

SWP Comment

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CFSP: The Capability-Expectation Gap Revisited

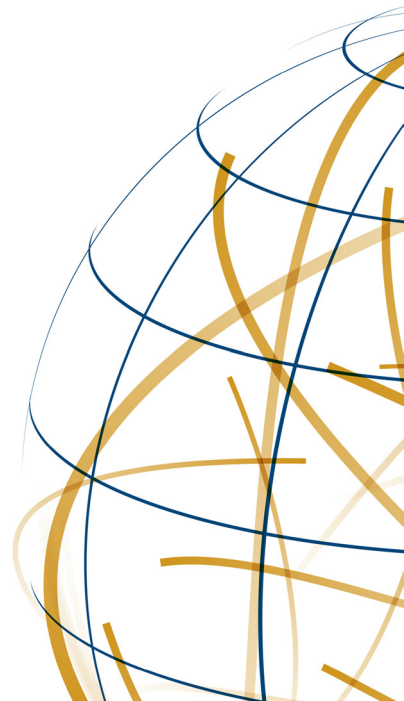
A Data-based Analysis

Annegret Bendiek, Minna Ålander and Paul Bochtler

The global political situation in Europe's neighbourhood has deteriorated dramatically in recent years, and this has had significant consequences for the European Union (EU). Conflicts are multiplying in Eastern Europe and in the Mediterranean Sea; Russia and China are showing increasingly expansive tendencies in South Eastern Europe; and the USA is becoming less and less reliable as a security provider for Europe. Against this background, it is striking that the Common Foreign and Security Policy (CFSP) still falls far short of what would be expected from the EU given the size of its internal market. The unanimity principle in the Council of the EU is often blamed for this. However, an analysis of CFSP data shows that the Member States are clearly satisfied with symbolic policy measures, despite their political rhetoric. This situation will not be resolved either by introducing simple majority voting or with mere declarations of political will from governments. The dialogue on the future of Europe should be seen as an opportunity to remedy the inability to act in the field of foreign policy by harmonising the CFSP.

In the 1990s, intergovernmental cooperation in the EU was accompanied by the expectation that it was only a matter of time before political union would be achieved in the CFSP. The establishment of the European Security and Defence Policy (ESDP) in 1999, the Stability Pact for South Eastern Europe in 1999, the two rounds of enlargement in 2004 and 2007 and the more than 20 civilian, military and civil-military missions or operations undertaken until 2009 were considered by many as milestones along the path to a common European foreign and security policy. This expectation

still exists today. The "geopolitical mission", under European Commission President Ursula von der Leyen, reflects the aspirations of the current Commission and of Josep Borrell Fontelles, High Representative (HR) for Foreign and Security Policy. According to Borrell, the EU should learn the language of power and act geopolitically with more realism and internal unity. A backward-looking foreign policy on the part of the Member States would harm both the countries themselves and the Union. In her State of the Union address in September 2020, von der Leyen called for the intro-



duction of qualified majority voting in the Council for imposing restrictive measures, i.e. for the implementation of sanctions and for taking action in the event of human rights violations.

Low Outcome

So far, few of these demands have been met. The lack of capacity to act within the framework of the CFSP is reflected in the results of intergovernmental decision-making procedures, understood here as CFSP output. But who does the EU want to reach or what does it want to achieve with its CFSP, and what impact does it seek to have? The answer to these questions is provided by looking at CFSP output. The effects of CFSP output (understood as outcome), on the other hand, are very difficult to measure, since actual EU policy towards or in third countries often deviates from the declared goals. A cursory glance reveals the extent to which the strategic interests of the Member States, but also of the EU institutions, have differed in the context of the CFSP in the last few months alone. Foreign policy decisions are frequently blocked. In early 2019, Italy blocked sanctions against Venezuela. Some NATO countries, mindful of Washington's stance, prevented the EU from taking a position against the collapse of the INF Treaty. Poland and Hungary torpedoed the conclusions of an EU summit with Arab states because they did not agree with passages on migration.

The EU's policy in the Middle East has also lacked coherence for some time. The conflict between the USA and Iran, which culminated in the killing of Iranian major general Qasem Soleimani in January 2020 and the Iranian attack on a US military base in Iraq, revealed a rift in the CFSP. On the one hand, the EU tried to position itself as a mediator and repeatedly called for de-escalation. On the other hand, the numerous, and sometimes contradictory actions taken by the EU institutions and Member States undermine the EU's foreign policy credibility. For example, the EU did not give a

good impression when the new President of the Council, Charles Michel, commented on the killing of Soleimani before the HR had made a statement, which indicated an inter-institutional power struggle when it came to the EU's external representation.

Disagreement also dominated between Member States. Germany, France and the UK (E3 countries) supported the USA, while other Member States disagreed with the E3. The trading company INSTEX, a European special-purpose vehicle which was founded to uphold trade with Iran bypassing US sanctions, has so far had little effect. Apart from Germany, France and Great Britain, only six other European states (Belgium, Denmark, Finland, the Netherlands, Norway and Sweden) had joined INSTEX by April 2020. So far, INSTEX has only carried a single transaction, which concerned medical devices, a category of goods that is exempted from secondary US sanctions anyway.

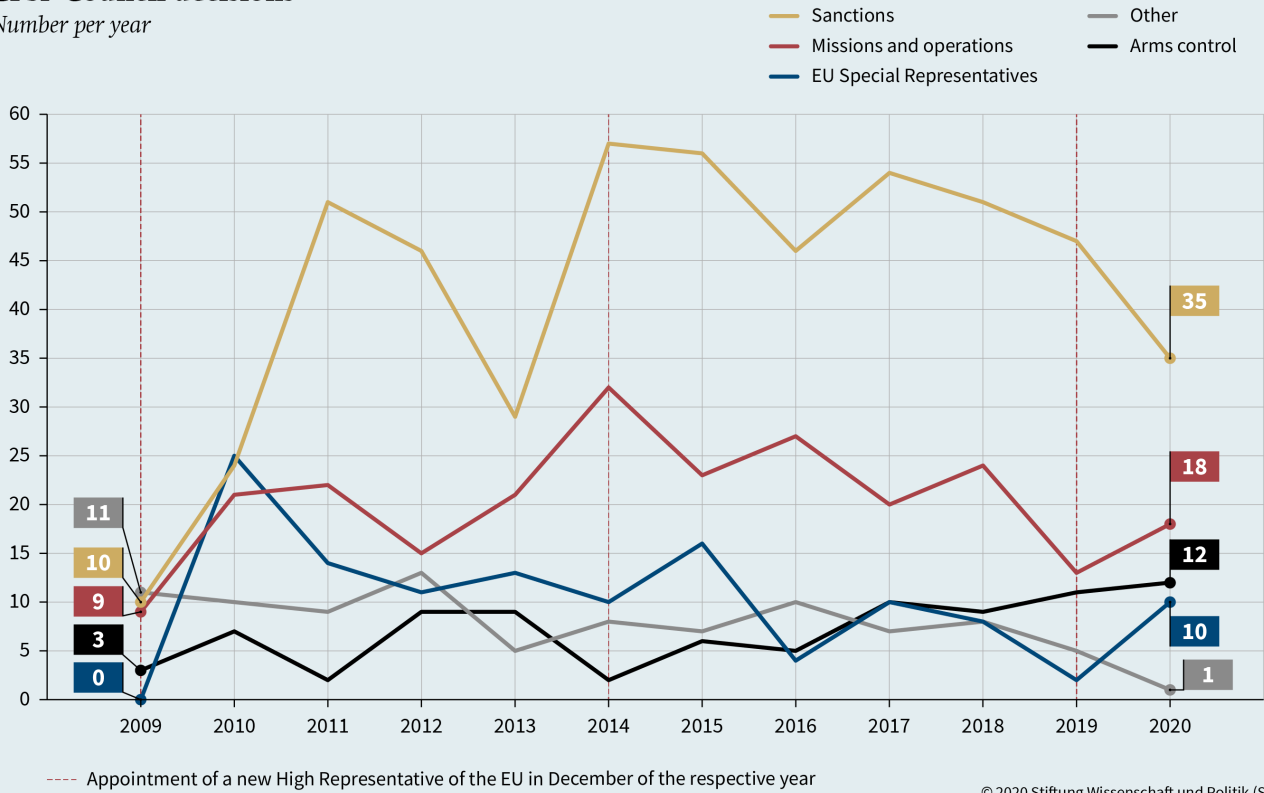
The EU has not yet been able to formulate a common policy on the Trump administration's initiative to find a two-state solution for Israel and Palestine. Despite this, Josep Borrell strongly criticised the American proposals, stating that they departed from international agreements. A similar situation emerged after a video conference of EU foreign ministers in May 2020, when they were unable to reach a common standpoint against Israeli annexations of the West Bank. At the same time, the General Assembly called for increased pressure on Israel, stating that unilateral action by the Israeli government in Jerusalem would have consequences.

Member States also failed to respond to the calls by the HR at the end of August 2020 for an increase in military capabilities for the EU Operation IRINI to enforce the UN arms embargo on Libya. The lack of consensus among EU countries is also reflected in the fact that policies are played off against each other. Since the discovery of large gas deposits in the eastern Mediterranean, Turkey, Cyprus and Greece have been in fierce conflict over their exploitation. Only after many weeks did Cyprus abandon its veto on sanctions on Belarusian

Chart 1

CFSP Council decisions

Number per year



Source: Minna Ålander, Annegret Bendiek and Paul Bochtler, *A Critical Perspective on Data Transparency in the Common Foreign and Security Policy of the European Union*, Berlin: SWP Research Division EU/Europe, Working Paper (WP) 2020/no. 02, November 2020, https://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/WP2020_Alander_et_al_Data-analysis_CFSP-output.pdf.

representatives of President Alexander Lukashenko’s regime at the beginning of October 2020.

The call for more EU unity was clearly expressed by HR Borrell in May 2020 in an article published in several European daily newspapers calling for diplomatic discipline and for Member States to work together to counter the Chinese *divide et impera* approach. The discrepancy between the ambition of the new HR and the diverging positions of the Member States was further highlighted when, in late May 2020, the Chinese People’s Congress mandated Hong Kong’s Chief Executive Carrie Lam to adopt a new Security Law for the special administrative region (SAR). Despite Borrell’s call for a “more robust” strategy towards China, it took several attempts by Member States to agree on common measures in July 2020,

including a ban on exports of surveillance technology and dual-use goods.

In summary: EU Member States are possessively trying to protect their national competences and are not making any serious effort to overcome their lack of consensus at supranational level. Nor do the EU institutions agree on who should represent the EU externally and who should make it politically accountable internally.

CFSP Output

The low level of CFSP outcome is matched by a low level of a results-oriented output (see Division EU/Europe, WP 2020/no. 02). According to Article 40 of the Treaty on the European Union (TEU), the CFSP and other external affairs are strictly separated by spe-

cific internal decision-making procedures. Legislation is excluded from the CFSP. The main CFSP decisions — whether the establishment of a CSDP mission, the decision on sanctions or the positioning of the EU in key foreign policy issues — are taken by the Foreign Affairs Council (FAC) (see Division EU/Europe, WP 2020/no. 02, Table 1, p. 7). However, its politically binding decisions have no direct legal implications for the Member States.

An analysis of the EUR-Lex database shows that between 2009 and 2020, the Council adopted 506 decisions on sanctions, 245 decisions on EU missions and operations, 123 decisions appointing special representatives and 86 decisions on arms control regimes (see Chart 1, p. 3). Another 94 decisions concerned institutional innovations such as the creation of agencies or other arrangements and agreements. In total, since 2009 the Council has adopted 1,045 politically binding but legally non-binding decisions in the CFSP and 1,146 legislative acts in other policy areas.

The figures indicate a growing discrepancy between the relatively high quantitative output in the CFSP and a de facto lack of results-oriented policy towards third countries. In fact, since 2009, the EU has conducted only 114 election observations, 12 military operations and 25 other missions (humanitarian, rule of law, police), and has withdrawn its call for political and economic reform in neighbouring countries (see A. Bendiek, *Europa verteidigen*). At present, the EU has only 6 ongoing military operations and 11 civilian missions. There are currently 7 Special Representatives to third countries or regions as provided for in Article 33 TEU. By comparison, the Organization for Security and Cooperation in Europe (OSCE), which is also intergovernmental, has adopted fewer resolutions but currently maintains a total of 16 civilian field operations. The OSCE has 57 participating states, is active on three continents (Asia, Europe and North America) and has a population of over a billion.

CFSP output also calls into question the special legal position of the CFSP within the

EU's Treaty structure. Formally, the decision-making procedures of the CFSP do not lead to legislative acts. The introduction of qualified majority voting in the CFSP could be a door opener for a new CFSP-related inter-institutional agreement between the Council and European Parliament with the aim of making CFSP decisions more legally binding for Member States. Evidence of the EU's external action beyond the CFSP is provided by the data on public votes in the FAC, which the Council of the EU makes available through the publicly accessible register of documents and the "Open Data Initiative". An analysis of these data shows that in other Council formations, a total of 92 decisions were taken in the "Foreign Affairs" policy field between 2009 and 2020. Each of the Council's ten configurations can adopt legislative acts on behalf of the Council as a whole. The FAC has adopted 36 legislative acts, but these have no connection with the CFSP.

Overall, the question arises as to the meaning and purpose of the special role of the CFSP as enshrined in Article 40 of the TEU. If the aim is to make the decision-making procedures in the CFSP more efficient and legally binding, the special role of the CFSP must be abolished by applying the community method.

Sanctions Instead of Politics

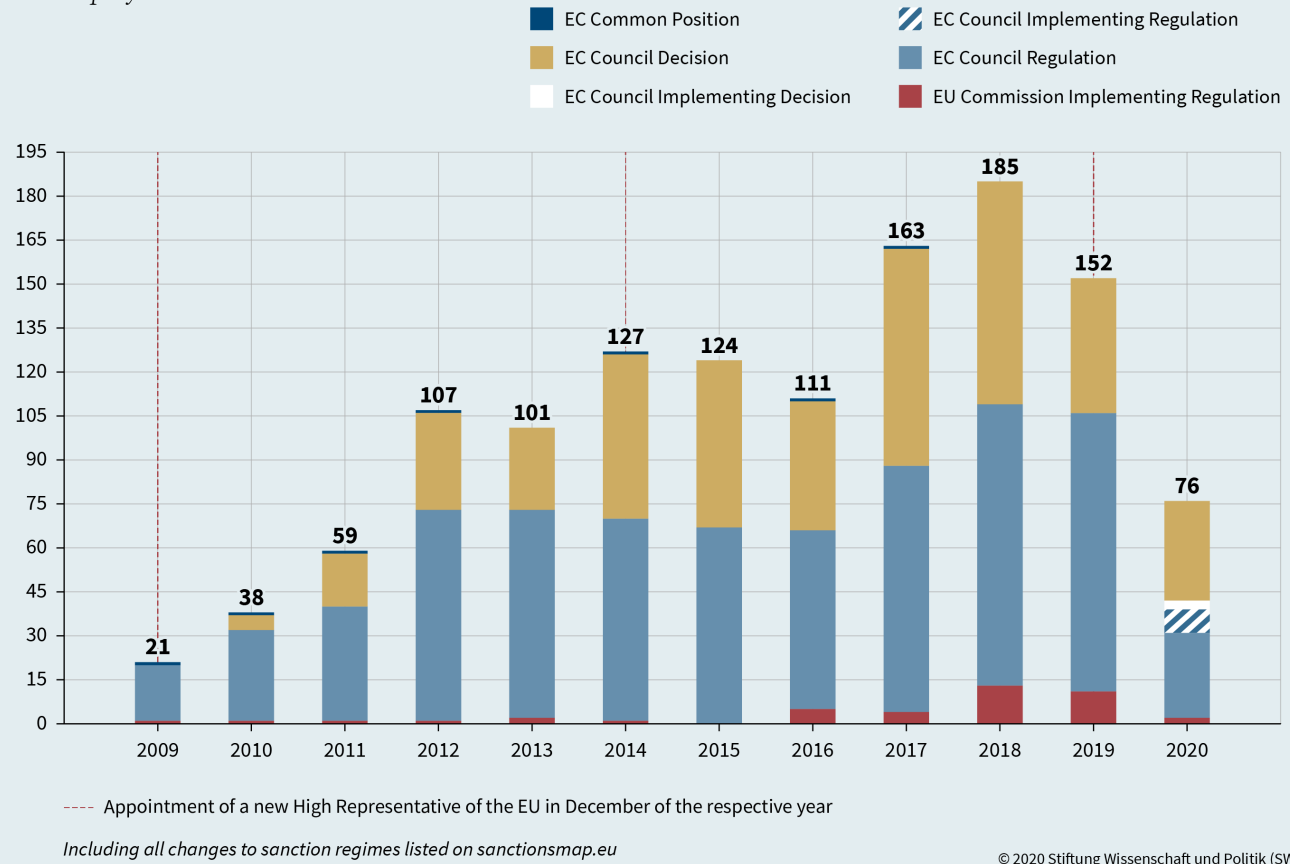
Restrictive EU measures such as sanctions are in the grey area between results-oriented policymaking and symbolic policies. Robert Blackwill and Jennifer Harris argue in their book *War by Other Means* that sanctions are less cost intensive than operations and missions for achieving specific foreign policy goals. Smart sanctions can be imposed flexibly and selectively on individuals, entities or third countries. It is therefore not surprising that one of the few areas in which the CFSP has acted or is still acting is the adoption of restrictive measures.

Restrictive measures (Article 215 of the Treaty on the Functioning of the European Union), specifically economic sanctions

Chart 2

EU sanctions documents

Number per year



Source: Minna Ålander, Annegret Bendiek and Paul Bochtler, *A Critical Perspective on Data Transparency in the Common Foreign and Security Policy of the European Union*, Berlin: SWP Research Division EU/Europe, Working Paper (WP) 2020/no. 02, November 2020, https://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/WP2020_Alander_et_al_Data-analysis_CFSP-output.pdf.

against third countries and individuals, are located at the legal interface between the external relations of the EU and the CFSP. Sanctions regulations can only be initiated with a unanimous decision in the Council. Since 2009, the Council has agreed on a total of 1,264 sanctions documents. These include both sanctions decisions and sanctions regulations. From 2009 to 2019, the number of sanctions imposed or amended annually increased from 21 to 152 (see Chart 2). However, this also includes a not inconsiderable number of decisions to continue or extend sanctions already in force. Only 47 of this total number involve restrictive measures adopted for the first time, as shown by the sanctionsmap.eu website, an

EU project publishing legal acts on sanctions.

The highest incidence was in 2014, when the EU adopted new sanctions against Russia, the terrorist organisation the Islamic State of Iraq and Syria (ISIS) and against the Syrian government. Currently, the EU imposes sanctions on 30 regimes or organisations, 23 of which are autonomous EU sanctions. The remaining seven sanctions serve to implement UN resolutions in EU law.

Increase in Press Releases

The Council of the EU meets on a monthly basis as the FAC under the chairmanship of

the HR. Since 2009, 172 publicly accessible and four non-public minutes of Council meetings have been published. The meeting minutes show that many agenda items did not result in CFSP conclusions due to the unanimity requirement. Council conclusions are intended to formally set out the EU's position on issues of political importance, crisis or conflict. They have no direct implications for Member States' policies.

The Council's low level of binding outcomes and output, with the exception of the restrictive measures, is accompanied by growing rhetorical activity on the part of the European External Action Service (EEAS). Since Josep Borrell Fontelles took office as the new High Representative on 1 December 2019, a new political style has emerged. Press releases are used where the Council is unable to reach unanimous decisions which would lead to common positions or actions. Additionally, when a Council conclusion is reached, press releases set out the EU's position on issues of major political importance, crisis or conflict.

Since 2014, the EEAS and the HR have issued 2,053 press releases on foreign and security policy issues (see Chart 3). More than half of these (1,206) were statements. A total of 78 press releases related solely to Council conclusions, and just 47 referring to human rights and political dialogues. A significant number (315 press releases) reflect the high volume of diplomatic meetings between the HR and representatives of third countries and international organisations.

However, the numerous press releases cannot hide the fact that the CFSP decision-making procedure has resulted in very few concrete actions. This, in turn, shows how difficult it is to reach a consensus on results-oriented foreign and security policy in the Council. However, perhaps more importantly, it also demonstrates that there seems to be no political will at the Council level to adopt a communitarised foreign and security policy, which would make it possible to adopt common positions on important issues and assume international responsibility. Instead, non-binding intergovern-

mental solutions are agreed on after complex negotiations at different policy levels.

The Expectation and Capability Gap

Different strategic interests, foreign policy traditions, and ideas about the institutional design of the CFSP, including the unanimity requirement, have long been cited in the literature as arguments to explain the inefficiency of the CFSP.

Christopher Hill, emeritus Professor at the University of Cambridge, formulated the much-cited theorem of the "Capability—Expectations Gap" (CEG) in 1993. Hill's aim was "to look at the functions which the European Community (EC) might be fulfilling in the international system, but also at the perceptions which are held of its role by third parties". By capabilities he meant conventional instruments (e.g. diplomacy), resources (e.g. economic power) and coherence ("the ability to take decisions and hold to them"). By expectations, he meant "those ambitions or demands of the EU's international behaviour which derive from both inside and outside the Union".

Hill concluded that a gap had opened up between the EU's external capabilities and the expectations placed in it. This gap was "dangerous because it could lead to debates over false possibilities both within the EU and between the Union and external applicants". An analysis of the available data suggests that the CEG, as proposed by Hill, does exist. All executives state that they are striving for an effective CFSP. However, contrary to what they claim, Europe's executives have not made any serious effort in the last ten years to bridge the gap between the high expectations of the CFSP and its capacity for collective decision-making.

No Serious Reforms ...

As already mentioned, since its creation by the Maastricht Treaty in 1993, decisions under the CFSP have been subject to the

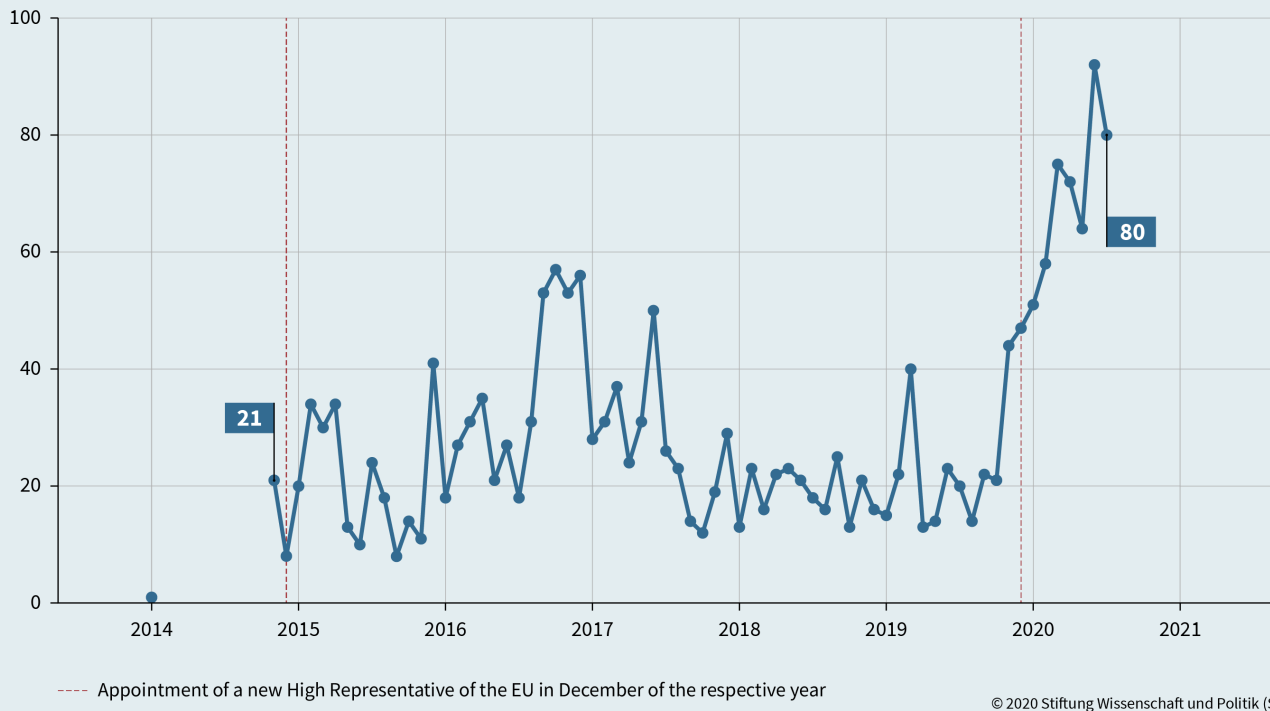
Chart 3

Press releases from the European External Action Service

Number per month

Period: Januar 2014–July 2020

No data available: February–October 2014



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Source: Minna Ålander, Annegret Bendiek and Paul Bochtler, *A Critical Perspective on Data Transparency in the Common Foreign and Security Policy of the European Union*, Berlin: SWP Research Division EU/Europe, Working Paper (WP) 2020/no. 02, November 2020, https://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/WP2020_Alander_et_al_Data-analysis_CFSP-output.pdf.

unanimity rule. The long series of revisions of the Treaty over the last decades and the fate of the Constitutional Treaty have shown that there is no political will in the European Council to develop a strategic capability to act in CFSP. The lack of a commitment to an extensive communitarisation of the CFSP has led to the demand that, at least some areas, such as sanctions or human rights policy, could, in future, be subject to the Community method. In these areas, CFSP decision-making currently follows the intergovernmental approach, but qualified majority voting could be introduced using the Passerelle clause according to Art. 31 (3) TEU or to Art. 48 (7) TEU. In its ruling on the Lisbon Treaty at the end of June 2009, the German Federal Constitutional Court drew constitutional boundaries that set limits to the Europeanisation of the CFSP.

Member States' low appreciation of the CFSP is also reflected in its meagre funding. For the period 2021–2027, the CFSP is expected to account for less than 2.5 percent of the total EU external action budget of €2.4 billion. In the current negotiations on the multiannual financial framework, there are few signs of these funds being increased. On the contrary: according to recent decisions, CFSP funds are to be reduced by 10.3 percent of the volume of the previous multiannual financial framework 2014–2020.

... and Contented European Governments

The extensive use of sanctions, the increase in press releases and the limited political efforts of the Member State governments

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to introduce the Community method as a supranational decision-making procedure in the Council of the EU – all this suggests that, contrary to Christopher Hill's claims, there is no capability – expectation gap, at least not internally. It is true that external actors have high expectations that the EU will demonstrate a political and military capacity for action commensurate with its economic strength. But the expectations placed on the CFSP within the EU's executive branches are rather low. Christopher Hill does not further systematise the differentiation between internal and external expectations and the recognition that internal expectations are lower than external ones.

The increase in the number of sanctions and press releases in the absence of serious reform efforts shows that the gap is not between expectations and capabilities, but rather between rhetoric and political will. The data analysed suggest that the Member States' executive branches are content with the status quo of the CFSP because it is limited to symbolic policy, which serves primarily to communicate to the EU that diplomacy is based on the principle of the lowest common denominator between the Member States' executives.

The increased use of sanctions and their effectiveness as a policy instrument are a controversial subject of academic discussion. The Global Sanctions Database of the Kiel Institute for the World Economy lists about 730 sanctions regimes from 1950 to 2016. Around one third of these have been officially classified as successful. Two thirds have had little or no impact. According to the analysis, comprehensive sanction regimes, in particular, which can be based on a broad coalition of states or which are imposed specifically against small states, have the potential to bring about changes in political behaviour. Sanctions regimes that only cover single areas, such as the targeted freezing of individuals' assets, will

not change geopolitical powers' overall policy course. This is by no means to say that sanctions are ineffective and purely symbolic. There are certainly anecdotal indications that sanctions can be effective. Moreover, symbolic policy can have an internal effect if it uses narratives such as a "unified Europe" or a "Europe that protects" and if it demonstrates political unity.

Moreover, intentional strategic communication through press releases can provide a political signal that the EU is taking a stance, or express interest in a region or certain actors. However, it is by no means a constructive contribution to conflict management or a results-oriented policy. Despite all rhetoric to the contrary, Europe's governments have established a CFSP that is largely limited to symbolic politics. Under a communitarised CFSP, Council decisions could be taken by qualified majority voting. Applying the Community method in the CFSP would bring about the necessary parliamentary control of foreign and security policy at EU level. If the EU wants to promote democratic multilateralism based on the separation of powers and the rule of law, as enshrined in the EU Treaties, it should represent these principles and norms itself.

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