

Ukraine, Russia and the EU

Breaking the deadlock in the Minsk process

Hrant Kostanyan and Stefan Meister

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Abstract

Although the Minsk process brought about a de-escalation of the conflict in Eastern Ukraine, not all of its 13 points have been implemented, including a ceasefire and withdrawal of heavy weaponry. In the absence of a military option, economic sanctions have become the core instrument of the EU and the US, to respond to Russia's aggression. At the end of June 2016, when EU Heads of State and Government meet to discuss the extension of sanctions against Russia, they should bear in mind that Russia did not implement the commitments it took upon itself in the framework of the Minsk agreements. Given the persistent deadlock in the Ukraine crisis, the leaders of the EU ought to agree to prolong the sanctions against Russia, push for the renegotiation of the Minsk II agreement and widen the 'Normandy format' to include the US and bolster reforms in Ukraine.

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Ukraine, Russia and the EU: Breaking the deadlock in the Minsk process

Hrant Kostanyan and Stefan Meister*

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In late June 2016, when EU heads of state and government meet to discuss the extension of sanctions against Russia, they should bear in mind that Russia did not implement its commitments in the framework of the Minsk agreements. Given the persistent deadlock in the Ukraine crisis, EU leaders ought to agree to prolong the sanctions against Russia, push for the renegotiation of Minsk II, widen the 'Normandy format' and bolster reforms in Ukraine.

1. Developing crisis

The Euromaidan protests in 2013-14 were triggered by the refusal of President Viktor Yanukovych to sign the Association Agreement, including the Deep and Comprehensive Free Trade Agreement (DCFTA), with the EU. The protests turned into a revolution, resulting in the ouster of Yanukovych in February 2014. The Kremlin reacted by annexing Crimea (March 2014) and orchestrating war in parts of Donbas and the creation of two separatist so-called 'republics', the Donetsk People's Republic (DPR) and the Lugansk People's Republic (LPR). Because of the rejection of a military option, economic sanctions have become the core instrument of the EU and the US for responding to Russian aggression. Although the sanctions are rather limited compared to the former EU and US sanctions against Iran and some economists have expressed scepticism about their economic impact,¹ they are crucial to underpinning the credibility of the EU and influencing the cost-benefit calculation of the Russian leadership regarding Ukraine.

The first major diplomatic attempt to halt the war and achieve a sustainable solution for the conflict in eastern Ukraine was the April 2014 "Geneva format" composed of Ukraine, Russia, the EU and the US. Its results were unedifying. The second attempt was the format of the Trilateral Contact Group on Ukraine, consisting of representatives from Ukraine, Russia and the Organization for Security and Cooperation in Europe (OSCE), under which a protocol and follow-up memorandum called Minsk I were prepared and signed by Ukraine,

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¹ D. Gros and F. Mustilli (2015), "The Economic Impact of Sanctions against Russia: Much ado about very little", CEPS Commentary (www.ceps.eu/publications/economic-impact-sanctions-against-russia-much-ado-about-very-little).

Russia and representatives of the DPR and LPR on 5 September 2014.² However, the ceasefire agreed in the framework of Minsk I never worked and collapsed completely with the battle over Debaltseve in January 2015. To stop this escalation, another round of negotiations took place in the context of the so-called Normandy format (involving Ukraine, Russia, Germany and France), which on 12 February 2015 resulted in a package of measures dubbed Minsk II.³ To give the new format more authority, the agreement was negotiated with the top leaders of all participating states personally.

The EU imposed sanctions on Russia in parallel with those imposed by the US and other Western allies, in June 2014 (related to Crimea and Sevastopol) and on 31 July 2014 (reinforced in September 2014) “in response to Russia’s actions in the east of Ukraine”.⁴ The additional restrictive measures against Russia continued to be adopted by the EU (and the international partners) as violations of the ceasefire continued, including after the battle of Debaltseve. Besides sanctioning persons linked to the annexation of Crimea and the war in eastern Ukraine, these restrictive measures cover financial, energy and defence sectors as well as dual-use goods. The EU sanctions are now prolonged until 31 July 2016 and can be extended another six months. EU heads of state and government tied removal of sanctions to the full implementation of the Minsk agreements.

More than a year after the signature of the Minsk II package, despite the dialogue conducted in trilateral working groups, none of its elements were fully implemented (see Box 1 below). Meanwhile, support for sanctions related to Russia’s role in eastern Ukraine is wavering in a number of EU member state capitals, including Paris and Berlin. Minsk II has slowed military escalation and drawn a very dangerous situation into a diplomatic process. At the moment, however, the package cannot be practically implemented owing to its contradictory provisions and the limited interest of all participating parties.

2. Minsk II process in stalemate

Thus the Normandy format that facilitates the Minsk process entered a deadlock.⁵ Following the meeting on 4 March 2016 German Foreign Minister Frank-Walter Steinmeier expressed his dissatisfaction with the situation on the ground in eastern Ukraine and the poor progress made during the meeting: “I’m afraid the situation in eastern Ukraine really isn’t being

² Protocol on the results of consultations of the Trilateral Contact Group, signed in Minsk, 5 September 2014 (www.osce.org/home/123257).

³ Minsk Agreement: Full text in English (www.unian.info/politics/1043394-minsk-agreement-full-text-in-english.html).

⁴ Council of the EU (2015), “Russia: EU prolongs economic sanctions by six months” (www.consilium.europa.eu/en/press/press-releases/2015/12/21-russia-sanctions/).

⁵ A. Moshes (2016), “A year since Minsk-2: Does the agreement have a future?”, FIIA Comment, Finnish Institute of International Affairs, Helsinki (www.fiaa.fi/en/publication/566/a_year_since_minsk-2/).

viewed seriously enough, and it can escalate again at any time”.⁶ OSCE observers report ceasefire violations on a daily basis, which increased in spring.⁷

Indeed, although the Minsk process de-escalated the fighting, many of its 13 points have not been implemented, including a complete ceasefire (see Table 1 below). Only partial withdrawal of heavy weapons took place and OSCE is not able to fully control this withdrawal. Russian armed formations are present on the ground while disarmament of the militias is yet to take place. The OSCE Special Monitoring Mission is tasked with monitoring implementation of the agreements. Yet it lacks resources and its access to the territories held by separatists has been limited. Its civil mandate is not adequate for such a tense and violent situation.⁸ Constitutional reform, elections and establishing the special status of separatist held territories have not taken place. Prisoner amnesty, exchange of hostages and access to separatist held territories for distribution of humanitarian assistance remain problematic. Ukrainian authorities still do not control the state border with Russia.

Table 1. Minsk II: Points and state of implementation

Points	State of implementation
1. Ceasefire	Not implemented
2. Withdrawal of all heavy weapons and establishment of security zone	Partially implemented
3. Monitoring and verification of ceasefire and withdrawal of heavy weapons by the OSCE	Partially implemented
4. Modalities of local elections in accordance with Ukrainian legislation and the law of Ukraine “on interim local self-government”	Partially implemented
5. Amnesty	Not implemented
6. Exchange of prisoners	Partially implemented
7. Humanitarian assistance	Not implemented
8. Determination of the procedure for the full restoration of socio-economic relations	Partially implemented
9. Handover of control over the Russia-Ukraine border from the Ukrainian side to Kyiv	Not implemented
10. Withdrawal of all foreign armed forces, military equipment, and mercenaries and disarmament of all illegal groups	Not implemented
11. Constitutional reform including decentralisation and special status for separatist held regions	Partially implemented
12. Holding elections in accordance with OCSE standards and monitored by ODHIR	Not implemented
13. Trilateral working groups	Implemented, but with limited results

⁶ “Ukrainian foreign minister Klimkin says no breakthrough in Ukraine talks”, 3 March 2016 (www.dw.com/en/ukrainian-foreign-minister-klimkin-says-no-breakthrough-in-ukraine-talks/a-19093100).

⁷ Daily and spot reports from the Special Monitoring Mission to Ukraine. The OSCE Special Monitoring Mission to Ukraine gathers information and reports on the security situation daily and in response to specific incidents (www.osce.org/ukraine-smm/reports).

⁸ OSCE Special Monitoring Mission to Ukraine (www.osce.org/ukraine-smm/117795).

Meetings of the Trilateral Contact Group (TCG) intensified within three sub-groups on political, humanitarian and security issues. Yet one former Ukrainian TCG representative called the negotiations “below the waterline”.⁹ Indeed, the TCG’s substantive contribution to resolving sensitive issues has been rather limited.

While the diplomatic process is stalemated and low intensity war continues, the existing compromise on EU sanctions is shaky. The blame game between Ukraine and Russia for non-implementation of the Minsk agreements is ongoing. A panel of eminent persons from OSCE member states, including Russia, describes the fulfilment of the Minsk agreements as a “starting point for the development of a sustainable political, military and economic settlement of the crisis in and around Ukraine.”¹⁰ Yet other than reinforcing the OSCE Special Monitoring Mission and creating a contact group, the panel has very few ideas and cannot fully agree on how to implement Minsk II. The Russian panel participant even refused to sign the final document, which shows that even in such a diplomatic group it is difficult to find common ground. Despite Russia’s opposition, a rethink of Minsk II is needed in order to avoid another major escalation and to link sanctions to progress on the ground. The EU should use its bargaining position based on sanctions to explore Russia’s flexibility regarding adjusting the agreement to the changing situation in Ukraine.

At the same time, Russia successfully opened a parallel channel with the US to test the flexibility of both the US and the EU. This unofficial format was created in May 2015 between Russian Deputy Foreign Minister Grigory Karsin and Assistant Secretary of State Victoria Nuland and was upgraded via a January 2016 meeting between Nuland and Special Presidential Advisor Vladislav Surkov in Kaliningrad region.¹¹ Unlike the multilateral Normandy format and the TCG, this bilateral US-Russia channel is not designed for systematic or comprehensive negotiations but rather for devising “creative solutions” to the conflict in the Donbas region. Beside the fact that the Ukrainian leadership has no say in this format, as opposed to the Normandy format, it is non-transparent and politically unaccountable.¹² While the Normandy format focuses only on the Ukraine crisis, these bilateral meetings deal with both Ukraine and Syria. This is a great success for Moscow, because it always aimed to link the Ukrainian and Syrian crises in order to facilitate package deals. Moscow wants to solve the Ukraine crisis to protect its sphere of interest; the US wants to solve the Syrian conflict to stabilise the region and stamp out Islamic State. This interest constellation creates leeway for “creative solutions” possible at the expense of Ukraine, given the absence of the EU and Ukraine at the table.

⁹ Роман Бессмертный: Переговоры по Донбассу находятся “ниже нулевой отметки”, 22 February 2016 (<http://apostrophe.com.ua/article/politics/2016-02-22/roman-bezsmertnyiy-peregovoryi-po-donbassu-nahodyatsya-nije-nulevoy-otmetki/3409>).

¹⁰ “Back to diplomacy”, Final Report and Recommendations of the Panel of Eminent Persons on European Security as a Common Project, November 2015, p. 13 (www.osce.org/networks/205846?download=true).

¹¹ “Top U.S., Kremlin Officials Meet For Ukraine Talks Near Kaliningrad”, RFE/RL, 15 January 2016 (www.rferl.org/content/ukraine-russia-us-nuland-surkov-talks/27490535.html).

¹² “Surkov-Nuland Talks on Ukraine: A Non-transparent Channel (Part One)”, *Eurasia Daily Monitor*, Vol. 13, Issue 103, 26 May 2016 ([www.jamestown.org/single/?tx_ttnews\[tt_news\]=45469&tx_ttnews\[backPid\]=7&cHash=14360a78e74a1b2ae7781be064e0161a#.V0sFY2aGiVR](http://www.jamestown.org/single/?tx_ttnews[tt_news]=45469&tx_ttnews[backPid]=7&cHash=14360a78e74a1b2ae7781be064e0161a#.V0sFY2aGiVR)).

3. Non-implementable agreement?

Important parts of the agreement are difficult to implement in a short to medium term for Ukraine and Russia and its backed separatists. Not only is there disagreement over specific points but the order of implementation is a subject of fierce debate. The EU faces a dilemma, because Brussels has limited leeway on Russia while Moscow has used the war in eastern Ukraine to put pressure on Kyiv and the other states of the Normandy format. Sanctions are the main EU instrument for pressuring Russia to make compromises. Even if it is difficult to measure how far sanctions influence Russian cost-benefit calculations, as the main response to Russian aggression they are crucial to sustaining EU credibility. At the same time, financial sanctions have an impact on refinancing Russian debt on the global financial market and limit foreign direct investment in the Russian economy.¹³ Their main impact is to exacerbate the effects of low energy prices (and limited diversification of the Russian economy) and the poor investment climate in Russia owing to the growing role of the state in the economy, systemic corruption and the lack of rule of law.

3.1 Russian reluctance

Russia still portrays itself as a non-party to the conflict, which makes any solution difficult. Russia and its backed separatists are not likely to move ahead with comprehensive cessation of hostilities across the *de facto* line of contact, ensure access for OSCE monitors or hand over border control to Ukrainian authorities.

Although Russia has no interest in a large-scale military campaign at this stage, comprehensive cessation of hostilities is not in its interest. Incidents on the *de facto* line of contact are a valuable means for Russia to use (the threat of) renewed hostilities in order to influence Kyiv and the international community: it improves Russia's bargaining position in the Normandy format.

Moreover, ensuring full access for OSCE monitors to verify the withdrawal of heavy weapons and creating a security zone will remain difficult to implement. Russia and DPR and LPR leaders are reluctant to provide access to OSCE monitors, which will expose their unwillingness to halt hostilities. They are only allowed to supervise two checkpoints at the Gukovo and Donetsk border crossings. This means the monitoring mission can only observe official border crossing on two checkpoints on the separatist side.¹⁴

Finally, Russia will not agree to hand over border control to the Ukrainian authorities as long as it is not necessary in its cost-benefit calculation. It would practically mean losing influence over the DPR and the LPR, which is a very high price to pay for the Russian regime. Ukrainian forces would be able to regain control over the territories, thus denying Russia its leverage over Kyiv through separatist-controlled areas.

3.2 Ukraine's indisposition

In an unstable political environment, Ukraine is unlikely to carry out a meaningful constitutional reform addressing decentralisation with a special reference to certain areas of

¹³ See BOFIT Forecast for Russia 2016-2018, Bank of Finland Forecast for Russia 2016-2018, 21 March 2016 (www.suomenpankki.fi/bofit_en/seuranta/ennuste/Documents/brf116.pdf).

¹⁴ O. Removska, D. Sindelar and L. Wannek, "Under Fire in Ukraine, OSCE Questions Its Worth", 14 November 2014 (www.rferl.org/content/ukraine-crisis-russia-osce-monitoring-mission/26690263.html).

the Donetsk and Lugansk regions, even if the High Representative/Vice-President Federica Mogherini and Commissioner Johannes Hahn insist on it.¹⁵ Neither the president nor the new government can afford to waste political capital in pushing through a politically sensitive and extremely unpopular reform. While Russian leadership can just decide to withdraw troops without asking the Duma, Ukrainian authorities need public support for such a decision by its parliament, the Verkhovna Rada. Such public support will not materialise as long as Russia and its proxies do not observe the ceasefire and the situation in separatist-held parts of Donbas remains volatile. There is no trust between Moscow and Kyiv.

Moreover, Ukraine and Russia have a different vision of decentralisation in the long term. At some point, Kyiv might be ready to grant some cultural, financial, linguistic and educational autonomy to parts of Donbas. However, Russia supports a sort of decentralisation that will empower regions of Ukraine to veto Ukraine's possible NATO and EU integration. The vision of many security people in Moscow is not stabilisation but a kind of a 'Bosniasation' of Ukraine: rendering it a dysfunctional and divided state, which is easier for Moscow to control than a functioning state.

Ukraine has made some progress in implementing the Minsk agreement. In September 2014, its parliament, on the president's initiative, adopted the law "on the special procedure of local self-governance in certain districts of Donetsk and Luhansk regions".¹⁶ In March 2015, the Verkhovna Rada amended the law to provide basic requirements for holding local elections and adopted a resolution on the determination of individual regions, cities, towns and villages of the Donetsk and Luhansk regions where the special procedure for local self-government would be introduced. Thus legislation allowing special treatment of the currently uncontrolled territories is already largely in place. Yet enforcing the legislation remains uncertain and the separatist side and the Russian government do not accept the law as being in line with the agreement.¹⁷

On 16 September 2014, in line with the Minsk agreement, the Ukrainian parliament passed a law granting amnesty to those involved in the Donbas events, except for persons who committed "grave crimes".¹⁸ In the context of an ongoing war, when lives are lost nearly daily, it makes no sense to implement the agreement for amnesty. As of 15 February 2016, the conflict had claimed officially 9,167 lives and injured 21,044.¹⁹ Even if the amnesty is pushed through by Ukrainian authorities, it is not likely to achieve much on its own. The reintegration of the separatist regions into Ukraine can only be successful when amnesty is implemented with clear conditions, including investigation and prosecution of crimes against humanity and war crimes.

¹⁵ Joint statement by the High Representative/Vice-President Federica Mogherini and Commissioner Johannes Hahn on the vote on constitutional amendments related to the judiciary by the Parliament of Ukraine, 02 June 2016 (http://eeas.europa.eu/statements-eeas/2016/160602_02_en.htm).

¹⁶ Verkhovna Rada of Ukraine adopted the Laws, 16 September 2014 (mfa.gov.ua/en/news-feeds/foreign-offices-news/27948-shhodo-uhvalennya-verkhovnoju-radoju-ukrajinizakoniv-ukrajini).

¹⁷ "Ukrainian Parliament OKs Bill On Special Status For Rebel East", RFE/RL, 30 March 2016 (www.rferl.org/content/ukraine-parliament-special-status-donbas-east/26906026.html).

¹⁸ "Ukraine Parliament Grants Self-Rule to Eastern Regions", 16 September 2014 (www.voanews.com/content/ukraine-parliament-adopts-law-on-self-rule-for-eastern-region/2451232.html).

¹⁹ "Donbas death toll through all period of conflict totals 9,167 persons; 21,440 wounded", *Interfax News Ukraine*, 3 March 2016 (<http://en.interfax.com.ua/news/general/328894.html>).

Linking decentralisation with the ‘special status’ for the two separatist regions was a major mistake, because it discredits the possible benefits of decentralisation reform for Ukrainian society. It is an example of how parts of the Minsk II agreement are linked with issues that are important to the future of the Ukrainian state. Decentralisation reform is an important initiative for the efficiency of the Ukrainian state through the distribution of resources to regional and local administrations. Its delay is negative for the entire reform process.

3.3 In what sequence?

Ukraine and Russia also disagree on the sequencing of the agreement’s implementation. For Kyiv, ceasefire, withdrawal of military equipment, foreign troops and mercenaries, prisoners’ exchange and taking over border control should be implemented first. Elections and enforcing the law on the special status of certain parts of the Donbas region will not be agreed to in the current volatile security environment.

In contrast, the Kremlin prioritises constitutional reform with the stress on decentralisation, elections (‘federalisation’), the law on the special status of certain parts of the Donbas and amnesty. During this year’s annual phone-in conference, President Putin stated, “It is necessary to accept – for all to agree and sit down at the negotiating table – to accept the constitution and on the basis of the constitution to hold elections. That is the way to get out of the crisis.”²⁰

There are big differences on how Russia and Ukraine interpret these conditions in separatist controlled territories. Russia’s representative in the Trilateral Contact Group, Boris Gryzlov, stated, “[T]he urgent need to ensure security and guarantee full ceasefire cannot justify a delay of the Donbas elections and consequently of the political settlement for three, five or ten years. On the contrary, if we embark on the path of postponing the political settlement, the situation may indeed get worse.”²¹ Germany and France push for a strict implementation of the Minsk agreement. The German Foreign Office has prepared a road map for elections in the separatist territories and is lobbying in Kyiv for the preparation of elections. At the same time, the situation in the separatist ‘republics’ looks rather negative.

Free and fair elections are not possible without necessary conditions on the ground. Until security requirements are addressed, a free press cannot operate and monitoring of the elections by international and Ukrainian organisations cannot be guaranteed. How can ODIHR election observers do their work in the separatist territories if the OSCE monitoring mission has no access at all? How can the safety of civil observers be guaranteed if they are attacked every week?

Even if the security conditions are provided, there are still disagreements over the modalities of the elections. Russia-backed separatists refuse to allow the participation of pan-Ukrainian political parties or the use of a proportional election system. This gives the impression that Russia and the separatists have no interest in political competition. Their main aim is to legitimise their rule over the territory they have occupied. The separatists also reject the

²⁰ Vladimir Putin, “\$2bn linked to Panama Papers was spent on expensive classical instruments - and what else we learnt from Russian President’s phone-in”, *Telegraph*, 14 April 2016 (www.telegraph.co.uk/news/2016/04/14/vladimir-putins-phone-in-with-russia/).

²¹ “Russian official: Donbass security is impossible without political settlement” (<http://tass.ru/en/politics/864605>, TASS, 23 March 2016, tass.ru/en/politics/864605).

Ukrainian government's insistence on the right of internally displaced persons (IDPs) to vote in elections without travelling to the territories.

3.4 What is definite

Regarding the lack of implementation, the first four points of the Minsk II agreement are clearly defined. Point one demands an "immediate and comprehensive ceasefire" in the Donetsk and Luhansk regions. Point two requires the withdrawal of all heavy weapons by both parties behind clearly defined lines, and point three outlines an "effective monitoring and verification by the OSCE of the ceasefire and the withdrawal of heavy weapons". Point four clarifies the next steps with regard to local elections and a special regime, which has to be confirmed by the Ukrainian parliament no later than 30 days from the agreement's signing date. While point four is something Ukraine has to implement by itself, or has to be implemented in coordination with the separatists, the other three points can only be implemented if Russia and its proxies cooperate with Ukrainian authorities. Without a fully functioning ceasefire, withdrawal of heavy weapons and access of OSCE monitors to the separatist regions, there will be no effective dialogue on elections or a special status for the DNR and the LNR. An important additional point is the release and exchange of hostages and illegally detained persons based on the principle "all for all", which has to be implemented no later than the fifth day after the withdrawal (point six).

4. Limits of diplomacy and sanctions

The stalemated Minsk process was periodically co-opted by both Ukrainian and Russian politicians. President Petro Poroshenko and ex-Prime Minister Arseniy Yatsenyuk used the conflict to deflect attention from lagging domestic reform and chronic inner squabbling.²²

Russia got everything it wanted in the Minsk II agreement, including decentralisation, status for separatist held areas and amnesty. The Ukrainian leadership accepted this agreement at a time when its army was under great military pressure from the separatists and Russian army. Presently, the Russian leadership, playing for time, blames the Ukrainian authorities for non-implementation of the Minsk agreement. The more time drags on, the worse the situation in Ukraine becomes owing to political disputes and a worsening economic situation.

In its relations with the EU, Russia's main problems are the financial sanctions and if there would be constraints imposed on large-scale projects like Nord Stream 2. However, because of several anti-sanction statements from representatives of EU member states, the Kremlin has at the moment the impression that it can get rid of the sanctions without making any serious steps towards implementation of the Minsk agreements.

Indeed, the consensus for sanctions in the EU is shaky. In particular, Italy, Greece, Cyprus, Austria and Hungary, and some politicians in Germany and France, have come out against extending sanctions. Italian Foreign Minister Paolo Gentiloni stated: "We cannot take for

²² See speech of and discussion with Petro Poroshenko at the 2016 Munich Security conference where he very emotionally talked about the war in eastern Ukraine but had limited answers on the reform process in Ukraine: Petro Poroshenko, Speech at the 52th Munich Security Conference, 12-14 February 2016 (www.president.gov.ua/en/videos/vistup-prezidenta-ukrayini-na-myunhenskij-bezpekovij-konfere-182).

granted any decision at this stage.”²³ Italy’s Veneto Regional Council went as far as passing a resolution recognising Crimea as Russian and calling for lifting sanctions.²⁴ Hungary Foreign Minister Peter Szijjarto spoke against automatic renewal of sanctions, stating, “You cannot decide on sanctions by sweeping the issues under the carpet...We believe that the question of sanctions should be decided at the highest level.”²⁵

Germany’s Vice Chancellor and Minister of Economy Sigmar Gabriel insisted the role of sanctions is not to bring about political and economic chaos in Russia but to “help solve the conflict in Ukraine, not to force Russia to its knees.”²⁶ At a speech at the German-Russian Forum in mid-March 2016 in Berlin, Gabriel quoted the French Minister of Economy, who in Moscow had said, “The goal that we all share is to give up sanction in the upcoming summer, because the Minsk process is respected”. Reacting to this quotation, Gabriel said, “Indeed, this must be our common goal.”²⁷ French Minister of Agriculture Stéphane Le Foll also expressed a clear anti-sanction view: “Of course, I want the sanctions to be cancelled very much. The president of France wants it and the government shares this point of view as well.”²⁸ Moreover, although less than one-fifth of the deputies participated, the French National Assembly passed a resolution arguing against extending EU sanctions against Russia.²⁹ Indeed, the EU member states show signs of less unity this time around and reaching a compromise between them will likely prove more difficult.

At the same time, at the end of May, German Foreign Minister Frank-Walter Steinmeier proposed a gradual lifting of the sanctions if there were to be substantial progress in Eastern Ukraine.³⁰ That means that the goal would no longer be full implementation of the Minsk II agreement before the EU would lift sanctions, but rather simply to induce Russia to take some visible steps towards implementation of the agreement. The problem with Steinmeier’s proposal, however, is that it is not the result of any visible concessions on the part of Russia, but rather that it reflects his concern that even if the European Council succeeds in reaching agreement to renew the sanctions at its meeting in June, it will be more difficult to maintain that consensus when the question appears again on the European Council’s agenda at the

²³ “Italy, Hungary say no automatic renewal of Russia sanctions”, *Reuters*, 14 March 2016 (uk.reuters.com/article/uk-ukraine-crisis-eu-idUKKCN0WG1B4).

²⁴ “Veneto Regional Council calls for recognizing Russia’s annexation of Crimea”, *Ukraine Today*, 18 May 2016 (uatoday.tv/politics/veneto-regional-council-calls-for-recognizing-russia-s-annexation-of-crimea-650795.html).

²⁵ “Italy, Hungary say no automatic renewal of Russia sanctions”, *Reuters*, 14 March 2016 (uk.reuters.com/article/uk-ukraine-crisis-eu-idUKKCN0WG1B4).

²⁶ “Germany warns against tougher sanctions on Russia”, *DW*, 4 January 2015 (www.dw.com/en/germany-warns-against-tougher-sanctions-on-russia/a-18169784).

²⁷ Transcription of speech by Sigmar Gabriels at the German-Russian Forum, Berlin, 17 March 2016 (available from the authors).

²⁸ “Paris confirms support for lifting sanctions against Russia”, (https://rbth.com/international/2016/02/02/paris-confirms-support-for-lifting-sanctions-against-russia_564219).

²⁹ Analyse du scrutin n° 1267. Première séance du 28/04/2016. Scrutin public sur la proposition de résolution invitant le Gouvernement à ne pas renouveler les mesures restrictives et les sanctions économiques imposées par l’Union européenne à la Fédération de Russie (art. 34-1 de la Constitution) (www2.assemblee-nationale.fr/scrutins/detail/%28legislature%29/14/%28num%29/1267).

³⁰ Auswärtiges Amt, Rede von Außenminister Frank-Walter Steinmeier beim Deutsch Russischen Forum/Potsdamer Begegnungen, 30.05.2016 (www.auswaertiges-amt.de/DE/Infoservice/Presse/Reden/2016/160530_BM_DEU_RUS_Forum.html).

end of the year. In effect, the EU is putting itself under severe pressure, not because of the situation in Eastern Ukraine but because of the lack of consensus among the member states, which weakens its own bargaining position.

5. Keep the sanctions

The sanctions have become an important element in the Kremlin's policy of testing the unity of the EU member states. At the same time, however, together with low energy prices, the global economic slowdown and bad economic policy, they affect the Russian economy.³¹ Moscow's pivot to China has failed, and it is trying to protect its economic and energy ties with the EU. These circumstances have improved the bargaining position of the EU and its member states vis-à-vis Russia with regard to the situation in eastern Ukraine if only the member states are committed to remain united and challenge large-scale energy projects like Nord Stream 2.

Even worse, if the European Council does not manage to prolong the sanctions in August, it will weaken the EU's position in negotiations and its credibility in Kyiv and the wider region. If the EU is not consistent on sanctions, it is likely to lose its leverage in the Ukrainian reform process and send a distressing message to the Ukrainian people who were on the Euromaidan that they stand alone against Russian aggression, thus further destabilising the country.

The EU's inability to prolong sanctions will send the message to Moscow, that the destabilisation of countries in the common neighbourhood, including via military action, will have very limited or no consequences. Even if the sanctions are limited, they are an important instrument to show unity and to draw a red line demarcating unacceptable Russian action.

It is a strategic mistake that some member state leaders are talking about lifting sanctions or linking Ukraine's fate to Syria's,³² as the US has done, because it sends the wrong message to Moscow. The Kremlin is under the impression that it can get rid of sanctions without compromise. The EU and its member states need to be clear that they support sanctions. This approach will improve the EU's bargaining position. If nothing is changed in the foreseeable future and Russia does not compromise or, worse, escalates the conflict, the EU ought to consider increasing sanctions and clearly tell Moscow that it is doing so, as happened at the G7 meeting in May 2016 in Japan.³³

The most interesting point Russian Prime Minister Dmitry Medvedev made at the Munich security conference was not his argument about a new cold war but about Russia's willingness to "listen to different ideas, including compromise" with regard to the situation in eastern Ukraine.³⁴ This has never been elaborated and even rigorous adherence to the Minsk agreements will not solve the current stalemate. Presently, the circumstances Russians

³¹ "Russia Economic Report 35: The Long Journey to Recovery", World Bank (www.worldbank.org/en/news/press-release/2016/04/06/russia-economic-report-35).

³² "Syria and Ukraine: two fronts in Russian war for influence", *Reuters*, 1 October 2015 (www.reuters.com/article/us-mideast-crisis-ukraine-idUSKCN0RV4RS20151001).

³³ Cameron, "G7 Countries Agree 'Vital' To Extend Russia Sanctions", *RFE/RL*, 30 May 2016 (www.rferl.org/content/g7-cameron-russia-sanctions/27761035.html).

³⁴ Dmitry Medvedev's speech at the Munich conference. Full text (<http://freenews.xyz/2016/02/13/dmitry-medvedevs-speech-at-the-munich-conference-full-text/>).

and Ukrainians find themselves in have changed. Ukraine has improved its military position and the Russian leadership gave up the Novorossiya (i.e. New Russia) project and the country continues to drift into a substantial recession. Therefore, it makes sense under the new conditions to allow Kyiv and Moscow more flexible in their implementation or adaptation of the agreement. Some parts need clarification and the order of implementation needs to be changed. At the moment it is easy for the Russian leadership to blame the Ukrainian government for not fulfilling its part, yet it is first of all Russia that has not respected the ceasefire and full withdrawal of heavy weapons. The separatists need to meet these conditions if elections are to be organised. There should be a clear list of what has to be done to prepare elections on the ground, both in terms of security and modalities. If these conditions are not met, elections should not take place.

Strategic patience with regard to sanctions is therefore more important than quick solutions. In fact, there are no sustainable quick fixes for the crisis in eastern Ukraine. The current focus of Germany, France and the US on pushing quick solutions will not work. Only if Moscow believes it cannot get rid of the sanctions soon can the Russian leadership be influenced. It is therefore better to leave sanctions in place rather than make compromises, which give Moscow more ammunition. The EU (and US) sanctions on Russia are an important tool to win time for Ukraine. More resources and energy ought to be invested in Ukraine to make sure that Kyiv really uses this time to reform and rebuild the state.³⁵ Giving up on sanctions without any political gain would declare the bankruptcy of the EU in international conflict resolution.

6. The way forward

Security for elections: Before elections can take place in eastern Ukraine, it is necessary to improve the security situation. The current OSCE mission is not sufficient. A plausible option could be expanding it, with more observers (up to 1,000) and a more robust mandate. The Russian leadership and the separatists should guarantee their security in the separatist territories. In fact, in such a war situation it is not an observer but an international peacekeeping mission that should take responsibility. Along a fragile and dangerous contact line, the conditions have to be improved for observers to do their job without fearing for their lives. Russia can be involved in ensuring the security of the observers but only in the context of an international peacekeeping mission. The observers should be allowed to access the separatist territories to be able to monitor withdrawal of heavy weapons from the separatist side. Only then will it make sense to put the Ukrainian side under pressure to withdraw their heavy weapons.

Since Russia is not ready to give border control to Ukraine before the elections, as an alternative, the OSCE Gukovo and Donetsk operations should be extended along the whole border on the Ukrainian side. The mission should have an enhanced mandate and resources to be able to effectively control the border. Here as well it would make sense to have a UN peacekeeping mission. Only if international peacekeepers control the border and no Russian weapons and fighters/soldiers flow in and out is it realistic to organise elections and hand over the border to the Ukrainians at a later stage. This will give the Ukrainian government a

³⁵ For the past two years nearly all economic indicators for Ukraine have been negative. The recent changes of the prime minister and the prosecutor, both from the president's political camp, will not bring the necessary push for the reform process. See "Ukraine. Current economic data", *Ukraine-Analysen*, 168, 11 May 2016, pp. 22-25.

minimal guarantee that after elections in the separatist regions an international controlled handover of the border to Ukrainian border forces can take place. The complete lack of trust between Kyiv on the one hand and Russia and its proxies on the other can only be improved by international observers, independent information and international guarantees for Ukraine.

Once the above mentioned minimum security conditions are ensured, the elections could be prepared. The election can be supervised by an OSCE police mission or a UN peacekeeping mission. Russia might be inclined to agree with OSCE or UN missions where it is represented. In terms of modalities, the pan-Ukrainian parties should be allowed to participate in the elections to ensure inclusive representation.

Elections in turn can become bases for the introduction of amnesty and entering into force of the special status if the ODHIR assesses elections to be largely in line with international standards. The candidates that did not commit “grave crimes” may be covered by immunity before the day of elections and by amnesty after elections. Those who committed “grave crimes” should be held accountable. However, the constitutional reform and decentralisation should be delinked from the “special status” law, because linking them only overshadows the possible benefits of Ukraine’s decentralisation.

Upgrade of the Normandy format: The Normandy format has done an important job in stopping the war and drawing the tense situation in eastern Ukraine into a diplomatic process, but it is in a stalemate at the moment. Whereas two prominent EU member states are part of the Normandy format, the US has its own (non-transparent) bilateral dialogue with Russia. Furthermore, it is not in the interest of the EU that Russia has its separate format with the US and that Washington is linking its talks with Moscow on Syria to the Ukrainian crisis. To involve the US in the new format would not only prevent possible compromises without the EU and Ukraine having their say, it would upgrade the format by creating a new dynamic for conflict settlement.

With regard to the EU, two options exist: Either Germany and France use their political weight in the EU and coordinate talks with other member states and relevant EU institutions, or the High Representative Federica Mogherini and the European External Action Service represent the EU. An EU-US-Russia format could be the result of such changes, which, with the inclusion of Washington, would have greater political authority.

Expanding the Normandy format and including the US makes sense not only for maintaining EU and US sanctions, but also for improving the bargaining position of the EU and increasing the importance of the negotiations for Moscow. Such an upgrade and high-ranking negotiations are needed in order to push Russia to resolve issues such as an international monitoring mission or peacekeepers for the Ukrainian-Russian border.

If Russia continues to block progress in the Normandy format and not allowing its upgrade, it should be clearly blamed for not being constructive. The EU and the US will have more legitimacy to support the stabilisation of Ukraine. EU member states and the US should demonstrate that they are willing to go further if Moscow is not constructive in solving the conflict.

Strengthen Ukraine: The EU effort can only be fruitful if Ukraine becomes a success story. The current stagnation in the reform process, shrinking support for the president and government and the resignation of key reformers from the cabinet in the context of the election of a new prime minister plays into Moscow’s hands. As it stands, the Kremlin does

not need to do much because Ukrainian elites are bringing discredit upon themselves and derailing the reform process, without much Russian interference.

The EU needs to invest more in the Ukrainian reforms, which means more financial support and resources but with even stronger conditionality. Brussels needs to increase the number of experts, who are not only supporting the Ukrainian government in the reform process but also working side by side with Ukrainian bureaucrats in the ministries. Ukrainian reform-oriented civil society needs to be involved much more closely in the monitoring process and communication with the wider Ukrainian society. The role of civil society organisations has to be upgraded with regard to the government and bureaucrats. The EU should require necessary changes in the personal structure in key ministries and agencies, especially in fighting corruption and reforming the judiciary and the economy. This needs to be linked with higher financial obligations. Furthermore, Ukraine needs to look after the welfare of Ukrainians.

All this will be easier if Ukraine is granted the European perspective. EU membership for Ukraine will not happen anytime soon, but it is a generational project.³⁶ This carrot would renew the EU's credibility in Ukrainian reformist circles, which are the main partners of Brussels. After all, the referendum in the Netherlands was first of all the result of frustration about the EU in the member states, the failure of the leading politicians to face populists and explain the importance of Ukraine to the credibility and security of Europe. Even if it is partially interpreted as a refusal of EU membership for Ukraine, it is crucial for European politicians to promote the importance of stabilising Ukraine for Europe's security. The current Russian leadership has no interest in the Ukraine's stabilization, preferring a weak state which it can control by informal and corrupt ties. This is not in the interest of the EU member states. Ukraine's evolution over the coming years will have a significant influence on the future of Russia and its relations with Europe. Stability will not come by making compromises with Russia on Ukraine and accepting the grey zone between Russia and the EU, but by supporting Ukraine to become a European success story. This would set a positive example for some countries in the post-Soviet space, thus facilitating the transformation of other countries of the region and ultimately triggering a change in Russia itself.

Concluding remarks

In sum, a revised Minsk II agreement would need to start with a fully functioning ceasefire, credible weapons withdrawal on both sides, withdrawal of Russian troops from the Ukrainian territory and the release of all hostages. The next step needs to be international control not only of the contact line between the Ukrainian state and the separatist regions but also of the Russian-Ukrainian border. Only if these preconditions are fulfilled does it make sense to discuss lifting sanctions. It could be an option to link the implementation of these steps to the gradual lifting of sanctions, but then it must also be possible to re-impose or increase sanctions if developments are stagnating or going in the wrong direction. All these points are preconditions for the preparation of elections in the separatist regions, possible changes in the Ukrainian constitution and decentralisation.

³⁶ D. Hamilton and S. Meister (2016), "What the West must do with the common neighborhood?", in *The Eastern Question: Russia, the West and Europe's Grey Zone*, Center for Transatlantic Relations, SAIS, Washington, D.C., pp. 52-77 (https://dgap.org/sites/default/files/article_downloads/meister_and_hamilton_section_2_part_2.pdf).

Finally, as long as the Ukrainian state is not stabilised and crucial security and social institutions are not rebuilt, it is dangerous to organise elections in the separatist regions and give them a special status or any political influence over Kiev. There is a decided risk that certain criminal and military elements will spill over into Ukraine. If securing stability and security in Europe is the goal of EU policy, then functioning institutions of the Ukrainian state are crucial preconditions. It is therefore more important to invest political and financial capital in the Ukrainian reform process than in the implementation of Minsk II in its current form. A successful reform process and stabilisation of the Ukrainian state will improve the bargaining position of the EU, thus allowing it to accomplish more vis-à-vis Russia and the separatists as part of its ongoing efforts to achieve sustainable peace in Europe.



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