategy under CSFP and it did not constitute a mere instrument of such grand strategy. Moreover, the PCA draws entirely on EU action resources under its low politics (first pillar) competencies, especially its trade power. Effects of EU external action on Ukraine are more ambiguous. While they center on trade and adjustment of the Ukrainian economic rule system, they have implications for high politics. Taken together, they provide Ukraine with a considerable alternative to alignment with Russia and begin dissolving Ukraine from Russian domination. For Russia, this effect implies a gradual loss of control within the territory of the former Soviet Union.

3.2. The Association Agreement (AA) of 2013

The AA constitutes the future cornerstone of EU-Ukraine relations. It is embedded in the European Neighborhood Policy (ENP) that has been developed against the backdrop of EU Eastern enlargement. Eastern enlargement affected EU-Ukraine relations in two important ways. With the accession of Poland, Slovakia and Hungary, the EU became to share a common border with Ukraine. Accordingly, the main ENP objective was “[...] to prevent the emergence of new dividing lines between the enlarged EU and its neighbours [...]” by sharing “[...] the benefits of the EU’s 2004 enlargement with neighbouring countries in strengthening stability, security and well-being for all concerned” (European Commission, 2004: 3). Implicitly, ENP was also intended to provide an alternative to further enlargement for countries without an accession perspective (Kelly 2010: 31). In 2009, the so-called Eastern Partnership (EaP) was launched at the Prague Summit, further confirming the political will to “[...] accelerate political association and further economic integration between the European Union and interested partner countries” (Council 2009: 6). Ukraine’s accession to the WTO in April 2008 fulfilled the major formal requirement to start negotiations on the AA.

The core element of the Association Agreement (AA), supposed to be signed in 2013, was the establishment of a Deep and Comprehensive Free Trade Area (DCFTA) that will gradually integrate Ukraine into the European Single Market and lead to a “gradual approximation with the EU *acquis* and [...] with international norms and standards” (EEAS 2013: 4). Respective provisions are formulated in Title V of the AA comprising 28 chapters of low politics issues like taxation or agriculture and rural development. The inclusion of the DCFTA as an integral part of the future AA constitutes a novelty in the general EU’s partnership policy. In fact, this element is absent in the European strategic partnerships, notably with Russia (Ferreira-Pereira and Vieira 2014: 8). Of particular importance is the binding and far-reaching commitment by Ukraine to ensure full compatibility of its existing

and future legislation with the EU sectoral acquis (Petrov 2014). In addition, the AA comprises a number of obligations and duties to cooperate in other areas of politics, including combat of terrorism, nuclear non-proliferation policy and the International Criminal Court, without, however, stipulating hard obligations. To enjoy the benefits of the DCFTA, Ukraine committed itself to progress in other areas, thus resorting to the principle of conditionality. The AA is based on common values, in particular full respect for democratic principles, rule of law, good governance and human rights. As Ukraine had several deficits in appreciating these values, the EU left it to Ukraine to set the pace for progress in implementing the AA. As gradual reforms are connected to financial assistance according to the “more for more” principle (cf. EEAS), the AA provides incentives to comply with the association agenda. Generally, the AA is intended to continue and intensify cooperation that has developed under the PCA and ENP, including cooperation with CSFP activities (Ferreira-Pereira and Vieira 2014).

Associating the Ukraine to the EU, decision-making on the AA within the EU was dominated by the supranational apparatus related to EU low politics. The conclusion of association agreements is regulated under art 217 TFEU. Accordingly, the Commission submitted to the Council a recommendation authorizing itself to open negotiations with Ukraine for the agreement on 13 September 2006. The Council authorized the Commission to negotiate a new EU/Ukraine Agreement to replace the Partnership and Cooperation Agreement (Council Doc. 5062/07 (09.02.2015)). The starting signal for a closer cooperation between the EU and Ukraine was given on 22 January 2007 when the Council adopted negotiating directives for a new enhanced agreement aiming “[...] at gradual economic integration and deepening of political cooperation’ to strengthen “[...] democracy, stability and prosperity” (Council 2007: 6). Negotiations were largely conducted by DG Enlargement. According to the regular procedure for association agreements, the AA will be ratified by the Council upon consent of the European Parliament.

However, the foreign-policy-part of the treaty negotiations was treated differently. After the Commission, the High Representative of the Union for Foreign Affairs and Security Policy submitted to the Council a contribution on CFSP and ESDP-related aspects of the draft negotiating directives for the new agreement with Ukraine on 1 December 2006. And the Council mandated that “for matters coming within Titles V and VI of the EU Treaty (CFSP and police and judicial cooperation in criminal matters), the negotiations shall be conducted with the Presidency, assisted by the SG/HR, in full respect of their respective responsibilities, set out in the relevant treaty provisions” (Council Doc. 5062/07 of 09.02.2015). As a corollary, the AA has been signed, alongside the EU and Ukraine, by all EU member states and will, as a mixed agreement, have to be ratified by all member states. The EU has even demonstrated remarkable flexibility, when signing the political part of the AA with the Ukrainian interim government on 21 March 2014, before signing the economic part after the presidential elections on 27 June 2014 (Ferreira-Pereira and Vieira 2014: 10-11).

Once again, the EU drew predominantly on its low-politics action capability. In particular, it controls two governance resources which are highly attractive for Ukraine and explain why the country is prepared to accept the conditions relating to democracy, rule of law and other good governance aspects that amount to tacit intervention into Ukrainian internal affairs. On the one hand, the EU can offer advantages on a number of EU policies which it controls. Of particular relevance is its control over access to the Single Market that will be gradually

facilitated under the envisaged Deep and Comprehensive Free Trade Area. Relevance of this aspect is illustrated by the fact that DCFTA provisions with some 1,000 pages form the bulk of the Association Agreement's over 1,200 pages. In addition, the EU can offer advantages on other low-politics issue-areas, including labor migration and the envisaged lifting of visa requirements, as well as technical and financial assistance in numerous areas, including loans for macroeconomic stability. On these aspects, the treaty is comparatively detailed, although their realization will frequently require implementation decisions. On the other hand, the EU controls a future accession perspective, although it has so far carefully avoided committing itself in this regard. It seems that Ukrainian cooperation is not least guided by this (still only anticipated and future) option. Hence, the EU is highly capable of offering far-reaching benefits to Ukraine, and it can credibly threaten to suspend such benefits, if Ukraine does not comply with its own obligations in turn, as envisaged by the conditionality principle.

In contrast, it is highly questionable whether the part of the AA related to high-politics (CSFP and CSDP) provides significant additional action capability. To be sure, Ukraine desired to include cooperation even in this area of EU policy-making, if only to broaden the range of cooperative projects with a view to developing a future accession perspective. However, the EU cannot offer a lot in this area, because relevant action capability is still almost entirely located with the member states. It provides primarily a framework for intergovernmental coordination; and it does not open this coordination framework for Ukrainian participation. What it does offer is cooperation with Ukraine on a number of international cooperation projects, including participation in EU military and civilian missions. So, the main purpose of including parts in the AA related to CSFP and CSDP might be to avoid possible negative implications of its exclusion, which might be taken as the intention to limit cooperation to low-politics areas. Because of the lack of genuine EU action capability in the area of high politics, the AA is a mixed agreement that has to be ratified also by the member states.

If sincerely implemented, the AA will over time create major effects in many areas of low-politics cooperation that continue approximation of Ukrainian standards to those of the EU. The many detailed and binding rules on the approximation of laws on many sub-fields of economic activity demonstrate that this process has by far not come to an end. Moreover, these activities are likely to boost bilateral trade and economic exchange between EU and Ukraine.

However, the finalization and adoption of the AA has also produced a series of significant, although unintended and possibly even unanticipated, high politics effects on the political relations between EU and Ukraine, between EU and Russia as well as between Ukraine and Russia. The AA provides Ukraine with an even more serious option of integration into the Western economic and political sphere as an alternative to integration into the Eastern sphere (Langbein and Wolczuk 2012). In the preamble, the European Union explicitly confirms that it welcomes the Ukrainian "European choice". The Ukrainian choice for Europe implied in turn that the EU-dominated areas would expand further to the East right into the heart of former Soviet territories. Thus, it has inevitably negative implications for Russia (Mearsheimer 2014). In the European bipolar power distribution between the EU and Russia, the AA inevitably required Ukraine to choose its alliance with one of these poles at the expense of the other (Smith 2014). It is these undesired and unintended high politics effects that explain developments around and after the failed signature of the agreement at the 2013

Vilnius summit. Even though a proposition of Ukrainian membership in the EU was explicitly not on the table, Moscow perceived completion of the AA as a foreign policy threat. Unwilling to “lose” Ukraine to the European Union, it had pressed the Yanukovich administration not to sign the agreement at that point. It had launched substantial trade sanctions against Ukraine in summer 2013. Russia wanted Ukraine to reject the European bid and join its Customs Union with Belarus and Kazakhstan (Aslund 2013:1). Failure of the Yanukovich administration to sign the AA with its “European choice” in turn triggered the Maidan movement and led to the fall of the Ukrainian government and the election of a new parliament and president. It also provided the pretext for the Russian de facto annexation of the Crimean peninsula as well as the uprising of Russian supported separatists in Eastern Ukraine, which in turn triggered EU sanctions against Russia (see section 4).

Adoption and signing of the AA diminishes in particular the prospect that Ukraine would ever join the Russian dominated Eurasian Union with its single market scheme and customs union. Since 2009, Russia has struggled for Ukrainian accession to the Customs Union. In 2010, Russia, Belarus, and Kazakhstan had established a customs union and abolished border controls. They had even joined the WTO as a single customs union. The Eurasian Economic Commission was set up in Moscow as a joint secretariat with a staff of more than 1,000 people. The Eurasian Development Bank in Almaty, Kazakhstan, and an arbitration court in Minsk were also established (Aslund 2013: 4). In essence, the Eurasian Customs Union may be conceived off as a Russian instrument to counter expansion of EU influence into former Soviet territories (Delcour and Wolszuk 2014: 190-202). Due to the nature of customs unions to have a uniform external tariff system, member states cannot maintain their own trade agreements with third parties. Accordingly, Ukraine would have had to terminate its existing trade agreement with the EU. In contrast, a free trade area, such as the one envisaged under the AA, allow Ukraine to conclude additional trade agreements with third parties, including Russia. Thus, the AA did not itself define the choice situation for Ukraine, while from an economical point of view, the decision was clearly in favor of the EU because the Community is by far the largest import trading partner from where more than one third of Ukraine’s total imports come from (European Commission 2014).

In the meantime, the EU has realized the high-politics implications of its low-politics approach. Having been caught by surprise over the fact that the Yanukovich administration had “unexpectedly decided [...] to suspend preparations for signing the Association Agreement” (see Commission statement SWD(2014) 96 final: 2), the EU is now acting somewhat more carefully. While the political part of the AA was signed on 21 March 2014, the more important economic part was only signed on 27 June 2014, after Ukrainian the presidential elections had brought about a legitimate new government. Moreover, the entry into force of the agreement has been delayed for over a year now to mitigate Russian concerns (Ferreira-Pereira and Vieira 2014: 10-11) and seems to depend on the outcome of negotiations with Russia.

To conclude, the second stage of EU external politics vis-à-vis Ukraine is still predominantly located at the level of low politics, but it has produced remarkable high-politics effects. The AA can be largely associated with the low-politics decision-making apparatus of the European Union. While it is embedded in European Neighborhood Policy, this policy is itself more a reflection of the dominant EU low-politics approach than grant foreign policy strategy. Moreover, the AA draws almost entirely on EU action resources under its low politics

competencies, especially its trade power. High-politics parts of the treaty constitute little more than additives to the establishment of the Deep and Comprehensive Free Trade. In contrast, the AA has produced dramatic high-politics effects. Despite its low-policy approach, the EU finds itself suddenly in a bipolar power struggle over Ukraine that has led to the current military conflict in Eastern Ukraine with a considerable potential of uncontrolled expansion. While this effect was definitely not intended by EU external action, it demonstrates that the EU has become a great power at the European continent that is taken seriously by Russia as the other European great power.

4. Great Power Politics with Intention: Restrictive Measures against Russia

While the EU accidentally became Russia's foreign-policy competitor in the course of negotiating the AA, it deliberately decided to become Russia's antagonist in the conflict over Crimea and Ukraine, imposing international sanctions on Russia. The EU responded with a threat of sanctions when disguised Russian military units seized control of the Crimean peninsula following the dismissal of Ukrainian President Yanukovich by the end of February 2014. When Russia and Crimean self-defense forces supported the Supreme Council of the Autonomous Republic of Crimea in holding a referendum on the future status of the territory on 16 March, the EU imposed a first set of sanctions. In the aftermath of the assault on Malaysian Airline Flight MH17 on 17 July, when access to the crash site was impeded due to persistent combat operations and the abduction of several OSCE monitors by Ukrainian separatists, the EU blamed Russia for doing almost nothing to relax tensions and the Council decided to intensify pressure by expanding the scope of sanctions (e.g. European Council 2014: 2). EU sanctions include four sets of measures: (1) restrictions on the access to capital markets for a number predominantly state owned Russian financial institutions, (2) establishment of an arms embargo, (3) prohibition of exporting dual-use goods for the military or military end-users, and finally (4) an export ban on goods and technologies required for exploitation of natural resources (2014/512/CFSP).

Imposing European restrictive measures (the official EU lingo for sanctions) for foreign policy purposes constitutes high politics; it falls within the domain of CFSP and is under tight control of the European Council. At the beginning of the international crisis over the status of Crimea, the European Council threatened to consider application of restrictive measures, like travel bans or asset freezes at an extraordinary meeting on 6 March. For this purpose, the Council mandated the Commission and the European External Action Service to prepare proposals for targeted measures. Only one day after the Supreme Council of the Autonomous Republic of Crimea had announced to hold a referendum on the future status of the territory, the Council adopted a CFSP decision (2014/145/CFSP) calling the member states to implement travel bans and asset freezes against twenty-five Russian politicians, advisors, propagandists, bureaucrats and military officers who were accused of actions aiming at destabilizing the situation in Ukraine. Subsequently, the Council repeatedly condemned Russia's annexation of Crimea and its prolonged support of illegal combatants in the Donbass area of Eastern Ukraine. Responding to Malaysian Airline Flight MH17, the Council on 31 July, adopted decision 2014/512/CFSP imposing an enlarged set of sanctions.

Adoption of foreign policy motivated sanctions follows CSFP procedures (Title V Chapter 2 of the TEU). Sanctions are adopted by unanimity of the member states. The right of initiative lies with any member state, the High Representative of the Union for Foreign Affairs and Security Policy or the High Representative with the Commission's support. As petitions are confidential, outsiders, including targeted countries, do not precisely know on whose initiative a certain issue is brought on the agenda. For Russia, this was particularly the case for the selection process for identifying the targets for travel bans and asset freezes. Once filed, proposals of the decisions 2014/145/CFSP and 2014/512/CFSP passed through a well-defined procedure (cf. Giumelli, 2013: 369): First, the affected subcommittees of the Council (i.e. the competent geographical group, the Political and Security Committee and the Foreign Relations Counsellors Working Group) discuss the proposals. After that, the Committee of Permanent Representatives II agrees on a draft text to be submitted to the Council for final approval.

The foreign policy motivated restrictive measures against Russia draw heavily on EU low-politics action capability. Especially EU control over access to the internal market as well as control over regulations under the common commercial policy and many other, in particular economic activities provides action capability that may be used to put foreign-policy motivated pressure on third countries. In all these areas member states have, partially or fully, lost control over legislation and regulatory decision-making. The partial trade embargo, for instance, if disparately applied, might have generated the risk of creating distorting effects within the internal market (cf. Lukaschek 2002: 325). Ensuring the functioning of the internal market, however, is an exclusive competence of the Community (article 26 TFEU). As most restrictive measures against Russia resort to economic means, implementation relies on governance resources that have previously been assigned to the Community to regulate the internal market. Additionally, the trade embargo affected the common commercial policy, whose regulation has also been delegated to the Community (article 3 TFEU in conjunction with article 207 TFEU). As the ECJ has already clarified in 1995, measures "[...] whose effect is to prevent or restrict the export of certain products cannot be treated as falling outside the scope of the common commercial policy on the ground that it has foreign policy and security objectives" (case 12/86: 3751 recital 9).

In these cases, CSFP decisions are implemented through subsequent (supranational) EU decisions. CSFP sanctions falling within the scope of low politics areas require regulatory implementation action at the level of the Union according to article 215 TFEU. This provision envisages the so-called "two-step procedure" (cf. Bohr 1993: 266) under which the member states initially decide upon imposing restrictive measures within the framework of the CFSP. Subsequently, the adopted measures need to be implemented by Community action based on a Council regulation. Accordingly, the sanctions imposed by decisions 2014/145/CFSP and 2014/512/CFSP are implemented through Council Regulations No 269/2014 and No 833/2014, respectively. They address measures relating to financial asset freezing, the restriction of access to capital markets, the export ban of dual-use goods and the prohibition of exporting exploration goods and respective technologies. As every regulatory intervention in these issue areas necessarily affects the common commercial policy and the proper functioning of the internal market, the member states were no longer capable of implementing the adopted measures on their own.

Some CSFP sanctions against Russia draw on action capability that is still under control of the member states. In the case of decisions 2014/145/CFSP and 2014/512/CFSP, this pertained to measures concerning travel bans and the arms embargo. In both areas, member states have not yet delegated respective governance resources to the European level. Regarding travel and visa restrictions for individuals listed in the annex of 2014/145/CFSP, the member states had to take the necessary measures to prevent the entry into, or transit through their territories. Whereas action capability still lies with the member states, individuals affected by the CFSP decision cannot address the authorities of the member states which immediately denied their entry into the Schengen area, because the list itself is under control of the CSFP Council that might review new evidence and de-list individuals from the annex. In the case of arms embargoes, division of competences between the EU and the member states are not so clear cut. On the one hand, arms exports to third party countries must not in any case be covered by the jurisdiction of article 207 TFEU. According to article 346 TFEU member states are discharged from certain treaty provisions if they consider measures necessary to protect the essential interest of their security when connected with the production of or trade in arms, munitions and war material. On the other hand, the Council adopted the European Union Code of Conduct on Arms exports in 1998, issued the Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, and established a notification and consultation mechanism for export license denials. Thus, not only implementation of arms embargoes but also decisions on target and scope of an arms embargo seems to be governed by collective considerations. In contrast to economic measures, however, they are not implemented by supranational union decisions (cf. Portela 2010: 28).

In the arms deal between Russia and France concerning the fabrication of two Mistral helicopter carriers possible European actorness was deliberately circumvented. In 2011 the two countries had signed a treaty worth EUR 1.2 billion comprising the construction of two warships within four years. Delivery of the first carrier was scheduled to be completed by late October 2014. Despite the events in Crimea and the Donbass area, and despite the European sanctions episodes of March and July, France was still willing to deliver the first ship on time. From a legal perspective, the imposed export ban on arms adopted by decision 2014/512/CFSP did not apply to this deal as respective provisions explicitly excluded contracts on arm deals concluded before 1 August 2014. Therefore, it was in France's sole discretion to decide whether to comply with the contract or not. Nevertheless, France was put under pressure from its European allies to stop the process of delivery. In fact, in late summer 2014, President Hollande emphasized that delivery was still not jeopardized if two conditions were met, namely a cease-fire and a political settlement in Ukraine (DPA 2014) Only on 25 November, France eventually suspended indefinitely the first delivery. Unlike in the case of travel bans, Russia's foreign policy antagonist was France on not the EU. Even though the realization of Mistral's delivery to Russia would have strongly violated the spirit of 2014/512/CFSP and related European perceptions of the situation in Ukraine, the EU had absolutely no say in the deal. Consequently, Russia had to address France and not the ECJ to complain about the suspension.

To conclude, decisions to initiate and adopt restrictive measures against Russia are dominated by high politics considerations and taken within the CSFP decision-making apparatus. To generate political pressure on Russia, the EU draws heavily on its action

capability originating from low-politics issue-areas. Accordingly, it becomes a high politics actor in its own right that is capable of purposefully exerting influence on the framework conditions under which Russia defines its own foreign policy. While the adoption of European sanctions under CSFP might not differ substantially from actions of other security related alliances and coalitions, the EU is capable to implement adopted measures in its own right, because the member states have previously transferred relevant action capability to the EU. As a consequence, the EU becomes an autonomous foreign policy competitor for Russia, even though its foreign policy is still intergovernmentally organized under CSFP. In these instances, Russia must consider the EU – and not its member states – as the relevant actor, because the Community is controlling underlying governance resources whose employment creates effects within the realm of high politics. At the same time, current sanctions against Russia indicate that EU action capability is still limited. Some measures, like travel bans and arms trade, are not yet (fully) under EU control, so that in these cases, the member states act individually. Accordingly, Russia would be well advised to, and in fact did, address France and not the EU.

5. Conclusion

Despite its still almost throughout intergovernmentally organized CSFP decision-making apparatus, the EU can become a highly capable high-politics actor in its own right, if it mobilizes its tremendous low-politics action capability to create foreign policy effects. The EU will become a foreign policy actor if it is capable of changing the framework conditions under which other international actors determine their security related foreign policy strategies. In this case, it will be relevant for these other actors, whether formally recognized or not, because its actions shape and affect their own foreign policy options. Moreover, as an organization, the EU can acquire the ability of corporate action, if it disposes of a decision-making unit that allows defining purposive policy strategies and determining appropriate action, and if it gains control of meaningful governance resources whose use might affect external addressees. Whereas the EU beyond any doubt comprises powerful decision-making units both in the area of low politics and high politics, it still lacks control of significant governance resources in the area of high politics. The EU may nevertheless become a highly capable foreign policy actor, if it succeeds in mobilizing its tremendous action capability originating from its internal policies for foreign policy action.

Its policy vis-à-vis Ukraine demonstrates how the EU may become a foreign policy actor by accident that unintentionally finds itself in the midst of an international high politics crisis. Its Ukraine policy is rooted in low politics. Starting with the Partnership and Cooperation Agreement of 1994, the EU has offered Ukraine a simplified access to its single market as well as other economic benefits and technical assistance in Ukraine's process of transformation from a Soviet republic to a modern state. The Association Agreement of 2013 that has triggered the current crisis over Crimea and Eastern Ukraine basically continued and deepened this policy. The gradual establishment of a Deep and Comprehensive Free Trade Area is its by far most important component. However, European rule export and economic approximation have opened a European perspective for Ukraine and contributed to diverting Ukraine's emphasis on its traditional alliance with Russia. Whereas the EU has so far throughout refrained from offering an accession perspective to Ukraine, its continuing policy

gradually diminishes Russian influence in the heart of the former Soviet empire. Thus, it contributes to shifting the balance between Russia and the EU. Although the EU still lacks almost entirely control over military power as the traditional resource in high politics, it is indeed perceived by Russia as its major competitor at the European continent because of its economic power. The current military crisis over East Ukraine and the annexation of the Crimean peninsula may be seen as a Russian attempt to stop this development of diminishing Russian influence.

The adoption of sanctions on Russia in response to barely hidden Russian military action in Crimea and Eastern Ukraine indicates that the EU has deliberately assumed the role of a (probably the) major counterpart of an expansionist Russia at the European continent. It also shows that the EU has acquired the ability to act purposefully in the area of high politics. Its current sanctions policy demonstrates that the EU can intentionally mobilize sufficient governance resources originating from its internal policies to significantly affect even a major military power like Russia. Although EU sanctions have been adopted under the intergovernmentally organized CSFP scheme, most of them are implemented by the EU, not its member states, because the member states have previously transferred the related governance resources, for example legislation and regulatory decisions on the single market and EU trade policy to the European level and have thus sacrificed control over these governance resources.

The current crisis over Ukraine demonstrates that EU high politics actorhood arises primarily from cross-pillar mobilization of action capability originating from its powerful internal policies. This cross-pillar effect has not been systematically taken into account so far. It militates against the impression of the EU as a largely normative power that employs its low politics related external action, such as its Neighbourhood Policy, support internal development and economic prosperity of target countries, while high politics activities are largely absent due to the lack of military power. To the contrary, low politics activities may produce high politics effects and low politics action resources may be used to realize high politics strategies.

6. References

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