

# THE HIGH REPRESENTATIVE OF FOREIGN AFFAIRS AND SECURITY POLICY AND THE CRISIS IN UKRAINE

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Federica Mogherini, the High Representative of Foreign Affairs and Security Policy and Vice-President of the European Commission (HR/VP), is the European Union's (EU) chief on foreign policy. However, during high profile negotiations concerning Ukraine other EU national leaders have carried Europe's voice. Building on the Eurozone's (EZ) crises, this absence is peculiar and it begs the questions: why is the HR not part of the high profile negotiations and how does this reflect on the EU?

Two major political situations are evident when it comes to the EU and Russia over the Ukrainian conflict: the Minsk agreements and imposing economic sanctions on some influential Russian citizens. The HR's participation in these key decisions concerning EU foreign policy shall be addressed. Since the new European Commission has taken office starting November 2014, the focus will be on the second Minsk agreement and the second wave of sanctions. This article disregards direct comparison with the Georgian conflict of 2008 due to the fact that the Lisbon Treaty had not yet entered into force and focuses solely on the European Union.

## The High Representative of Foreign Affairs and Security Policy

The HR is a political innovation of the Amsterdam Treaty which has been preserved and developed in the 2009 Lisbon Treaty. Broadly speaking, the HR is "charged with coordinating and carrying out the EU's foreign and security policy". The mandate coincides with that of the Commission and lasts for five years.

The HR/VP takes part in the works of the European Council (art. 15 TEU), is *de facto* Vice-President of European Commission (art. 17 TEU; art. 18 TEU) and presides over the Foreign Affairs Council (art. 18 TEU). Together with the European Council, the HR/VP "ensures the unity, consistency and effectiveness of action by the Union" (art. 26 TEU). Furthermore, and of particular interest to the second Minsk agreement, art. 27 TEU states that the "High Representative shall represent the Union for matters relating to the common foreign and security policy. He shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences."

However, despite these responsibilities enshrined in the TEU, the European Council has final say about who will actually negotiate on behalf of the EU according to art. 218 TFEU. Therefore, the HR/VP has large attributes but these depend on empowerment from the European Council. The European Council can appoint another entity if it so decides on matters concerning foreign policy.

Russian aggression on the European continent is not new in recent history. The Russian military intervened in Georgia in 2008 over claims of genocide and crimes against humanity. The West was in uproar and negotiations ensued with NATO and OSCE to settle the matter. French President, Nicolas Sarkozy, brokered a ceasefire which Russia.<sup>ii</sup> Ghimiş (2012) argues that this is a show of strength on the part of European Union. It has managed to show solidarity and unity in negotiating to protect its regional security. Furthermore, the author argues that crucial to the success of the UE in these negotiations was that the representative of the entire EU was also president of one of its largest states.<sup>iii</sup> This point will be tackled later on.

## The Minsk II agreement & economic sanctions

With regard to the Ukrainian conflict, two agreements have been struck with the aim of establishing peace in the region. The first Minsk agreement was brokered by the OSCE and was reached on September 5<sup>th</sup> 2014<sup>iv</sup>, with support from the EU<sup>v</sup> shortly after EU announcements of new economic sanctions on Russia. Russian troops have been seen entering Ukraine in November 2014<sup>vi</sup> thus revealing that negotiations have not yielded their expected results. The tension persisted and the parties resumed hostilities several months later, at the beginning of 2015. This led to the failure of the Minsk I agreement.

The second Minsk agreement was reached on February 12<sup>th</sup> 2015 after marathon talks between leaders from France, Germany, Russia and Ukraine<sup>vii</sup> under OSCE supervision. This negotiation format, dubbed the Normandy format, does not appear to have been explicitly endorsed by the European Council in any of its conclusion reports<sup>viii</sup>. It is well worth noting that, after the talks, French, German and Ukrainian leaders briefed the rest of the EU countries in a summit in Brussels<sup>ix</sup> about the conclusions.

Statements from the HR/VP prior to the faltering Minsk I agreement and during negotiations for the Minsk II agreement steer away from its mandate enshrined in art. 26 TEU to ensure the unity, consistency and effectiveness. They incline towards more of a support role and towards side-line involvement in important decisions.

Firstly, the role of support arises from statements published on the official page of the European External Action Service. These reflect the position that the European Union “supports all the initiatives aimed at bringing political solution to the ongoing conflict in Eastern Ukraine”<sup>x</sup> and that the HR works to “maintain unity” and to “exercise maximum pressure to stop the fighting”<sup>xi</sup>. Furthermore, prior to the Minsk II negotiations, a Foreign Affairs Council decided unanimously to postpone imposing further sanctions on an enlarged lists of Russian individuals and entities. In a press conference following the Foreign Affairs Council meeting, the HR/VP said that this is to give space to current diplomatic efforts<sup>xii</sup>. Repeated emphasis on the EU’s readiness to take action<sup>xiii</sup> echoes hollowly when it comes to actual action.

What these statements seem to highlight, rather than a united position of the EU, is that its chief on foreign policy has little influence. The HR/VP is absent from Minsk, its role in preparing negotiations is to put together a list of entities to be targeted by potential economic sanctions<sup>xiv</sup>, to liaise with the trilateral contact group (TCG) and to otherwise talk about measures, decision and solutions. All of these suggest a side-line role.

Secondly, during the Foreign Affairs Council of January 29<sup>thxv</sup>, the HR/VP is tasked to “to further improve strategic communication in support of EU policies and to explore options for the establishment of a dedicated communication team to lead these actions.” Furthermore, this task is echoed by the European Council in its March meeting<sup>xvi</sup>:

“The European Council stressed the need to challenge Russia's ongoing disinformation campaigns and invited the High Representative, in cooperation with Member States and EU institutions, to prepare by June an action plan on strategic communication. The establishment of a communication team is a first step in this regard.”

Tasking the HR/VP as understood in TEU and TFEU to act as press officer raises a significant question about its legitimacy. If a position which is given weight by the Treaties is side-lined during important moments, then the credibility of the Treaties and of the will of the EU is questioned. It begs the question what other important positions or clauses are side-lined when push comes to shove.

It is not the scope of this article to determine how the HR/VP should have contributed to the negotiations but it begs the question why the head of foreign policy for a bloc encompassing half of the OSCE members was

not preferred to two heads of state. The side-line role the HR/VP plays undermines the credibility of the EU in a time of crises. If one of the leading figures in the development of a political union between the member states is side-lined in trying times, due to alleged inexperience<sup>xvii</sup> or for other reasons, in favour of Germany or France, then disharmony for the European project becomes apparent. Why empower a HR/VP if the president of a member of state or, in this case, two, are on par with President Putin? Surely, the European Council could have easily tackled this matter without their needing to amend the TEU. Therefore, the HR/VP should yield more weight than any one or two heads of member states irrespective of the states given its mandate to lead foreign policy mandated by a treaty ratified by all member states.

In conclusion, alongside the sovereign debt crisis and the rising influence of the anti-European discourse, undermining the institution of the HR/VP sends the message that political influence, i.e. Germany and France, trumps political union deals a subtle blow to the EU's credibility. This choice would go to show that the EU means business. The reverse would be, then, that when the HR/VP represents the EU that it is does not mean business? Also, it is worth assuming that pushing the HR/VP forward in trying times would have shown the world that the Union is strong and that members believe in its institutions.

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<sup>i</sup>European Union External Action Service n.d *The post of High Representative of the Union for Foreign Affairs and Security Policy*. Available from: [http://eeas.europa.eu/high-representative-about/index\\_en.htm](http://eeas.europa.eu/high-representative-about/index_en.htm). [Accessed 31.03.2015]

<sup>ii</sup> King, C. 2009 *The Five-day War*. Available from: <http://www.foreignaffairs.com/articles/64602/charles-king/the-five-day-war>. [Accessed 30.03.2015]

<sup>iii</sup> Ghimiş, Ana-Maria (11 July 2012) *The Georgian War – success or failure of diplomatic negotiations?* Available from: <http://cepeoffice.com/2012/07/11/the-georgian-war-success-or-failure-of-diplomatic-negotiations/>. [Accessed 30.03.2015]

<sup>iv</sup>BBC (13 November) *Ukraine Crisis: Timeline*. Available from: <http://www.bbc.com/news/world-middle-east-26248275>[Accessed 30.03.2015]

<sup>v</sup>Consilium (30.04.2014)*Special meeting of the European Council (30 august 2014) – Conclusion*. Available from: <http://data.consilium.europa.eu/doc/document/ST-163-2014-INIT/en/pdf>. [Accessed 30.03.2015]

<sup>vi</sup>BBC (12 November) *Ukraine Crisis: Russian troops crossed border, NATO says*. Available from: <http://www.bbc.com/news/world-europe-30025138>. [Accessed 30.03.2015]

<sup>vii</sup>Euronews (10 February 2015) *Ukraine conflict timeline*. Available from: <http://www.euronews.com/2015/02/10/ukraine-conflict-timeline/>. [Accessed 30.03.2015]

<sup>viii</sup>Consilium (n.d) *Register*. Available from: <http://bit.ly/1NsiT6x>. [Accessed 30.03.2015]

<sup>ix</sup>Guardian (13 February 2015) *Putin tried to delay Ukraine ceasefire deal, EU summit told*. Available from: <http://www.theguardian.com/world/2015/feb/13/ukraine-service-personnel-killed-minsk-ceasefire>. [Accessed 30.03.2015]

<sup>x</sup>EU External Action Service (05/02/2015) *Statement by High Representative/Vice-President Federica Mogherini on the announcement by Chancellor Merkel and President Hollande*. Available from: [http://eeas.europa.eu/statements-eeas/2015/150205\\_01\\_en.htm](http://eeas.europa.eu/statements-eeas/2015/150205_01_en.htm). [Accessed 30.03.2015]

<sup>xi</sup>EU External Action Service (29/01/2015) *Remark by High Representative/Vice-President Federica Mogherini upon arrival at the extraordinary Foreign Affairs Council*. Available from: [http://eeas.europa.eu/statements-eeas/2015/150129\\_01\\_en.htm](http://eeas.europa.eu/statements-eeas/2015/150129_01_en.htm). [Accessed 30.03.2015]

<sup>xii</sup>Consilium (09.02.2015) *Main results of the Foreign Affairs Council*. Available from: <http://www.consilium.europa.eu/en/meetings/fac/2015/02/09/>. [Accessed 30.03.2015]

<sup>xiii</sup>Consilium (18.02.2015) *Statement by the High Representative/Vice-President Federica Mogherini on the violation of the ceasefire in Debaltseve*. Available from: [http://eeas.europa.eu/statements-eeas/2015/150218\\_01\\_en.htm](http://eeas.europa.eu/statements-eeas/2015/150218_01_en.htm) [Accessed on 30.03.2015]

<sup>xiv</sup>Consilium (09.02.2015) *Main results of the Foreign Affairs Council*. Available from: <http://www.consilium.europa.eu/en/meetings/fac/2015/02/09/>. [Accessed 30.03.2015]

<sup>xv</sup>Consilium (29.01.2015) *Council conclusions on Ukraine*. Available from: <http://www.consilium.europa.eu/en/press/press-releases/2015/01/council-conclusions-ukraine/>. [Accessed 30.03.2015]

<sup>xvi</sup>Consilium (30.03.2015) *European Council meeting (19 and 20 March 2015) – Conclusions*. Available from: <http://data.consilium.europa.eu/doc/document/ST-11-2015-INIT/en/pdf>. [Accessed 30.03.2015]

<sup>xvii</sup>Financial Times (July 2014) *Attacks on Mogherini unjustified and wide of the mark*. Available from: <http://blsogs.ft.com/the-world/2014/07/attacks-on-mogherini-unjustified-and-wide-of-the-mark/>. [Accessed 30.03.2015]