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**The Assertiveness of the European
Commission in the Enforcement of
Fundamental Values:**

The impact of the Russia-Ukraine War

Andreína V. Hernández Ross



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Chapter I. Introduction

The outlook facing the European Union (EU) today is disquieting –even ominous. Europe is not only facing a “state of generalised noncompliance” (Batory, 2016: 685-699) where separate instances of noncompliance –arising in many areas of EU rules and policies– have concurred, resulting in its increased frequency and visibility. Moreover, several national governments have made far-reaching changes to their countries’ political systems. Jan-Werner Müller has defined this anomaly as ‘constitutional capture’,¹ a phenomenon by which a government systematically dismantles checks and balances, limits the independence of the judiciary, destroys press freedom, attacks civil society, increases executive power and, essentially, undermines the rule of law (RoL) –all through legal means (Palombella, 2016: 49).

The subsequent erosion of democracy and consolidation of autocratic rule within the EU has proceeded the furthest in Hungary. International organisations, scholarly studies, and media accounts have detailed it (The Economist, 2019; 2022; Jackli and Stenberg, 2020; Zoltán Kasai, 2021; European Parliament, 2022). Notably, Hungary became the first EU Member State ever to be downgraded to only “partly free” by Freedom House (2019: 13). Along this line, the V-DEM Institute also drew attention to the substantial decline of Hungary’s democracy in its most recent Democracy Report. It also referenced Hungary’s most recent parliamentary elections (3 April 2022), positing that Viktor Orbán and his right-wing, Christian-nationalist Fidesz party secured their latest victory through “the manipulation of electoral rules”, thus ‘locking in’ Hungary’s return to electoral autocracy (V-DEM Report, 2023: 10, 20).

The full story of the erosion of democracy in Hungary has become a familiar narrative among scholarly circles. Almost as soon as Orbán came into power, he implemented a series of reforms that progressively overhauled several democratic institutions in the country. On 11 March 2013, the Hungarian government took advantage of significant parliamentary majorities to replace the country’s old constitution, which dated to communist times. The Hungarian Parliament thus adopted the so-called ‘Fourth Amendment’, an amalgam of various constitutional provisions seeking to, among other modifications, limit the independence of the judiciary, bring universities under more governmental control, and legitimise political prosecution. Moreover, further changes to the legal basis reduced the authority of the Election Commission, the State Audit Office, the office of the Public Prosecutor, the Central Bank, and the role of the media more generally (Bánkuti, Halmai and Scheppele, 2018; Halmai, 2018; Krekó and Enyedi, 2018; Smith, 2019; Jakli and Stenberg, 2021; Zoltán Kazai, 2021).

As time went by – and several elections with identical outcomes took place– the Orbán regime managed to further dispose of the checks to his power and consolidate control over the three branches of government, all while evading the minimal standards for democracy (Kelemen, 2020: 481-482). As such, it has dramatically ‘captured’ the institutions designed to uphold the fundamental values of the EU (Butler, 2018), that, in accordance with Article 2 of the Treaty on the European Union (TEU) and the explicit rulings of the Court of Justice of the European Union (CJEU), are the basis of its legal and political system.²

Given the centrality of values in the European legal system and the recurrence of Budapest’s infringements, European policymakers were expected to act swiftly against the Hungarian government. And yet, for decades, the diligence and zeal with which Orbán dismantled the Hungarian democracy was not matched by a similar vigour on the part of European institutions in their response to the crisis of the RoL (Closa, 2021; Emmons and Pavone, 2021; Cheruvu, 2022; Kelemen and Pavone, 2022). Since the 2010s, a chorus of frustrated observers have lamented particularly the European Commission’s supranational timidity, especially since, as Guardian of the Treaties, it is meant to ensure the observance of obligations among its

1 This phenomenon has inspired many concepts that also describe such regimes’ varied nature. For example, besides Müller’s popular conceptualisation (Müller, 2014), Steven Levitsky and Lucas A. Way (2002) introduced the term ‘competitive authoritarianism’ and Wojciech Sadurski (2018) popularised the concept ‘democratic backsliding’.

2 See Judgment of the Court (Full Court) of 16 February 2022, C-156/21, *Hungary v European Parliament and Council of the European Union*. ECLI:EU:C:2022:97 and Judgment of the Court (Full Court) of 16 February 2022, C-157/21, *Republic of Poland v European Parliament and Council of the European Union*. ECLI:EU:C:2022:98.

constituent parts. Indeed, according to Article 17 TEU, the Commission possesses autonomous powers to monitor Member State compliance and to engage in judicially binding sanctions if necessary. It is, therefore, crucial in controlling and enforcing EU policies. However, and particularly given the length of the RoL crisis in Hungary, it is generally held that the Commission has indulged in political malpractice: deliberately choosing not to enforce EU law even though resources are available.³

That being said, the Commission's most recent response to the RoL crisis certainly differs from former efforts. In 27 April 2022, the EU executive triggered Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget against the Orbán regime. This new mechanism links the disbursement of EU funds to the fulfilment of conditions aimed at pursuing horizontal policy goals. Concretely, it makes subsequent payments permanently conditional upon Member States' respect for the rule of law (Goldner Lang, 2020: 1-2).⁴

As will be developed further on, the present investigation proposes that the coercive potential of this instrument as a forceful rebuttal and its actual implementation by the Commission signals a change in its approach to Article 2 TEU noncompliance. In particular, the Commission's activation of the so-called RoL conditionality mechanism against the Hungarian government represents a forceful and decisive response against violations of the fundamental values, particularly striking given its traditional and questionable enforcement record towards Member States' breaches of EU law.

Moreover, the circumstances in which it was triggered further support this argument. In between the ruling on the legality of the conditionality mechanism by the CJEU and the operationalisation of the Regulation against the Hungarian government, war broke out in the continent. It could be argued that, in such a context, it would have been wiser for the Commission not to antagonise a Member State, as Poland's government declared,⁵ the Union was to demonstrate unity. Moreover, the Commission would have had a legitimate excuse to continue to delay its response against the ever more troublesome RoL violations by member governments. Nevertheless, the Commission initiated the conditionality mechanism against Hungary *despite* the war – or, it is contemplated here, *because* of it.

The boldness of the European Commission's decision stands in obvious contrast to its prior strategy of appeasement. If, in 15 years, no single development seemed significant enough to trigger a revision in the Commission's practices, what could have changed recently? As such, the study considers the influence of the Russian invasion of Ukraine and the ensuing return of war to the continent in the observed outcome. Could the invasion of Ukraine have added new supporters of a more rigorous enforcement policy against a background of asymmetries in compliance records? Did the Ukraine crisis become a 'watershed' moment for the Commission in signalling that the EU could not return to a status quo because integration costs have increased? In what way, lastly, did the return of bellicose confrontation raise the stakes within the Union?

As follows, the present research contends that the activation of the RoL conditionality mechanism against the Hungarian government pioneers a paradigm shift in the traditional approach to enforcing values in the EU. It reflects a shift towards a more assertive response against member capitals' violations of Europe's core beliefs. As such, the investigation explores what conditions can justify the transformation in the Commission's behaviour vis-à-vis the Hungarian government. Considering the present context and the timing of the developments, it is proposed that the hostile context of military aggression in the European neighbourhood propelled said change in the EU executive.

3 Kelemen and Pavone conceptualised the Commission's inaction as a "politics of forbearance" (2022: 2).

4 The objective of Regulation 2020/2092 prompted extensive discussion. Several scholars have argued that, although it was formally built on the need to protect the budget, the Commission's proposal was drafted to protect the rule of law. At least, it has been posited that defending the RoL is as important as the objective of defending the budget (Fiscaro 2019, 696). Furthermore, scholars seem convinced that the mechanism was introduced as a direct response to the growing awareness about the ineffectiveness of the available mechanisms for enforcing EU values (Ibid., 698); hence, the new legislation can only be understood in the context of the Union's increased concerns over the RoL crisis and its inability to respond to these violations with the measures at hand (Goldner Lang, 2020: 11).

5 Poland's Deputy Foreign Minister Jablonski was quick to argue that the mechanism should not be used. "We're in a war situation", he said, "This is a challenge Europe hasn't faced in decades. We need to put aside all the smaller things". (Quoted in Borger, 2022:1800).

Therefore, the research examines the process that uncovers how the Russia-Ukraine war triggered an institutional change within the multi-faceted EU. By relying on causal inference literature and, notably, by using process tracing (PT) as the method of choice, the investigation identified the drivers and mechanisms that linked the war (cause) with the Commission's recent assertive response in the Hungarian RoL saga (outcome). It was further aided by scholarship on qualitative research, institutional change, crisis literature and the prolific research on the Commission's roles and strategies and the Union's broader agency in international affairs (EU actorness).

1. Justification of the research

The primary object of the research is to attest to the Commission's novel assertiveness in its approach to enforcing fundamental values. As will be illustrated in the next chapter, the Berlaymont's enforcement track record has been the subject of much academic discussion (Kelemen and Scheppele, 2022; Kelemen and Pavone, 2022; Priebus, 2022a). Indeed, the familiar narrative of a Commission deliberately averting its task of sanctioning Member States' noncompliance, resulting in the accommodation of the national interest to the detriment of the Union's general interest, continues to dictate the academic discourse. As a result, most intellectuals have failed to interpret the activation of the RoL conditionality mechanism as an augury heralding further change. Therefore, by eluding the fringes of the entrenched scholarly debate and focusing on the unexplored variation in the Commission's behaviour in its long-running dispute with the Hungarian government, the investigation brings a fresh perspective to the study of the effectiveness of the Commission in its performance as the Union's prosecutor. Indeed, the shift towards a sterner Commission concerning Article 2 TEU offences is a recent phenomenon. Thus, carefully exploring this topic can open up a new line of inquiry in European studies and set up the foundations for its development.

Furthermore, drawing from the well-established scholarship on institutional change and the wide-ranging (and still developing) crisis literature within EU studies, the research is principally concerned with examining the conditions under which macroenvironmental phenomena –such as an asymmetric military threat and the return of war to the continent– can trigger changes within an institution and offset a broader transformation in the interplay of political dynamics at the institutional level. Accordingly, the investigation further boosts the existing literature on centralised enforcement by accounting for the influence of exogenous factors in what is primarily an endogenous dynamic. In linking theory and current political developments, both at the institutional (domestic) and international level, the research can widen the variables often considered in studies about the EU executive and its enforcement record more specifically. Henceforth, it is intended that the findings of this investigation will advance the understanding of the effectiveness of the Commission in the fulfilment of its responsibilities, the politics of law enforcement, and European politics more broadly, as well as introduce new insights on the EU's institutional dynamics.

Moreover, as one of the most potent institutional actors in the Union's system of governance, changes in the Commission's behaviour are of considerable practical and scholarly interest (Thomson and Dumont, 2022: 136). Queries that concern the nature, role or effectiveness of the Commission's practices are fundamental to the institutional architecture of Western Europe because it leads to a consideration of the potential for the development of supranational institutions, the relation between the EU and the Member States, and hence the purposes of the Union and the possible and desirable alternatives for the shape of Europe in the future. If the Commission has become more stringent against Member States, it could signal a renewed commitment towards a more political Union and, therefore, a more integrated, federalist polity. Indeed, a continuous cycle of political crises and the dilatation of the noncompliance phenomena across the Union demands a more robust leadership, perhaps even an institutional transformation that greatly empowers a proper European executive. At first sight, the Commission's most recent actions against the Hungarian government suggest a change: in effectively protecting the notion of 'the general interest', the Commission increasingly makes policy (and evermore political) choices (Andersen, 2012: 18). Yet, to the extent that this premise is seriously considered, it calls for a more thorough discussion to confirm it.

Furthermore, if the Union's authority is expanding, it is doing so when member capitals are contesting its power. Simultaneously to this shift in the EU executive, national governments have taken the Commission's increasing intrusion in policy fields, previously governed exclusively by the Member States, as their favoured rallying cry. As a result, politicians are actively rejecting supranationalism and, alarmingly, framing the European project as a tug-of-war between an intergovernmental compulsion and the inherent forces that push towards a more integrated political union. Against this background, further changes to the delicate balance of powers would challenge the existing power constellation and status quo. Would Member States support an aggrandisement of the EU's authority at the cost of national sovereignty? Can the European project move further forward with the institutional thrust and impetus, even if it risks overstepping Member States' interests? Or will the project, as initially conceived, must be overhauled and revisited?

The questions posed here, then, encompass nothing less than the future of the European Union – not least because the Commission's response to the RoL crisis will reveal whether illiberal democracies would ultimately become part of the European system of governance or if the European institutions would be able to defend their unique legal order (von Bogdandy, 2019; Kelemen, Pavone and Emmons, 2019). Indeed, as a foundational value in the European system (Pech 2010; 2022a), the rule of law requires a specific form of political and social behaviour, which embeds the whole system, partly, because it is agreed upon by all Member States upon accession to the Union (Goldner Lang, 2020: 25). Furthermore, the RoL is intrinsic to the European legal order because it is indispensable to observe EU law. The system itself requires national legal orders to safeguard the independence of public institutions, the separation of powers, and the integrity of elections to enable the operation of specific EU rules (Pohjankoski, 2021).

Moreover, the EU's constitutional system, or 'community ruled by law'⁶, relies upon the principles of mutual recognition and mutual trust (Closa, 2016: 16). For instance, the principles that support EU law –like the principles of supremacy and direct effect– were mechanisms created based on existing trust that member governments would follow and uphold legal norms. However, these principles lose all strength if there is no respect for the RoL within the Member States, especially since national courts and parliaments are responsible for enforcing EU law inside their borders. This is precisely why the Hungarian government's amendments of Articles 12 and 19 of the Hungarian Constitution, which limited the jurisdiction of the Constitutional Court, posed such perils to the order.⁷

Even more generally, noncompliance can endanger the stability and reliability of the entire EU legal framework and the effectiveness of the European policymaking process. Firstly, the landmark function of the EU is 'integration through law', and the rule of law is the foundation on which the Union has been built. For this particular system to be sustainable, there must be a certitude that the EU will uphold its commitments –that its institutions, norms and values can be reliable. Thus, it loses this primary function if the Union's obligations are no longer deemed absolute and binding. Secondly, Member States' political and economic orders are deeply intertwined. Therefore, disrespect for the rule of law in a given Member State could project the effects of its decisions beyond its borders, causing negative externalities on the whole of the Union to affect all citizens. Not only that, the wrongdoer still participates in the EU institutions, thus affecting the quality of EU decision-making. Henceforth, member capitals' erosion of the RoL not only invokes a set of problems related to self-interested, partisan and corrupted forms of politics that are detached from the ideas of the common good that the Union upholds, but it also affects trust and recognition that spills into the Union's specific policy areas, and, henceforth, affects its overall performance (Closa, 2016: 16).

Renegades may risk additional costs in the form of loss of prestige or damage to the EU's overall reputation (Underdal, 1998: 8-9). Indeed, the EU touts the promotion of democracy as central to its very *raison d'être* and even won a Nobel Peace Prize for its role in promoting democracy (Kelemen, 2022: 178). Unfortunately,

6 See C-294/83, *Les Verts v. European Parliament* [1986] ECR 1339, par. 23.

7 The reform repealed the Hungarian Court's earlier decisions, effectively depriving them of legal effect. In addition, it also prevented the Court from reviewing constitutional amendments that conflict with constitutional principles. In so doing, it hampered the legal security concerning the protection of constitutional rights, while simultaneously obstructing the harmonisation of domestic rights' protection to comply with European standards (Halmai, 2018). Thus, the reform crippled the system that is supposed to provide Hungarian citizens with legal certainty and protection against arbitrary powers (Goldner Lang, 2020: 25).

the protracted RoL crises have mainstreamed the notion that the EU accepts standards different from those aspired to in the Founding Treaties – an incongruity that risks exacerbating “Europe’s crisis of legitimacy” (Schmidt, 2020; Emmons and Pavone, 2021). Therefore, if the erosion of the RoL continues and the European institutions fail to rise to the challenge and take robust action to defend democracy, the Union will no longer be perceived as trustworthy by Europeans or other actors in the international scene. This is critical, considering the Union’s legitimacy is less solidly anchored than most other political systems. Thus, any weakness concerning its essential function can endanger its existence –especially today when the EU is still overcoming the remnants of the Eurozone crisis, the sudden influx of refugees and the pain of Brexit (Mos, 2020: 267). In such significant instability, a growing perception that the EU might become a noncompliance community could be critical (Falkner, 2013: 14).

Already, domestic RoL crises have initiated a process of fragmentation within the EU (Fisicaro, 2019: 721). Current trends in several Member States are forewarning that the endurance of this critical situation can have dangerous consequences. If this trend continues and Viktor Orbán further restricts the public debate and continues to hinder the rule of law in Hungary, the Union can expect the Hungarian Prime Minister to become a trendsetter. It can stimulate a further weakening of the EU founding values and embolden others to do the same. Thus, the Union can foresee many more member governments following Orbán’s playbook down the slippery slope of undermining the values enshrined in Article 2 TEU. Indeed, although the disregard for fundamental values has been especially pronounced in Hungary (and Poland), other states, including Bulgaria, Romania, and Malta have begun to flaunt the EU’s fundamental values (Cianetti, Dawson and Hanley, 2018; Kelemen, 2020: 482).

Such a palpable threat within the Union is disquieting because when parliamentary majorities are ruthlessly exploited, populism abounds, and the media no longer performs its classic ‘watchdog’ function, the vigour of democracy comes under pressure. It should be of concern, then, that the Nobel laureate Imre Kertész thinks many parallels exist between the 1930s and the present (Bugari, 2016: 101). As follows, national constitutional crises should not be seen as purely domestic problems (Fisicaro, 2019: 698) if only because the offending government might read the Union’s silence as an endorsement of its constitutional and policy reforms (Closa, 2021: 505). All in all, if infringements to the EU’s fundamental values are not sanctioned, it could have severe repercussions on the functioning and further development of the EU and risk derailing the European integration process.

2. Objectives of the research

2.1. General objectives

- Account for the European Commission’s change in its role as Guardian of the Treaties, particularly in its approach to the Hungarian government’s violations of the values set out in Article 2 TEU.
- Examine the conditions under which macroenvironmental phenomena (the Russia-Ukraine war) can trigger changes within an institution and offset a broader transformation in the interinstitutional interplay of political dynamics.
- Determine the relationship between the war and the Commission’s response, going beyond traditional bellicist theory.
- Offer a new perspective on the discourse about the Commission’s powers of enforcement and its role as the prosecutor of EU law, concretely, show its novel stringency against noncompliance.
- Demonstrate the European Commission’s ambition to become an international actor.
- Advance the understanding of the effectiveness of the Commission’s role, as well as the politics of law enforcement, European politics, and the institutional dynamics that characterise the EU system of governance.

2.2. Specific objectives

- Identify and set out the specific process that illustrates how the Russia-Ukraine war enabled the Commission's assertiveness through the method of process tracing.
- Create a chronology of the events leading to the observed outcome.
- Present an account of the dimensions of conflict behind the adoption of the oil embargo (the sixth package of restrictive measures) against the Russian government.

3. Outline of the research

The investigation proceeds as follows: Chapter II revisits the long-standing debate on the Commission's enforcement record and other relevant arguments that enabled and justify the theoretical expectation proposed. Chapter III elaborates on the work's methods: it explains the objective, fleshes out the single causal explanation, defines the variables, establishes the methodology to be followed and warns about the limitations of the research. It construes the outcome variable and provides four reasons why the decision to activate the RoL conditionality mechanism set out in Regulation 2020/2092 against the Hungarian government is considered assertive. Similarly, it defines the cause variable according to the scholarship, resulting in a set of conditions that describe a geopolitical actor (i.e., sub-section titled 'Who qualifies as a geopolitical actor?'). Outlining these criteria was necessary to later account for the Commission's specific preference and, most importantly, to demonstrate that this cognition indeed shaped its choices.

The other sub-section in Chapter III (i.e., 'Estimating the "geopolitical" Commission') describes the operationalisation of the cause variable. In this regard, the research centred on the adoption of restrictive measures –particularly the sixth package of sanctions, which included an oil embargo against Russia. It proposes to use the oil embargo as a proxy, given that its successful adoption would virtually decouple Europe from its dependence on Russian energy and, therefore, ensure that the EU preserves its capacity to act autonomously, increase the credibility of the Commission's ambitions, allow the EU to reassert its position internationally, and enable it to meet additional conditions to be defined as a geopolitical actor. Henceforth, focusing on the oil embargo would allow to tease out whether the Commission took the war as an opportunity to advance its policy preference of turning the EU into a competitive geopolitical actor and, if so, how this dynamic played out. Chapter III also delineates the explanation's mechanism (i.e., the alignment of Member States' preferences with the Commission's).

Next, Chapter IV develops the link between the cause and the outcome following the best practices of process tracing. After disregarding the alternative explanations of the phenomenon, the chapter moves on to empirically test the causal theory. According to the nature of the research, it was first necessary to attest to the Commission's preference and demonstrate that those cognitions were not reducible to material features related to the observed outcome, which is done in the first section ('The Prioritisation of Agency: The Promise of a 'Geopolitical Commission)'). Then, it was imperative to show that this specific cognition generally shaped the Commission's actions (which is done in the next section, 'The European Union as a geopolitical actor in the Russia-Ukraine war'). Lastly, the research analysed if the Commission's identified preference also shaped its choices concerning activating the RoL conditionality mechanism against the Hungarian government. That is, the rest of the chapter developed the causal graph set out in Figure 3, which was followed by a discussion of the results. Finally, Chapter V offers the conclusions and sets out the prospects for future studies. The data set (primary sources) and the bibliography are included at the end.

Chapter II. Literature Review

As advanced earlier, intellectuals unanimously concur in criticising the Commission's approach to the RoL noncompliance among Member States (Kelemen and Scheppele, 2022; Kelemen and Pavone, 2022; Priebus, 2022a). They condemned the Commission's apparent withdrawal from its responsibility to look after the general interest and pursue disobedience and nonconformity with EU law. The severity and persistence of the RoL crisis, particularly in Hungary and Poland, has proliferated a myriad of explanations for this phenomenon and thus calls for revisiting longstanding debates on the performance and effectiveness of the Commission in its role as prosecutor.

Earlier studies, for instance, pointed to the Commission's material deficiency to effectively intervene in Member States to safeguard the RoL (Snyder, 1993: 31; Tallberg, 2002: 626; Andersen, 2012: 15-16). Initially, this argument focused on the original delegation of prescriptive powers to the supranational institution by the signatories of the Treaties and the subsequent changes to Treaty provisions, which gradually limited the Commission's enforcement powers. This restriction prompted the Commission Legal Service itself to admit that "a systemic threat to the rule of law in the Member States cannot, in all circumstances, be effectively addressed by the instruments currently existing at the level of the Union" (European Commission, 2014). However, this argument has since been rejected by academics, primarily because the Berlaymont has multiplied the possible instruments at its disposal in recent decades. Ramona Coman posited that the EU has gradually enacted a rule of law policy which, in her words, "corresponds to the gradual institutionalisation of policy tools at the EU level" (Coman, 2022: 12), while R. Daniel Kelemen explicitly argued that "the EU had robust tools in place to defend the rule of law all along", adding that "the creation of new tools was mostly used as an excuse to delay action" (2022: 117).

Conversely, one aspect that can be questioned is the overall effectiveness of these instruments, which is what the literature has focused on over the past years. It was claimed that the Commission's available toolkit was ill-suited for the task. In the words of Müller, it turned out not to be a "good match for the specific political challenges to liberal democracy", such as national governments' challenges to the RoL (Müller, 2015: 148; Hillion, 2016). To start, the ex-ante mechanism introduced by the institutionalisation of the Copenhagen Criteria led to "superficial analyses and assessments"; it was never sufficiently defined and was often inconsistently applied (Müller, 2015: 147-148). The Copenhagen Criteria led the EU to rely on "simple checklists," excluding several critical dimensions necessary to combat noncompliance effectively.

Similarly, the Commission's resort to legal action against governments that fail to implement EU law does not show better results. Indeed, the infringement proceedings can only be based on EU law, which makes it much harder to address systemic problems covering the relevant areas of democracy and the RoL (Müller, 2015: 147), as evident in the Hungarian saga. For instance, on one occasion, the Commission took Hungary before the Court for age discrimination under Article 285 of the Treaty on the Functioning of the European Union (TFEU) and won the case. Nevertheless, the Hungarian judges initially discriminated against were never comprehensively reinstated, so new government appointees loyal to the Fidesz government remained in the administration. As Müller condemned, "Despite its nominal legal success, Europe appeared impotent in getting at the real issue, which was political and had nothing to do with the discrimination of individuals" (Ibid.: 148).

Then, there is the infamous Article 7 TEU, claimed by Commission President José Manuel Barroso as a "nuclear option" in his 2012 State of the Union address, and from then, eternally reiterated as such by the other institutions and the Member States.⁸ This provision's purpose is to ensure respect and compliance with the Union's fundamental values, by sanctioning Member States' breaches (for instance, by suspending certain of their rights). At present, Article 7 TEU is made up of two procedures: one 'preventive' and another 'corrective'. As Closa explained, the preventive stage concerns the 'clear risk of a serious breach' of values

8 Emmons and Pavone suggested that the EU's inaction has gone together with a "coordinative discourse wielded by a constellation of national and supranational actors to legitimate stasis." Accordingly, one strategy to justify inaction is to weaponise the Council and Commission's commitment to the notion that "any enforcement action must be evidence-based to be legally valid" (Emmons and Pavone, 2021).

in Article 2 TEU, whereas the corrective stage applies to the actual breach of these same values (2021: 502). Despite its potential, the problems contained in this Treaty provision are manifold (Kochenov, 2017; Closa, 2021; Priebus, 2022b). First, the conditions to activate the procedure are vague. As Closa stated, “What is a ‘clear risk’, and what distinguishes it from a ‘serious and persistent’ one is not defined (...) This lack of definition grants a significant margin of discretion for actors to interpret situations” (2021: 502). Second, Article 7 TEU would be more effective if it did not rely upon the Council of the European Union (hereafter, the Council) to achieve unanimity. Moreover, it is a distinctly political tool, notably based on the judgment of a national government by EU institutions and a country’s peers in the EU. Worse still, it is well-known that the ultimate problem with addressing the RoL crisis in the Union is that there is currently no legal basis in the Treaties to enable the adoption of a “pure” rule of law measure (Goldner Lang, 2020: 10). Thus, the Council Legal Service (CLS) often reiterates the claim that the Commission lacks the competence to create new RoL enforcement tools beyond the Article 7 procedure. For instance, when the EU executive introduced its Rule of Law Mechanism or, more recently, proposed the RoL conditionality regulation for the EU budget, the CLS initially suggested it lacked the competence to act (Opinion of the CLS, 2018).

Aware of this legal constraint, the Commission has had to recourse to pragmatic and creative manoeuvres – like relying on a different legal basis – to avoid gridlock, just as it had done with several Single Market measures in the past. Alternatively, it has fabricated several ‘soft law’ tools that ultimately lack the potential to deter Member States’ noncompliance precisely because they miss the coercive effect. For instance, if a member country does not alter its behaviour, the EU executive may follow up with a reasoned opinion in infringement proceedings. Nonetheless, the reasoned opinion has no binding legal effect because the Commission is not competent to state the possible measures and actions necessary to bring the concrete infringement to an end (Andersen, 2012: 44). A similar logic operates with initiatives such as EU Pilot, the European Semester, the EU Justice Scoreboard or the Rule of Law Framework.

Most importantly, there still is an inverse relation between the potency of the supervisors’ control mechanisms and their actual use. With reason, the continuation and scope of the Hungarian crisis have raised questions about the Commission’s autonomy vis-à-vis the Member States and its political will in pursuing member governments’ noncompliance with Treaty provisions and the transversal values constituting the European constitutional order. Hence, dissatisfied and frustrated authors have condemned the Commission’s use (or lack thereof) of its enforcement powers. For example, Bárd and Kochenov (2022) lamented the Commission’s tendency “to look away”. Kelemen and Pavone (2022) labelled it “a policy of forbearance”, while Professor Pech (2022b) characterised it as a “dereliction of duties”. Regarding the protracted dispute with the Hungarian government in particular, Shada Islam posited that the EU’s “let’s not rock the boat’ strategy toward Hungary’s Viktor Orbán is short-sighted, self-defeating, and shameful” (Carnegie Europe, 2022).

The Commission enjoys a wide margin of discretion over its enforcement action, which, it is implied, has not been adequately used. Since the early 2000s, the Commission has engaged in a widespread practice of observing procedural guarantees and several successive administrative and judicial phases in favour of Member States and a strategy of reaching friendly settlements (Andersen, 2012: 13). As such, it has favoured dialogue as the most appropriate way to address breaches of EU law, including conformity with Article 2 values (Batory 2016, 688; Closa 2021, 505), with scholars arguing that this strategy “crowd out active enforcement” (Emmons and Pavone 2021). In a similar line, many academics have defended that the Commission’s expansion of means has remained inefficient, only resulting in adding to the length of the process. Consequently, this has not only induced ‘complaint fatigue’ (Smith, 2010: 156; Hofmann, 2018a: 748). In addition, scholars have condemned the Commission’s preference for managerial means of policymaking and soft tools and strategies of enforcement over more coercive measures as a “façade for inaction” or a method to defer critiques of its enforcement track record (Kochenov and Pech, 2016; Kelemen, 2022: 117).

Numerous studies attribute this stasis to institutional gridlock and rational preferences (Sedelmeier, 2017; Falkner, 2018: 770; Closa, 2019; 2021). They have shown that the Commission strategically assesses and anticipates the impact of several factors to act. For instance, it has been proposed that the Commission only embraces enforcement when it enjoys the support of Member States and when the potential effects of failure are minimal. Such strategic thinking leads to a preference for engagement mechanisms that fall short

of sanctions, resulting in the Commission engaging with offending states. In effect, given that the capacity to act in the EU is a function of the distribution of competences within the treaties and that the distribution is meant to flow from the principles of conferral and subsidiarity, the decisive role of national governments in EU decision-making and the enduring influence of norms of national sovereignty in the EU play a vital role (Kelemen, 2020: 487). Thus, the Commission ultimately depends on the Member States and the agreement between the Council and the European Parliament (EP) for approval and, even at extraordinary times, also on the ratification by national or regional parliaments. Henceforth, formal and informal interactions between the institutions and the Member States inform the Commission's behaviour because these interinstitutional dynamics shape its agenda-setting and policymaking powers (Kelemen and Pavone, 2022).

The Commission could seek compliance by sanctioning a state, but this would risk alienating national authorities. Following this line of thought, it was first posited that the Commission was endowed with the role of ensuring "the delicate balance between supervising compliance, on the one hand, and sustaining diplomatic relations with the individual member states, on the other" (Andersen, 2012: 14). Since the Commission earned the role of diplomatic negotiator for Member States and institutions, it has often been argued that the Commission valued its neutrality (Kassim and Laffan, 2019: 58), which, in turn, facilitated the view that the power of national governments constrained it. Moreover, it has also been common to assert that the Commission has been reluctant to launch infringements even against governments who violate EU law because "the rights of the Member States concerned must always be achieved" (Andersen, 2012: 54). Through this lens, then, the different phases of the infringement proceedings take up new meaning. The procedural structure starting with a 'warning letter', guarantees Member States' interest in submitting its observations. It also allows for an exchange of interpretations of particular provisions and jurisprudence, and significantly, it prevents the Commission from acting as a vindictive prosecutor by automatically initiating the procedure. It thus compels the parties to seek out prejudicial conflict solutions during the preliminary and consecutive phases (Andersen, 2012: 89). As follows, given this "ethos of compromise, mutual accommodation and mutual trust" (Hellquist, 2018), scholars have documented the Commission officials' fear that "EU actions to enforce the rule of law would discriminate against individual Member States, thereby jeopardising the fundamental principle of mutual trust and undermining hard-won policies reliant on intergovernmental dialogue and cooperation" (Emmons and Pavone, 2021; Kelemen and Pavone, 2022).

More recently, however, the argument has shifted slightly. Kelemen and Pavone (2022) demonstrated the fundamental tension facing executive actors who double-hat as prosecutors and policymakers. They framed the Commission's behaviour as an interinstitutional power game and characterised its withdrawal from enforcing EU law as a strategic decision to preserve and advance its role as a policymaker. Hence, the literature now holds that, instead of the Commission acting out of an impetus to sustain diplomatic relations with the Member States to protect their rights, it is doing so out of its self-preservation.

Another usual justification for inaction is the idea that any attempt to address RoL deficiencies will backfire or result in the worst outcome. Officials fear this action could alienate the member government and its population against Europe, with the additional risk of incentivising similar behaviour in other states (Bieber and Maiani, 2014). Moreover, a stringent response could increase support for the domestic actors that EU intervention is supposed to counteract. For instance, observers have warned that rally-round-the-flag effects could emerge if the EU activates Article 7 TEU (Schlipphak and Treib, 2017; Closa, 2021: 504).

Thus, the claims for inaction in enforcing the EU's fundamental values are multiple and diverse. Moreover, this view is so entrenched in academia that many authors have failed to note the informal changes occurring within the Commission. For instance, some observers have noted that the EU institutions have used the Russia-Ukraine war to justify further inaction on the enforcement of the fundamental values and, mainly, on confronting the Hungarian and Polish governments in their breaches of EU law (Bayer, 2022a; Bárd and Kochenov, 2022; Kelemen, 2022; Kruwkowska and Bodoni, 2022). Conversely, the present research found indicators that point to a change in the traditional way the Commission has dealt with Member State's noncompliance. In this respect, it joins the few voices that have chosen to sidestep the overarching and longstanding view on the Commission's enforcement track record. Jakub Jaraczewski (2022), for instance, also believes that the von der Leyen Commission has "grew some teeth" in the RoL crisis. Although he did

not focus on the RoL conditionality mechanism, he viewed favourably the Commission's decision to halt the Resilience and Recovery Facility fund payout towards Hungary and Poland over the RoL concerns.

The present investigation notes a more proactive Commission because it triggered the RoL conditionality mechanism. Nevertheless, opinions on the potential of this tool are mixed. For example, various thinkers, including Fisičaro (2019; 2022), Goldner Lang (2020) and Hegedüs (2022), all agreed that the RoL conditionality mechanism could herald more stringency from the Commission in its approach to the enforcement of values. However, since they wrote before its actual operationalisation, they remained sceptical as to the actual effect it could bring, given that it provides almost complete discretion to the Berlaymont. Only Daniel Hegedüs (2022) celebrated the Commission's brazen move to condemn Hungary for RoL violations, especially amid a raging war.

On the other hand, authors have advocated for using economic leverage and conditionality for years. For instance, Kelemen and Scheppele (2018) noted that "refusing to pay for budding autocracies that violate the rule of law" was an effective weapon at the Commission's disposal. Likewise, Israel Butler argued that the rules governing the European Structural and Investment Funds (ESIFs), that is, the Common Provisions Regulation (CPR), already allowed the Commission to suspend funding where a Member State does not uphold the RoL, especially when considered alongside the Charter of Fundamental Rights and the case law of the CJEU (2018: 2-3). In short, these views suggest that the Commission has always had the tools to "go for the wallet" (Fisičaro, 2019: 706) and address Article 2 TEU violations. What remained lacking, however, was the political will to do so.

Henceforth, against this background, how can the astonishing use of enforcement powers by the Commission against the Hungarian government be accounted for? In the scholarship, institutional change has been studied from different perspectives. However, most theorists start by looking at the factors driving potential change. The literature has defined two main approaches: explanations that rely exclusively on processes that are endogenous to the institution and accounts that invoke exogenous sources of change (Koning, 2016; Micelotta, Lounsbury and Greenwood, 2017).

Endogenous explanations refer exclusively to dynamic processes that occur within the organisation. In these accounts, the institution changes due to its properties, without outside influence –for instance, through its interaction with the other actors embedded within it. Alternatively, exogenous explanations hold that institutions change due to their interplay with the outside world. As Masahiko Aoki explained, "If agents know a priori the entire set of all possible choices and act accordingly, or if they can eventually explore all the relevant possibilities with the aid of accident and chance, then they will eventually be able to find the best overall institutional arrangements as time passes" (2001: 183). Nonetheless, since this is highly unlikely in any international setting, it is suggested that only extrinsic factors, such as unpredictable events or large-scale developments (for instance, mass migration), will modify the overall institutional arrangement.

It is worth noting that most of these processes are never entirely exogenous or endogenous. Externalities may alter changes in an institution's internal dynamics and structure. Thus, some of the changes that are characterised as endogenous turn out to be little different from processes triggered by external factors. Likewise, modern-day theorists also differentiate between naturalistic and agent-based accounts. Nonetheless, the unfolding of naturalistic processes often incorporates the efforts of many actors to advance their interests. In short, institutional creation and change involve a continuum of forces.

In the history of European integration, macro-structural factors, particularly the presence of a significant crisis, have often been the necessary condition for non-incremental change (Lefkofridi and Schmitter, 2015). Consequently, the seemingly European crisis-induced development has become a buoyant line of research in EU studies over the past decades. Accordingly, scholars have focused on the sources, trajectories and effects of the numerous challenges the Union has faced in recent years, including the debt, financial and economic crises, the migration crisis, Brexit and the COVID-19 pandemic (Salines, Glöckler and Zbigniew, 2012; Bauer and Becker, 2014; Lefkofridi and Schmitter, 2015; Natorski and Pomorska, 2017; Davis Cross and Pawel Karolewski, 2017; Kamkhaji and Radaelli, 2017; Schimmelfennig, 2017; Rhinard, 2019; Kassim,

Saurugger and Puetter, 2020; Anghel and Jones, 2022; Ferrara and Kriesi, 2022; Kelemen and McNamara, 2022).

As expected, the current context facing the Union makes such questions demanding and essential today. Indeed, the chronology of recent events alone suggests as much. The implementation of Regulation 2020/2092 was suspended in 2020 until the CJEU ruled on its legality at the request of the Hungarian and Polish governments. Later, its application was further delayed for various legal, bureaucratic and political reasons. The procedure was finally activated on 27 April 2022, roughly two months after the start of the invasion. Ergo, considering the present context and the timing of crucial developments in the RoL saga between the Commission and the Hungarian government, it seems relevant to inquire whether it is possible that the ongoing war against a close EU neighbour affected the Commission's behaviour.

Well-established bellicist assertions contend that a military threat may prompt the development of an actor's coercive capacity, fiscal revenue or administrative power (Genschel, 2022; Kelemen and McNamara, 2022). As follows, it is widely recognised that an exogenous shock can instigate and enable an increase in a supranational institution's authority by demanding a coordinated and centralised response, at least temporarily. Accordingly, the research set out to explore the relationship between the war (cause) and the Commission's assertiveness in the enforcement of values (outcome) to determine the process and causal conditions that might illustrate the plausible link between the observed cause and outcome –starting from the Commission's leadership.

In effect, the von der Leyen Commission embodies an ambitious administration with a distinctive plan for the EU executive on the international chessboard. As numerous speeches and interventions by its members reveal, the Commission wants to turn the EU into a “geopolitical” actor (European Commission 2019a; Borrell 2022b). As demonstrated later in the research, this is a novelty in EU governance. Indeed, the study of EU agency has propelled a spawning and influential field in EU studies: from ‘global actor’ to ‘normal international actor’, the external dimension of the Union has been conceptualised in various ways. However, eminent among these labels is the concept of ‘EU actorness’, now the esteemed concept defining the EU's role in international affairs (Čmakalová and Rolenc, 2012; Gehring, Urbanski and Oberthür, 2017; Klose, 2018; Tereszkievicz, 2020; Vogt and Pukarinen, 2022; Serban, 2023). Actorness, however, has produced a panoply of conceptualisations, depending on which ability in the EU's external action the scholar focuses on. For example, the EU has been analysed as a civilian, normative, ethical, market, and structural power (Serban, 2023). Nonetheless, due to this tendency to compartmentalise the Union's functions in the external sphere, studies have failed to attribute to the EU at least some capacity to pursue great power politics (a notable exception is Gehring, Urbanski and Oberthür, 2017).

Furthermore, this assumption has also extended to the realm of world politics. Indeed, the international community tends to reject and undermine the idea of the EU as a great power. As the institution's official speeches and documents reveal, the von der Leyen Commission was aware of this reality and set out as a priority to correct it. Indeed, before taking office, Ursula von der Leyen had already set out an explicit objective and, naturally, planned for a specific strategy to turn the EU into a relevant voice in world affairs over the span of her administration.

It is unnecessary, however, to infer in what ways the von der Leyen Commission would have deployed its resources and set out that strategy –or if it would have unfolded at all– since the Russian Federation's abrupt invasion of Ukraine dramatically altered the picture. Thus, the outbreak of the war presented the Commission with a fortuitous opportunity to deliver on its promise and showcase its capabilities as an international actor on par with the great powers of the world order. This meant that it would have to attest to a proper understanding of the context and the actors within it and show it could effectively gather support to advance its preferred policy outcome (Riddervold, 2016; Gehring, Urbanski and Oberthür, 2017; Tereszkievicz, 2020; Vukovi, 2020; Anghel and Jones, 2022; Vogt and Pukarinen, 2022; Serban, 2023). Most importantly, the Commission would have to exhibit strategic thinking and reflect a sense of ‘realpolitik’ to react swiftly and coherently to the developments on the international stage. In the present context, all these translated into leading the international response against the Russian aggression by projecting determination, deploying

credible threats, and exercising pressure when requisite (Idem). Indeed, the Commission pushed for the endorsement of restrictive measures against the Russian government as immediate condemnations of its escalations and as a herald of resoluteness in world affairs, which would serve to attest to the emerging geopolitical Union. The Hungarian government, however, proved a persistent hurdle to the Commission's ambitions.

Orbán's government had not only pursued a Russia-friendly foreign policy over the past years and had avoided publicly condemning Russia's president Vladimir Putin's part in the war; most importantly, it had blocked progress on the negotiations and implementation of EU sanctions. Thus, given the increasing stakes, the information available, the time limits brought about by the war and the subsequent urgency to act, the Hungarian veto handicapped EU decision-making at a critical moment and, therefore, posed a fundamental challenge to the Commission's capacity to assert its role in the international arena. To navigate this complication, the EU executive exploited the potential of Regulation 2020/2092 as a means to exercise leverage and pressure Budapest to converge with its preferred policy goals.

Henceforth, it is contended that the Commission's newfound assertiveness in the enforcement of EU values is the result of the window of opportunity the Russia-Ukraine war presented the Commission to advance its foreign policy interests in the international arena. Furthermore, the investigation reveals that enforcing fundamental values is a subordinate concern for the Berlaymont. Indeed, after a decade of defiance, the Commission finally confronted the Hungarian government, but its motivation arose from an entirely distinct concern and to achieve an objective in an altogether different policy area. As a result, the assertiveness observed is instead an accidental anomaly.

1. Theoretical expectation

The Commission's newfound assertiveness in enforcing EU values results from its priority to turn the EU into a geopolitical actor and the window of opportunity the war created to achieve this objective.

Chapter III. Research Design

1. Object of the research

The primary purpose of the research is to explain the Commission's discernible assertiveness in its approach to the Hungarian government's violation of the EU fundamental values, as laid out in Article 2 TEU. As advanced in the introduction, the boldness of the decision to activate Regulation 2020/2092 stands in obvious contrast to the Commission's prior strategy of appeasement, particularly concerning Article 2 TEU noncompliance. Consequently, the present investigation argues that the operationalisation of the RoL conditionality mechanism pioneers a paradigm shift in the Commission's traditional response to centralised enforcement.

The Commission's activation against the Hungarian government reflects an EU executive that boldly rules against the interests of the national governments since it disregarded the financial and political consequences this measure could have in member capitals, especially amid a raging war in the continent. Henceforth, if, according to long-standing literature, the Commission does estimate the reaction of Member States prior to acting (Falkner, 2018; Closa, 2019; 2021), then this brazen disregard for their interests suggests that the Commission has diverged from its previous appeasement strategy and tendency to accommodate Member States.

In this context, the research defines 'assertiveness' as the absence of concession on the part of the Commission in its rejoinder to Member State noncompliance. In contrast to its previous strategy, the fact that the Commission has favoured the activation of the RoL conditionality mechanism over further dialogue, despite the risk that such an act could antagonise governments' preferences and interests in the EU system and, henceforth, hamper its effectiveness in its other roles (Kelemen and Pavone, 2022), points to a more decisive approach in the enforcement of EU law. As such, it simultaneously depicts a more commanding behaviour vis-à-vis the Member States.

Moreover, in line with the literature on institutional change and EU crisis literature and given the context of the developments, the research proposes that the observed change in the Commission's approach to Member States' noncompliance is the result of the exogenous shock brought about by the outbreak of the Russia-Ukraine war. Thus, to analyse the conditions under which macroenvironmental phenomena can trigger changes within an institution, it set out to identify the underlying causes and processes that can connect the war (cause) and the Commission's assertiveness in enforcing values (outcome).

2. Research question

In view of the above, the investigation is set to answer why the European Commission is more assertive in its enforcement of the fundamental values contained in Article 2 TEU against the Hungarian government, particularly since the start of the Russia-Ukraine war. As follows, it explores if the outset of the war could explain the observed outcome. And, if so, under what conditions could the Russia military aggression account for the increasing assertiveness in the Commission's response to the Hungarian government violation of the EU fundamental values.

3. Methodology

The present investigation intends to account for change in the practices of the European Commission. Within the institutionalist scholarship, particularly historical institutionalists have demonstrated that institutions often transform in informal and gradual ways that are difficult to capture by an exclusive focus on the explicit alteration of the legal setup. Instead, institutions frequently start functioning differently because of a combination of exogenous developments and endogenous processes (Koning, 2016: 647). Considering this strand of thought, the investigation stemmed from the impression that the exogenous shock brought

about by the outset of the Russia-Ukraine war affected the practices of the Commission to result in the noted outcome. Nonetheless, the plausible mechanisms linking the two remained unknown (Beach, 2017). Thus, to uncover the plausible relationship between a cause and the outcome, and to avoid relying on an overly broad notion of cause (Norman, 2021: 937), the investigation adopted a method of theory-building process tracing (PT).⁹

The primary aim of PT is to produce causal accounts of specified outcomes; hence, it serves to identify and develop causal processes. Moreover, it is advantageous since it can avouch for specific paths as viable explanations in individual cases, even if the paths differ from one case to another (Bennett and Checkel, 2015: 19). In addition, the detailed, context-sensitive analysis characteristic of PT allows scholars to closely examine the strategic incentives generated by choice situations (Jacobs, 2015: 48). In other words, it allows for a more in-depth case analysis.

Furthermore, interpretative process tracing (IPT) is not only concerned with the events and the relations between events, but, in addition, it explicitly incorporates the study of the institution under review. In theoretical terms, it depends on a configuration of causal explanations that focuses on the causal processes and constitutive explanations that can capture the structural conditions of social systems and speak to the system's dispositions. Given the complexity of the European institutional network, any EU-centred analysis can only benefit from this comprehensive approach. Henceforth, the investigation builds on the notion that causal explanations are necessarily nested in constitutive ones. It employs IPT to establish the causal relation between different points in the process leading up to the identified change in the Commission's behaviour, while also considering its specific system of social meanings, which the relevant agents (i.e., the Commission president and vice-president, as well as the EU diplomats) assigned to their work and to the context (Norman, 2021: 952).

As such, the investigation proceeded as follows: it first defined the dependent variable, which in a causal research study is often referred to as the outcome. Next, the research determined its hypothetical causal explanation. To do so, given that there is little prior knowledge on the observed outcome, the investigation proceeded primarily through inductive study. This involved analysing events backward through time from the outcome of interest (Bennett and Checkel, 2015: 18), although focusing on the alleged link with the ongoing war. Afterward, it mapped the resulting timeline that listed the sequence of events, which, in turn, enabled the detection of a set of nodes and mechanisms, and the elaboration of a single causal explanation.

9 There are at least three variants of process tracing: theory testing, explaining-outcome process tracing, and theory-building process tracing. This investigation used theory-building process tracing because of how the investigation came about. As the observed outcome is a recent and understudied phenomenon, the possible causal explanations were wide and varied. It was suspected that there might be a connection between the cause and the outcome proposed here, but the potential mechanisms linking the two remained unknown (Beach, 2017).

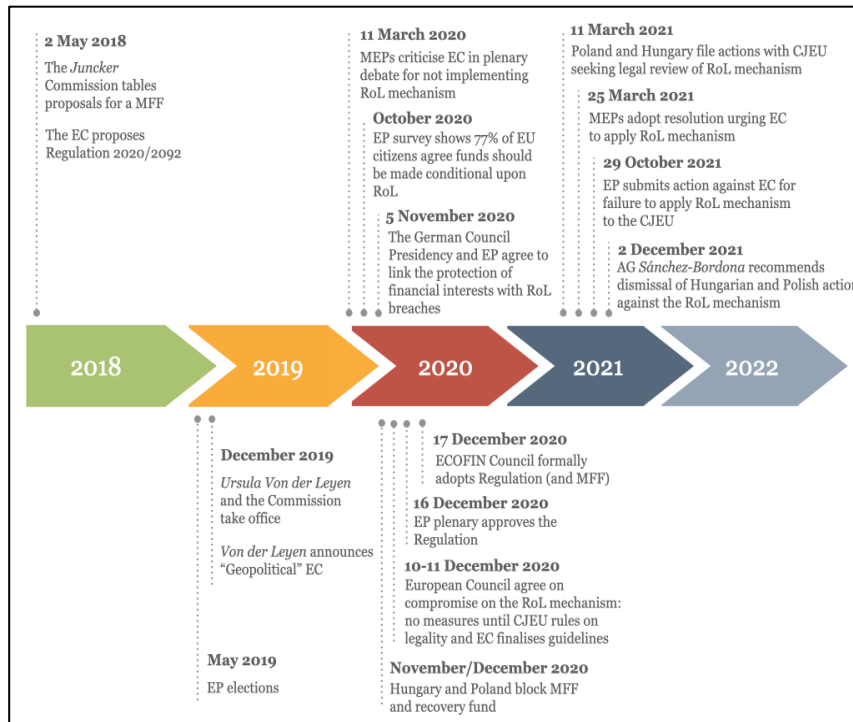


Figure 1: Timeline concerning Regulation 2020/2092

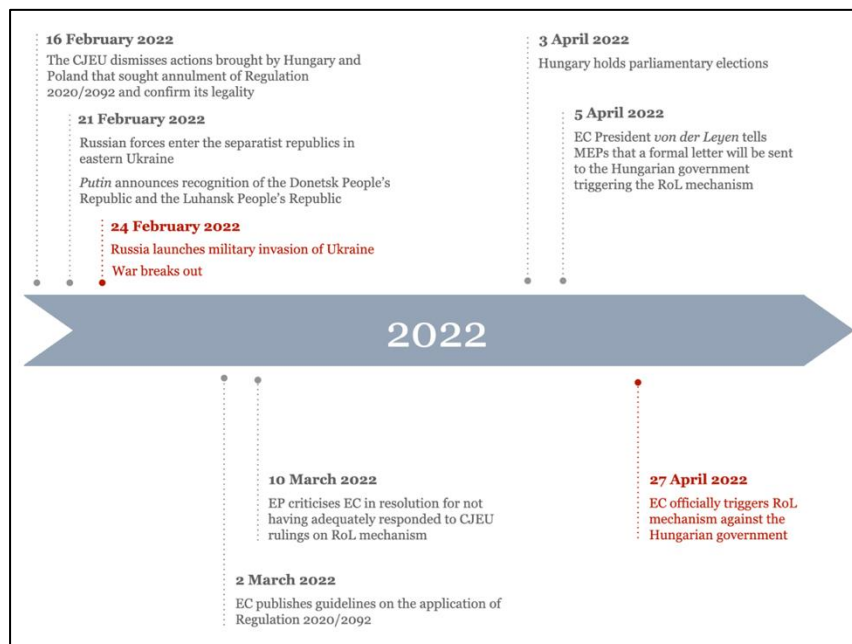


Figure 2: Preliminary sequence of relevant events

Once the single causal explanation was defined, the study surveyed and reviewed the outcome's rival explanations to prove the causal theory. The methodological standard of process tracing requires an examination of the alternative causal pathways through which the outcome of interest might have occurred (Bennett and Checkel, 2015: 21). This exercise of discarding other explanations strengthens the proposed argument. Accordingly, the research evaluates two alternative explanations: first, that the Commission has prioritised the pursuit of Article 2 TEU noncompliance and second, that the CJEU's ruling of 16 February 2022 created the political momentum for the Commission to discipline RoL violations.

Next, it developed a causal graph, since effective causal-theory-testing via PT depends on a clear specification of the causal logic or mechanisms underlying a causal effect (Jacobs, 2015: 55). Indeed, the function of the causal graph is to represent the chain of cause-and-effect relations –that is, the set of causal relationships that constitute the process being tracked by within-case evidence. In addition, the graph identifies the crucial nodes and illustrates the location of the relevant causal mechanisms that must be confirmed through the uncovering and detection of relevant evidence. The causal graph that reconstructs the causal explanation in the present investigation is depicted in Figure 3.

Given the ideational character of the axiom proposed, the research had to substantiate three elements to explore the assumption empirically: first, that the Commission possessed specific cognitions; second, that those cognitions were not simply reducible to material features related to the observed outcome (evidence of exogeneity of the intervening variable); and third, that the Commission's identified preference indeed shaped its choices and was effectively applied to the case in point (Jacobs, 2017: 45). The study relied on official documents, news pieces, and academic contributions to provide evidence for the first two elements.

The assessment of the third element constitutes the crux of the study. Once the chronology was established and the causal graph formulated, the research traced the process forward from the hypothesized cause to the subsequent outcome via the reconstruction of an event-history map. That is, the research established a valid correspondence between the nodes and mechanisms in the causal graph with the events and developments of the specific case study. The investigation provides for this concurrence in Chapter IV, where it analysed and interpreted the collected data and applied the theoretical statements that will ultimately validate that the events (nodes) were generated by the logics proposed (casual mechanisms). It remained careful of providing warrant for the claim that each subset of events generates the next subset of events by virtue of the causal mechanisms contained in the causal graph (Waldner, 2015: 128).

4. Definition of variables

4.1. Outcome variable

The dependent variable (or outcome in a causal research study) refers to the European Commission's assertiveness in its enforcement strategy, reflected in its decision to activate the RoL conditionality mechanism set out in Regulation 2020/2092 against the Hungarian government. It is argued that the Commission's latest action in the Hungarian RoL saga is more forceful and decisive in four respects.

Firstly, Regulation 2020/2092 surfaces as a “strong manifestation of the ‘force of law’” (Goldner Lang, 2020: 3), particularly because it relies on the “power of money” (Fiscaro, 2019). Indeed, as theorised by Kelemen (2020: 485), funding can sustain national autocracies. Autocratic leaders may be able to use federal transfers to support clientelist networks that perpetuate their rule. Furthermore, unlike other cases, the stamp of approval that comes specifically with EU membership helps them attract Foreign Direct Investment that might otherwise be more concerned about the risks of investing in an autocratic regime (Ibid.: 483).

As is well documented, Hungary is one of the Member States that has benefited the most from EU funds. It is the largest recipient per capita, and in recent years, more than 95 per cent of all public investments in Hungary have been co-financed by the EU (Kelemen and Scheppele, 2018).¹⁰ Furthermore, it is well known that the Hungarian government has received EU subsidies, which have reached the governing party's pockets, even as the country backslides into authoritarianism.¹¹ Therefore, by establishing a link between a Member State's violation of the RoL and the suspension of EU payments, the mechanism exploits the potential of the budget as a tool to exercise leverage on the member capital's behaviour and to encourage their convergence

10 In 2021, Hungary's GDP amounted to 182,8 billion euros, which is why the freezing of the regional funds (even having been lowered from 65% to 55%) represented over 3% of the country's annual economic output (roughly 6.3 billion euros) (Melchior, 2022).

11 *The Economist* captured the essence of this dynamic in one of its pieces. It posited that “Viktor Orbán campaigns against the EU from Monday to Friday and collects its subsidies at weekends” (The Economist, 2018; Kelemen and Scheppele, 2018).

towards the Commission's preferences (Fisicaro, 2019: 705). This is especially the case with Member States that are net recipients and, therefore, dependent on EU funds (Goldner Lang, 2020: 6).

As such, "going for the wallet" appears to be a compelling way to address the problem (Fisicaro, 2019: 706) and, consequently, a more effective enforcement instrument of EU law (Fisicaro, 2022: 4). Indeed, adopting other strategies or implementing different RoL instruments is ineffective and, ultimately, matters little if the money keeps flowing and prolongs the livelihood of these autocracies (Kelemen and Scheppele, 2018). Moreover, it is also worth noting that spending conditionality has shown promising results in terms of compliance (Fisicaro, 2019: 705).¹²

That being said, the truth is that this option has always existed in the EU's general enforcement toolbox because spending conditionality is not new to the European political and legal order. The Maastricht Treaty had already introduced economic sanctions, although their actual role was of limited significance. As Kelemen clearly stated, due to the Union's particular political dynamics and interinstitutional balance, the Commission would most likely be blocked if it threatened to suspend funds (2020: 485). Ultimately, this act demands and relies on political will to take action. However, given the modest political appetite to censure Hungary and Poland, even despite extensive departures from democratic standards (de Búrca, 2022: 23) and because of the intergovernmental character of so much EU decision-making, it is expected (and so it has happened) that Poland and Hungary would support one another against criticism or action by others. In addition, it is likely that other governments would reject the censuring of a fellow Member State openly¹³ –if only out of fear that the mechanism could be used against them (Kelemen, 2020: 490). To illustrate, consider the heated debate that ensued, even before the Commission's 2018 proposal, when Commissioner for Justice Vera Jourová and the EP put forward a series of ideas to strengthen the RoL conditionality attached to EU funding. Several governments – Poland, Hungary, but also Romania and Bulgaria– adamantly denounced the schemes (Kelemen and Scheppele, 2018).

Besides, the Commission's ability to act on behalf of the EU depends on the Member States and the agreement between the Council and the EP. Henceforth, formal and informal interaction between the institutions and the Member States inform the Commission behaviour because these interinstitutional dynamics shape its agenda-setting and policy-making powers (Kelemen and Pavone, 2022). For instance, it is worth recalling that the votes of Fidesz's MEPs proved instrumental for von der Leyen –who was the nominee of the European People's Party (EPP)– to win confirmation in the EP (Kelemen, 2019; 2020: 488). Following Kelemen's logic, it is not surprising that the Commission originally attempted to deescalate tensions with the Hungarian government regarding the RoL and projected hesitation to ultimately 'bite the hand that feeds it' by suspending EU funding.¹⁴

Despite other Member States repeatedly casting doubt on the wisdom and the legality of the RoL conditionality mechanism, and regardless of the risks that such a provocation could generate, seeing as it was perceived by member capitals as forcefully imposed (Goldner Lang, 2020: 7), the Commission still went ahead and triggered it against the Orbán regime. It, indeed, summoned the political will to act under its existing authority against all odds (Kelemen and Scheppele, 2018). In that line, the decision to trigger the mechanism against Hungary projected a certain determination to address a wide preoccupation –very unlike its past behaviour– hence, a second reason why this response suggests a growing assertiveness. For instance, concerning the spending conditionality scheme in other policy areas, the Economic and Monetary Union's (EMU) sanctions have never been effectively applied and macro-economic conditionality has been triggered once against Hungary. However, suspending commitments related to the Cohesion Fund never happened because the Council lifted the measures before they entered into force (Fisicaro, 2019: 709).

12 For example, alongside the Economic and Monetary Union's sanction's toolbox, the Cohesion Fund and the ESI Funds also use this approach (Fisicaro 2019, 706).

13 As de Búrca drew to scholars' attention, governments may fear that if they act against another member capital, there could be retaliation against them in another form. In that line, thinkers have also proposed that the EU's hesitance in pursuing Member States' noncompliance reflects a "calculated gamble", in which seeking to persuade deviant Member States through diplomatic and other softer means is likely to work better in the long run (de Búrca, 2022: 29, 31).

14 Kelemen's and Pavone's (2022) study is illustrative of this dynamic.

More specifically to the issue at hand, back in 2020, the Commission suspended the implementation of the regulation to alleviate the Hungarian-Polish blockade of the budget talks and the post-pandemic European Recovery Fund.¹⁵ Several observers saw this as a blatant –but perhaps expected– accommodation of a member government, in line with the Commission’s historical enforcement record. Thus, in view of all the conditions that made its adoption –let alone its implementation– difficult, the Commission’s proposal (which provided it with leverage against Member States’ noncompliance) and its subsequent activation of the Regulation 2020/2092 against the Hungarian government (which testifies to its will to use the available tool) demonstrates its growing assertiveness.

In addition, the von der Leyen Commission’s actions starkly contrast to previous EU presidencies. For instance, Jean-Claude Juncker adamantly opposed conditionality (Kelemen and Scheppele, 2018). When asked during a conference in Berlin if he supported Germany’s proposals to attach the rule of law conditions to EU funds, Juncker allegedly said: “I am of the opinion that one should not do that”, adding that the proposal would be “poison for the continent” (Idem). As Kelemen and Scheppele asserted, whether Juncker’s refusal to support funding conditionality stemmed from his loyalty to the EPP or from a sincere belief that suspending funds to some Member States would drive them into the arms of other powers with no interest in the RoL (Idem), the track record is the same: the Commission ended up accommodating the deviant Member States and failed to fulfil its role as Guardian of the Treaties.

Thirdly, Regulation 2020/2092 also signals a growing assertiveness due to the nearly unlimited discretionary power the Commission reserved for itself. According to Professor Laurent Pech, this instrument explicitly empowers the Commission to propose to the Council to adopt measures such as a suspension of EU payments, albeit provided that these national breaches of the RoL “affect or seriously risk affecting the sound financial management of the EU budget or the protection of EU financial interests in a sufficiently direct way” (Pech, 2022b). As such, the authority to establish deficiencies is entirely left to the Berlaymont since it submits the proposal for an implementing act on the appropriate measure to the Council. However, unlike the original proposal, where the Council automatically adopted the decision unless a qualified majority decided to reject the Commission’s proposal (reverse qualified majority), the Council now decides by a ‘normal’ qualified majority (Platon, 2021). Still, authorising the Commission to establish a violation of the rule of law allows the EU to act with greater ease concerning RoL backslidings affecting the budget (Fiscaro, 2019: 706).

In fact, some critics have raised doubts about its potential effects. With the CJEU having ruled on the constitutional core of the Union,¹⁶ Luxembourg explicitly articulated what had only been suggested in previous rulings: the possibility for any political entity to avail itself and adopt new rules to address critical problems as they arise. In the current crisis, this would mean the ability of EU institutions to confront member governments that violate the RoL through legitimate (legal) political mechanisms. Given that reversing jurisprudence requires a significant threshold that is hard to reach (Alter, 1998: 136), the call for the defence of the Union’s values¹⁷ provided the European institutions with the legal certainty necessary to inform the interpretation of specific Treaty provisions on which their authority to engage in national politics is based. In other words, the Court provided the legal backing to (ideally) encourage EU political institutions to intervene more brazenly when the situation requires it in what Member States’ often cite as purely domestic matters. As such, it has been argued that it gives too much discretion to the Commission and opens up the question of its control (Goldner Lang, 2020: 23).

15 The adoption of the Multi-Annual Financial Framework (MFF) (and the coronavirus relief fund) was bound up with the approval of Regulation 2020/2092 (Borger, 2022: 1772). Since the Polish and Hungarian governments believed the Regulation was unfairly targeted at them but could not block the adoption of the mechanism (it only required a qualified majority of votes in the Council), they threatened to thwart the approval of the financial package. At the same time, they brought before the CJEU two annulment actions against the RoL conditionality mechanism, which enabled the crisis to be averted (or, perhaps, delayed). Indeed, it was promised that the mechanism would only be activated after the CJEU had ruled on the legality of the mechanism (Borger, 2022: 1772). Hence, according to the compromise forged in the European Council in December 2020, the Commission refrained from triggering the mechanism until the Court had ruled on its legality.

16 Case C-156/21, *Poland*, and Case C-156/21, *Hungary*.

17 “The values enshrined in Article 2 TEU have been identified by the Member States and are shared by them. They define the very identity of the Union as a common legal order. The Union must therefore be able to defend them within the limits of the powers conferred on it by the Treaties”. Case C-156/21, *Poland*, para. 145 and Case C-156/21, *Hungary*, para. 127.

The final reason why the adoption and the activation of Regulation 2020/2092 suggests a shift towards a greater assertiveness in the Commission's practices towards member capitals' violations of EU law is the timing of its implementation, arguably a convulsed and turbulent time in Europe. Just two months before the Commission officially notified the Hungarian government of activating the conditionality mechanism against it, the Russian Federation unlawfully invaded Ukraine. It could be argued that, in such a context, it would have been wiser for the Commission to delay any potential confrontation with member capitals, not only because a collective response to the Russian aggression would require consensus within the Union, but also to convey an image of unity to the outside world. Besides, as mentioned earlier, the Commission would have had a legitimate excuse to continue to delay its response against the ever more troublesome RoL violations by member governments. And yet, against all odds, the Commission still initiated the conditionality mechanism.

4.2. The trigger and the cause variable

As to the plausible cause of the phenomenon, the research centres on the Russia-Ukraine war. As mentioned above, an exogenous shock can trigger institutional change. Therefore, this research proposes that the outset of the military aggression operated as a triggering event, which presented the Commission with a window of opportunity to embody and materialise its priority to become a geopolitical actor in world affairs (cause variable).

Given the theoretical and indefinite character of the term 'geopolitical actor', it is necessary to define it properly to use it in the subsequent empirical exploration. Therefore, to eliminate sources of confusion, the research engaged in an exhaustive survey of the scholarly literature to identify the most common, topical and contemporary indicators to define an international actor (hereafter, geopolitical actor, to use the terminology of the von der Leyen Commission). Furthermore, these criteria enabled an assessment of the Commission's actions, which permitted to examine whether its revealed preference shaped its choices, particularly during the hostile context, and, hence, can support the theoretical expectation proposed here.

In addition, it is worth noting that most, if not all, of the following characteristics have commonly been attributed to the nation-state, particularly in its external endeavours. Increasingly, however, scholars have ascribed one or the other to the EU in view of the apparent evolution of its practices in different policy areas. As a result, it has become customary to study the Union from two opposing points of view. Some stress the Union's international organisation qualities, expecting it to react as a network of governments. While other authors have focused on its state-like qualities (Čmakalová and Rolenc, 2012). This dichotomy facilitates the assessment of the Commission as a geopolitical actor on par with the other great powers. It is expected that, if evidence exists that the Commission embodies several of these criteria, it would be projecting more state-like qualities, thus, performing as a geopolitical actor as opposed to a traditional international organisation.

4.2.1. Who qualifies as a geopolitical actor?

The scholarship concedes that a geopolitical actor must attempt to set an ideological perspective and provide an overall political direction. Furthermore, it has to draw attention and line support to advance specific policy ideas in line with its priorities (Nugent and Rhinard, 2019). To do so, a geopolitical actor frequently uses formal or informal methods to shape the form in which it presents issues (a tactic often called framing). Moreover, it is not enough to ascertain its resolve in pursuing specific goals; particularly when the actor's objectives are being threatened; it has to be able to project the determination that coercion or force can be used if necessary (Riddervold, 2016; Gehring, Urbanski and Oberthür, 2017; Tereszkievicz, 2020; Vukovi, 2020; Anghel and Jones, 2022; Vogt and Pukarinen, 2022; Serban, 2023).

Moreover, to this first set of characteristics, it is also essential to add that the geopolitical agent has individual and separate preferences from other relevant actors (Gehring, Urbanski and Oberthür, 2017). In the case of the European Commission, this not only points to defending different interests than the Member States, which in any case is an embedded condition in the EU system of governance and enshrined in the Treaties. In this particular case, it also implies that the Commission developed its own (of course, informal) external relation

policy, or to be more precise, a strategy of external action separate from the preferences of the Member States (Idem). This implies the prioritisation of selected policies and, naturally, given the institutional setup of the Union, the probability of taking politically sensitive decisions that might frustrate or disturb other institutions or member governments.

A second set of conditions to be characterised as a geopolitical actor refer to the Commission’s capacity to understand the context and the actors within it (Cadier, 2014). This includes the urgency and gravity of a threat and the international community’s expectation to answer to the specific peril. Moreover, this ability must be accompanied by the capacity to deploy threats in carefully crafted and credible ways, which implies a certain level of resolve, harnessed and directed to a specific hazard.

Accordingly, deploying the threat is another aspect to which the literature dedicates much space. It is generally agreed that the credibility of a geopolitical actor hinges on its ability to react in a quick and coherent way to international crises and events. This stresses the importance of timing and implies that a geopolitical actor must focus on immediate results, perhaps neglecting long-term implications. It also points to the imperative of acting consistently and efficiently internationally (Riddervold, 2016; Gehring, Urbanski and Oberthür, 2017; Tereszkievicz, 2020; Vukovi, 2020; Anghel and Jones, 2022; Vogt and Pukarinen, 2022; Serban, 2023). One could translate this condition to fit the European case as the ability to act independently from its wider organisational environment, i.e., more than the sum of its parts.

Furthermore, beyond the level of resolve, much of the literature extends to capabilities and resources. Here, the scholarship mainly refers to the deployment of military power, but in the case of the Union, it could be centred on its capacity to use the competences and instruments at its disposal strategically. In this sense, a geopolitical actor must possess the ability to purposefully apply forceful measures to alter the other side’s perceptions and preferences to induce their compliance or achieve a particular outcome; in other words, to engage in coercive diplomacy (Vukovi, 2020). This proficiency demands insight and creativity to devise innovative options that can manoeuvre procedural impediments and overcome bargaining deadlocks. Henceforth, this third and final set of conditions also recalls what scholars have often referred to as tactical power or what actors do throughout the process to achieve a desired outcome (Idem). Given the institutional setup of the EU, where every decision undergoes at least three different institutional filters, this view becomes especially significant.

Table 1 summarises the conditions that must be met to be characterised as a geopolitical actor:

Table 1: Criteria to qualify as a geopolitical (international) actor.

(1) Understanding the context and the actors within it;
(2) Setting an ideological perspective and providing a political direction;
(3) Gathering support to advance specific policy ideas in line with its priorities;
(4) Projecting determination that coercion or force can be use if necessary;
(5) Deploying threats in a crafted and credible manner;
(6) Presenting individual and separate preferences from other relevant actors;
(7) Taking measures that can be politically sensible;
(8) Reacting in a quick and coherent manner to events;
(9) Acting independently from its wider organisational environment;
(10) Thinking strategically, both to apply forceful measures and to overcome bargaining deadlocks.

4.2.2. Estimating the “geopolitical” Commission

Finally, given that the investigation had to substantiate that the Commission’s identified preference shaped its choices concerning the activation of the RoL conditionality mechanism, the research proposes that adopting restrictive measures –particularly in the field of energy– against the Russian Federation is a valuable indicator to operationalise the Commission’s objective and examine its practices towards achieving it. First, as the Union lacks military assets, restrictive measures against Putin’s regime were the selected way to engage on the international stage, which “in times of serious budgetary constraints” are more likely to project power (Lehne, 2012). This is particularly the case at the EU level, where sanctions constitute one of the most significant comparative advantages given that the Union represents 27 countries and 448 million consumers and is the most considerable trading power (Bloj, 2021). Henceforth, the EU is well positioned to exert pressure and collective leverage to promote its values and interests (Lehne, 2012; Bloj, 2021).

Moreover, another reason that justifies the use of sanctions as a proxy to estimate the Commission’s preference is that Putin’s war employed far more than troops at the border and missiles over Kyiv. The battlefield moved to the political dimension and mainly materialised in the energy debate. Throughout the conflict, the Russian government resorted to halting gas supplies as a bellicist strategy in the war. As the Polish Prime Minister stated in March of 2022, the Kremlin was turning its revenues from oil and gas sales into “aggression, invasion” (Wanat, 2022a). Ukrainian President Volodymyr Zelenskyy shared that view: “Everyone in Europe and America already sees Russia openly using energy to destabilise Western societies” (Hanke Vela, 2022b). On a similar note, Poland’s Energy Minister Anna Moskwa believed that the “ongoing conflict and the war” revealed that Europe did not need “more tools of blackmail from Gazprom and the Russian Federation” (Wanat, 2022a). This made energy sources stand as assets and, hence, able to be operationalised as an offensive strategy on both sides, much like the deployment of troops on the battlefield.

Indeed, the actors themselves saw the sanctions, particularly oil and gas, as a proxy of the great power competition at the international level. The German Economy and Climate Action Minister Robert Habeck referred to energy policy as security policy. He claimed that the EU’s attempts to enhance energy sovereignty would bolster its security. He added that Europe had to “overcome the high dependence on Russian imports of fossil fuels – a warmonger is not a reliable partner” (Wanat, 2022a). Therefore, sanctions on energy projected a foreign policy stance (Bloj, 2021), and the EU made clear that it would use them as its preferred resource to antagonise Russia. This was especially the case since ending dependence on Russian energy could become a potentially devastating development for Russia’s whole business model (Eder, 2022a).¹⁸

Hence, Russia’s attack on Ukraine and its subsequent weaponisation of resources underlined the importance of energy independence. As the EU High Representative for Foreign Affairs and Security Policy and Commission Vice-president (HR/VP) Josep Borrell put it: “We need to recognise what this war means for European security and resilience more broadly. Consider the energy dimension. Reducing our dependence on energy imports from authoritarian and aggressive powers is an urgent strategic imperative” (Borrell, 2022b). Following the same strand of thought as Habeck and Moskwa, Mario Draghi claimed that the goal was for Europe to no longer need to import any Russian energy: “We no longer want to depend on Russian gas because economic dependence must not become political subjugation” (Hanke Vela, 2022b). In this line, it is worth noting that academics have argued that “strategic autonomy” covers all EU-related policy areas, thereby requiring a horizontal, cross-policy, approach” (Anghel *et al.*, 2020: 1). In fact, Anghel *et al.* show that this view was already reflected in the 2016 EU Global Strategy, which identified energy as an area where the EU should be able to act autonomously to promote its interests in the broader stage (Ibid.: 3).

Considering the above, an oil embargo would strengthen the EU’s multilateral action and reduce its dependence on external actors (Anghel *et al.*, 2020), effectively making it less vulnerable to external threats. As a result, the successful adoption of an oil embargo against Russia, which would virtually decouple Europe from its “Russian addiction”, would ensure that the EU preserves its capacity to act autonomously

18 Putin could ultimately diversify to other markets, such as China, but would still be liable to face heavy discounts on his crude in the meantime. That means even if Russia does manage to sell, it would be for a much lower price than Russian vendors would like.

(or with like-minded partners if it so wishes). Moreover, the effective use of sanctions would increase the credibility of the Commission's ambitions, allow the EU to reassert its position internationally, and, accordingly, enable it to meet additional conditions to be defined as a geopolitical actor. Hence, the oil embargo operates here as a proxy to tease out whether the Commission took the war as an opportunity to advance its policy preference of turning the EU into a competitive geopolitical actor, supporting the expectation that the Commission's identified preference indeed shaped its choices and was effectively applied to the case in point (Jacobs 2017, 45).

4.3. Mechanism

As will become evident in the following chapter, the observed outcome also depended on another indicator, which, according to process tracing literature, "transmitted causal forces from X to produce Y" (Beach and Pedersen, 2011). Indeed, the research proposes that the Member States' preferences, namely their choice to align with the Commission's priorities, made the institutional change possible. Naturally, a brief word on this is in order.

As is well documented, the Union's power is essentially comprised of the power of its parts. That is, the EU can act coherently and advance the integration process, provided it finds consensus among its members. This is especially the case in those policy areas where the intergovernmental dimension prevails, as is the case of international sanctions related to the Common Foreign and Security Policy, which demands unanimity. However, given the power asymmetries between Member States and their different policy goals (Schmidt, 2019; Anghel, 2020) the decision-making process is further complicated.

In this context, the endurance of diverging national interests in negotiations becomes a vulnerability. It may result in a lengthy decision-making process or the inability to reach a consensus, further debilitating the EU's speed and ability to act with a single voice in the global arena (European Commission, 2018). Nonetheless, this reasoning also means that the EU constitutional framework may prove an enabler for the Union if Member States' preferences converge. Accordingly, the present investigation provides anecdotal evidence, i.e., public interventions by Member States' governments concerning the oil embargo, to examine the convergence or divergence of Member States' inclinations with the Commission's priority of turning the EU into a geopolitical actor.

5. Data

To carry out the empirical research, the work relied mainly on official documents of the European institutions (particularly the European Commission, the Council of the European Union, and the European External Action Service, or EEAS). In addition, it considered the speeches and statements of the relevant actors (for instance, those of Ursula von der Leyen, Josep Borrell, Viktor Orbán and several other members of national governments, all portrayed in Chapter IV). It also reviewed these leaders' social media platforms for immediate reactions to political developments and their interventions on other communication outlets (for example, Catherine Ashton, the previous HR/VP of the Commission, recalling her most significant challenges during her tenure in *POLITICO's* podcast).

Furthermore, the research traced the causal process by reconstructing the sequence of events with news pieces (from news to opinion articles and newsletters). It inspected several media outlets but relied heavily on *Euractiv*, *POLITICO*, *Agence Europe*, and *VerfBlog*. Finally, the investigation also drew on secondary literature and other scholars' interpretations of the events to inform the overall argument and shape the narrative.

6. Limitations of the research

The research sought to investigate the rationale for the European Commission's assertiveness in enforcing the Union's fundamental values. Given that there is little prior knowledge about this phenomenon, the investigation employed an inductive approach, first tracing backwards the political developments to determine a potential causal explanation. As such, the case study started as a form of plausibility probe

of mechanisms, but it could not be analytically developed further due to extension and time limits. The investigation was limited to a theory-building process tracing, which lacks a high degree of external validity in that it has not been compared with similar cases. Furthermore, in terms of design, the investigation failed to address the problem of equifinality –where multiple causal pathways may lead to the same outcome (Checkel, 2015: 74)– because the proper process tracing was conducted only on the proposed argument. Nevertheless, the intent here was not to design a general theory but to explain the case under review. Further study is, of course, welcomed in this respect, particularly by deploying comparative methods that can map additional cases and compare them with the present findings to enable generalisations that can strengthen the argument.

Moreover, the investigation faced two additional methodological challenges, mostly related to the input data available. Firstly, the proposed causal explanation places great emphasis on the Commission's preferences, which led to considering ideational factors. This is inherently problematic because, as scholars have posited, “even where ideas can be well measured, analysts will face difficulty assembling evidence of the mechanisms through which those ideas influence choice” (Jacobs, 2015: 46). Nevertheless, efforts were undertaken to compensate for this shortcoming via the available evidence, which included the opinions of EU diplomats directly engaged with the affairs, thereby increasing the probability of the argument proposed.

Secondly, with process tracing methodology, it is necessary to follow political developments closely. Nonetheless, the content of EU negotiations is rarely disclosed to the public or the media. This is the case of the informal exchanges in the Berlaymont between Commission representatives and national agents. As is expected, unavailable evidence naturally lowers the degree of probability one can attach to the likely truth of an explanation (Bennett and Checkel, 2015: 19) and weakens the ability to make a robust causal inference because of superficial evidence (Beach, 2017). Consequently, to study this process, one must conform with paying attention to the two negotiation positions at the beginning and the end of the decision-making process. This naturally limits the study to a narrow comparison between position and outcome, which might have the risk of overestimating a country's negotiation success (Bailer, 2010: 751). However, building on bargaining power literature, scholars have confirmed that where issues are salient, the position taken is more likely reflective of its actual preferences (Ibid.: 751-752).

Finally, to account for the lack of data, the investigation used news pieces and secondary sources (triangulated and contrasted with different outlets) to reconstruct the developments. In addition, it relied heavily on official documents and public statements and communications of the national agents (i.e., revealed preferences). Although statements to the public may be exaggerated or even false; for this case study, it was enough to assume that the revealed preferences of the actors under review portrayed their actual predilections.

Chapter IV. Analysis of results

1. Review of alternative explanations

1.1. The Commission has prioritised the pursuit of Article 2 TEU noncompliance

The main reason why this alternative is unlikely is that there are several governments, particularly Poland (Bogdanowicz and Taborowski, 2020; Pech, 2021; Bayer, 2022a; Łtowska, 2022), that show deficiencies as severe as those presented by Hungary in their democracy and protection of the Union's fundamental values, and yet, the Commission has overlooked their penalisation. Moreover, it is not as if these developments have stalled or receded in any way. For instance, consider that by the outbreak of the war, Polish civil society and European experts continued to note novel challenges concerning the RoL in the country. Concretely, Polish judges were still being suspended for applying EU law (the case of Judge Anna Głowacka, for example), and scores of new judges had been appointed despite concerns over the independence of the body nominating them (Bayer, 2022a). The situation was ripe for Commission action. Nevertheless, the Berlaymont not only resorted back to its appeasing "wait-and-see approach" (Priebus, 2022c) but, in addition, reports surfaced that Commission officials were preparing to disburse EU funds for Poland (Hanke Vela and Lynch, 2022c) – a speculation that has since been confirmed.

Hence, the Commission chose to neglect those concerns despite the continuous distress regarding the Polish government's judicial reforms and the independence of the country's judiciary. If prosecuting violations of the EU fundamental values had indeed been a priority for the executive, it would have targeted Poland as well, or at least signalled to its forthcoming action. Even considering that the Commission chose not to prosecute the Polish government due to the notable hospitality it has shown to the Ukrainian refugees, it stands to support the assertion that protecting the RoL in the Union comes second to other considerations.

Furthermore, the violations of RoL reported in Poland, and the discussion about granting Warsaw its EU funds coincided with the Commission's stringent response against Budapest. Given that these two contrasting approaches were happening simultaneously, the likelihood that the impetus to persecute the Hungarian case arose from a change in the Commission's will to enforce EU values is improbable. Indeed, if the Commission embraced Warsaw, it naturally undermined the underlying principle of fighting autocracy, protecting democracy, and leading with values. It instead suggests other considerations were at play.

1.2. The Court's ruling generated the political impetus to pursue the Hungarian government

A second possible explanation is that the Court of Justice enabled the change in the Commission's approach to the RoL and the enforcement of the fundamental values. Indeed, the Commission could have approached noncompliance more confidently if it counted on the support of the other European institutions that share the "language of centralisation" (Weiler, 1981: 293). This fits the long-standing discourse about the 'expansionist' tendency of the Commission and the 'activist' character of the Court of Justice. It has been posited that these supranational institutions, true to their "integrationist ethos" (Weiler, 1981: 279), exploited their room to manoeuvre "to allow jurisdictional expansion without recourse to complicated Treaty amendments" (Idem). According to this viewpoint, the Commission raised cases that the CJEU thus interpreted, consequently expanding policy areas where the Union could legislate. As a result, this partnership enabled the Commission and the Court to interpret widely and creatively the existing provisions as a proxy for governance without the intermediary of the Member States (Weiler, 2014: 98).

At first sight, the developments concerning Regulation 2020/2092 are reminiscent of this supranational dynamic of the early decades of the European communities. The Court ruled on the constitutional core of the Union, which not only resulted in it setting a critical precedent but, *de facto*, provided the Commission with legitimacy to interfere in Member States' domestic politics and prevent future noncompliance with the

values of the Union. Indeed, seeing as these values permeate the entire legal system and form part of the constitutional identity of the EU, the Commission has the prerogative to protect them.

However, the probability of this alternative is weakened by the fact that the Court ruled on the legality of the RoL conditionality mechanism on 16 February 2022, and since then, the Commission has delayed its implementation on numerous occasions, citing different justifications. Moreover, following the ruling, the Commission announced that it would “analyse carefully the reasoning of the judgments and their possible impact on the further steps [to take]” (Priebus, 2022c) and proceeded to elaborate on the guidelines it had promised in the criticised compromise brokered by the European Council in December 2020. The wording of the Commission announcement instead points to further procrastination.

Additionally, although the Court’s ruling has been influential in the fight to protect fundamental values, it is not remotely new. Scholars had proposed that before Regulation 2020/2092, the Court had not had the opportunity to rule on fundamental values because there had not been any preliminary ruling, arguing that violations of the RoL had only been negotiated in political institutions. As such, several authors have stated that the Court’s February joint judgments on the legality of the RoL conditionality mechanism were ground-breaking or revolutionary. For example, for Marco Fisicaro, this is the first case “to address the competition issues arising from the use of ‘expenditure conditionality’ as an alternative mechanism for applying EU law” (2022: 4). For his part, Vestert Borger emphasised the Court’s proclamation on Europe’s constitutional identity (2022: 1772). Regardless of the accuracy of these practitioners’ views, the fact remains that the CJEU has been ruling on these questions (the constitutional identity of these values, and particularly, of the rule of law), at least since the entry into force of the Lisbon Treaty. Indeed, the wording of Article 2 TEU not only describes them as constitutional values; moreover, the nature of several provisions, such as the area of Freedom, Security and Justice, the internal market and the EMU, consolidate their legitimacy. Indeed, as van Elsuwege and Gremmelprez argued, due to the abolition of the pillar structure, the values are already horizontally applicable to all areas covered by EU law (2020: 13). Therefore, although a judgment expressly stating that values constitute the identity of the EU is undoubtedly welcome, it is somewhat secondary, especially in the light of previous case law.

In effect, in 2018, the Court seemed to imply that the RoL was emerging as a priority in the Union’s legal order. In Case C-441/17 R *Commission v Poland*, the Commission had initiated proceedings against the Polish government for infringement of several environmental directives.¹⁹ As the Polish authorities had not yet complied with the interim measures requested by the Commission, the Commission demanded a periodic penalty payment until the Polish government complied. The Court agreed: its judgment stated that Article 279 TFEU allowed the imposition of interim measures and a periodic penalty payment to be applied in the event of noncompliance with those measures. For the Court, this decision was necessary “to ensure the effective application of EU law”, which was declared to be “an essential component of the rule of law” (Wennerås, 2019: 541).

Even more important in this respect was Case C-64/16, *Associação Sindical dos Juízes Portugueses*,²⁰ which provided an opportunity to discuss the RoL in the Union with greater breadth and vigour. In its judgment, the Court admitted the possibility of ruling on a situation not directly related to a substantive area of EU law. Indeed, in contrast to previous case law in which the CJEU ruled on cases in which Member States applied EU law, the mere fact that a national court had jurisdiction to decide on the interpretation and application of EU law is now sufficient to bring the case under the jurisdiction of the Luxembourg Court. As such, this judgment was a statement of intent: the Court was doing its utmost to bring any RoL matter within its jurisdiction and thus to be able to address violations of fundamental values by legal means.

The case, therefore, introduced a practical tool to directly address violations of the RoL in the Union and established an additional scheme for addressing its breaches: European courts must be independent bodies to

19 Judgment of the Court (Grand Chamber) of 17 April 2018, C-441/17, *European Commission v Republic of Poland* (Białowieża Forest). ECLI:EU:C:2018:255.

20 Judgment of the Court (Grand Chamber) of 27 February 2018, C-64/16, *Associação Sindical dos Juízes Portugueses v Tribunal de Contas*. ECLI:EU:C:2018:117.

be able to make a reference for a preliminary ruling. Since the Court considered national courts as “European courts” –as almost all of them can be called upon to interpret or apply Union law– Member States have since been obliged by law to guarantee the judicial independence of their national courts. The CJEU implied that judicial independence is a prerequisite for ensuring the application of EU law and guaranteeing judicial protection. Thus, by entrusting the critical function of judicial review to national courts, the Court could concretise the value of the RoL in one of the existing provisions of the Treaty: Article 19 TEU (Bonelli and Claes, 2018; Wennerås, 2019; Van Elsuwege and Gremmelpréz, 2020). In short, the Court not only endowed itself with the competence to adjudicate on the RoL cases (which could include ruling on national policy). It also managed to effectively turn values into obligations to prevent future cases in which other Member States start to dismantle their liberal states by limiting the activity of their judiciary.

This brief mention of some of the previous RoL cases not only demonstrates that the ruling on the conditionality mechanism did not emerge in a vacuum and is, in fact, in line with previous jurisprudence, but it also proves that the Court’s decision could not have been essential in enabling and supporting the transformation of the Commission, since the Court already had quite robust jurisprudence on the matter.

2. Causal theory and causal graph

Alternatively, the investigation argues that the outbreak of the Russia-Ukraine war can explain the novel assertiveness of the EU executive in its pursuit of Article 2 TEU noncompliance. It is proposed that the war presented the von der Leyen Commission with an opportunity to attain its objective for its tenure: to make the EU a relevant geopolitical actor. This could be achieved through a coherent and effective response to Russian aggression, particularly by implementing sanctions against its energy sector. Nevertheless, the Hungarian government emerged as a roadblock to its successful attainment.

Given the attention the Commission devoted to this priority, the context of uncertainty and limited information, as well as the urgency to project a united message to the international community, the Commission strategically used its bargaining weight to address the hindrance: it linked the sanctions’ negotiations with the disbursement or suspension of EU funds –introduced with the activation of the RoL conditionality mechanism. This enhanced the Commission’s negotiation leverage and maximised its chances to shape the forthcoming negotiations where Member States’ representatives would approve or reject the Commission’s draft proposal on an oil embargo. The causal graph, which lays out the causal logic underlying the explanation, proposes the following:

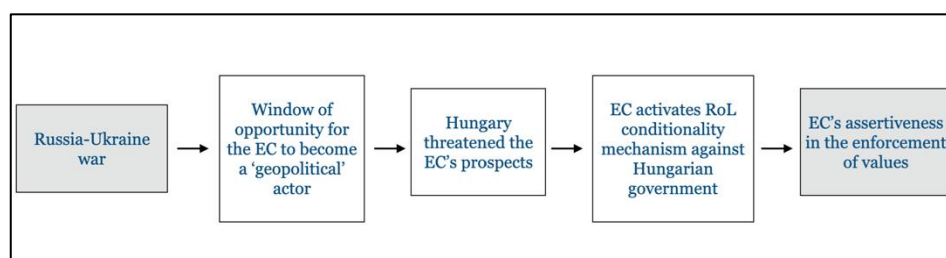


Figure 3: Causal graph of the effect of the war on the Commission’s practices.

3. Data analysis

As advanced in Chapter III, to empirically test the causal theory, the research needs to attest to the Commission’s preference and demonstrate that those cognitions were not reducible to material features related to the observed outcome. Indeed, the Berlaymont’s preference to turn the EU into a competitive geopolitical actor in world affairs pervades its official documents since its appointment: from the Commission’s priorities, the Political Guidelines, its Work Programmes, and the State of the Union addresses to its reiteration in successive statements by the Commission president, but also by HR/VP Josep Borrell and all the other EU diplomats. Moreover, it is also evident in its actions, particularly compared to other crises. Accordingly,

the following section accounts for the Commission's priority to make the EU a relevant geopolitical actor by closely examining several documents and statements and by looking back at the past, comparing its performance across different crises on the international scene. In this regard, focusing on other crises that have also presented aspects of military aggression becomes particularly informative.

3.1. The Prioritisation of Agency: the Promise of a 'Geopolitical Commission'

Following the European elections in May 2019, the recently-elected Commission set several political priorities to shape the political and policy program until 2024. In her 'agenda for Europe', or political guidelines, the president-elect Ursula von der Leyen claimed to see the "next five years as an opportunity for Europe to strive for more at home in order to lead in the world" (European Commission, 2019a). The speech revealed the President's ambition to "strengthen Europe's role as a global leader" and "enhance its legitimacy", suggesting these concerns would be prioritised in the next administration. In effect, the Commission's 2020 Work Programme explicitly stated it intended for the Commission "to lead international efforts" (European Commission, 2020a), an insight to which the Commission President added more nuance the following year. In the 2021 Speech of the Union address, von der Leyen asserted that the EU is a "unique security provider" and that there would be occasions "where NATO or the UN will not be present, but where the EU should be" (von der Leyen, 2021: 12). Moreover, von der Leyen's pretension for the EU executive to lead the transition is evident, given that it is her, as president of the Commission, whose voicing these concerns (perhaps this message would be read differently if echoed by the president of the European Council).

In fact, the Commission President frequently stressed her aspiration for her institution to "be bold and to be decisive". She expected the Commission to be "ambitious, strategic and assertive", which she interpreted as having the capacity to "act fast" in the world stage (European Commission, 2019a). In her speech of 10 September 2019, she claimed she aimed for an "agile and modern Commission", and in her first State of the Union address, she emphasised the urgency for Europe to "take clear positions and quick actions on global affairs" (von der Leyen, 2020: 15). Again the following year, she insisted on the need for prevision to react swiftly and coherently to international events: "Europe knows better than anyone that if you don't deal in time with the crisis abroad, the crisis comes to you" (von der Leyen, 2021).

Besides the attention towards acting swiftly to the pulse of global developments, von der Leyen's outlook of what the Commission's leadership might look like also considered European capabilities. She pledged to lead an EU executive that acts "with determination, that is clearly focused on the issues at hand and that provides answers" (European Commission, 2019b). Henceforth, it is not only about reacting quickly but operating efficiently. Ursula von der Leyen stressed the Commission's will to leverage the EU's collective strength to project its values and priorities abroad. For instance, she promised to rely on a combination of the Union's military and civilian instruments and diplomatic and commercial tactics (European Commission, 2020a; 2021b). Concretely, the Commission pledged to "leverage more effectively its regulatory power and unique single market and social market economy, its position as the world's first trading partner" (European Commission, 2021b). These promises have come to light in the context of the ongoing war. For instance, in the build-up to the Russian invasion, HR/VP Borrell listed several actions to take concerning EU-Russia relations, adding that the EU might not be a "military alliance", but it has "ways and means to advance its security interests and that of its partners" (Borrell, 2022a).

Indeed, von der Leyen also valued international partnerships as part of the EU's toolkit in foreign policy. Nonetheless, in contrast with earlier Commissions, she revealed a sense of shrewdness and even realism concerning the immediate environment she was entering. For instance, in her Letter of Intent to the leader of the European Parliament and the Council's Presidency, she stated that, although multilateralism had been and "will remain the cardinal principle of the EU as the most effective means to govern", the Union cannot "be multilateralists alone nor only for the sake of it" (European Commission, 2021b). Indeed, von der Leyen implied that without a review of the Union's traditional approach to foreign policy, the EU's position in an increasingly power-driven world would be weakened. She added that, in light of the more transactional nature of the global system, some elements of 'hard power' have to be factored in, which is why her Commission would act "more assertively" (European Commission, 2021b). Likewise, HR/VP Borrell insisted the Union

continued to favour dialogue and negotiations, but “never at the expense of our freedom, sovereignty, independence, and the respect of fundamental values”. Moreover, referring specifically to the current conflict between Russia and Ukraine, Borrell added that, although still calling “for de-escalation (...) negotiations and dialogue”, the Union reaffirmed its “commitment to respond to attacks on Ukraine. Any further military aggression against Ukraine will have massive consequences and severe costs” (Borrell, 2022d).

These statements mirror and broaden the von der Leyen Commission’s notion of agency. First of all, it signals to the possibility that Europe’s preferences might diverge from those traditionally associated with the ‘normative’ EU (Manners, 2002). For instance, the first-ever comprehensive European Security Strategy (ESS) – formulated in 2003 – placed advocacy of ‘effective multilateralism’ at the centre of the EU’s strategic goals. As such, strengthening the United Nations (UN), equipping it to fulfil its responsibilities and acting effectively were the key European priorities in foreign affairs (Anghel *et al.*, 2020: 29). Similarly, the 2016 EU Global Strategy was built upon its predecessor. Although it introduced a more critical view of multilateralism and a desire to address its weaknesses, it favoured relying on the international order’s multilateral architecture to respond to global events. Indeed, former HR/VP Federica Mogherini still envisioned achieving “security through cooperation” as the “strength of the European Union experience” (Idem). In this matter, the present-day Commission is not neglecting international cooperation, but it is signalling a more vital aspiration to act unilaterally.

Furthermore, Europe’s preferences may also differ from those of other international partners. For instance, early in the current conflict, the United States decided to evacuate family members of the US Embassy personnel in Kyiv. Yet, HR/VP Borrell stressed that EU states did not need to follow suit (Euronews, 2022). Similarly, at the outset of the war, the US spearheaded an approach of maximum pressure against the Russian Federation. It advocated for the complete termination of any relationship with Russia and expected all other actors to follow the same policy. Nevertheless, in von der Leyen’s welcoming of the then recently-elected German Federal Chancellor Olaf Scholz on 10 December 2021, she expressed that the EU pursued “a good relationship with Russia”. In effect, Europe’s interests did not align with its Atlantic partner because, unlike the US, Europe relied on Russia for 27 per cent of its crude imports, 47 per cent of its coal and 41 per cent of its gas imports (Siebold and Strupczewski, 2021; Thompson and Frater, 2022). Henceforth, although von der Leyen added that the ‘good relationship’ “depends first and foremost on how Russia behaves” and acknowledged that “Russia is taking a threatening stance towards its neighbours and that undermines Europe’s security”, the Commission still emphasised the importance of the EU-Russia nexus (Siebold and Strupczewski, 2021).

Europe’s appetite to project and implement an independent external policy is noteworthy, given that the continent has historically sought other partners’ direction in world affairs, particularly that of the United States. As a result, it has often lingered in its international response, expecting others’ consent before taking action – a fact that von der Leyen recognised when she claimed that the EU could make change happen by design, “not by disaster or by dictate from others in the world” (von der Leyen, 2020). Similarly, HR/VP Borrell has implied the same concern. He has encouraged the EU to follow its “own interests and values and avoid being instrumentalised by one or the other” (Anghel *et al.*, 2020: 9) and has guided his actions accordingly. For example, in a call with US Secretary of State Anthony Blinken back in December 2021, Borrell allegedly told him that “Nothing can be discussed about Europe without the EU”, going as far as citing the historical moment when the great powers divided up Europe after the end of the Second World War to underscore that present-day Europe was nothing like the Europe of 1945 (Gil, 2021). Indeed, after the cited conversation with Blinken, Borrell reiterated that both had agreed that any discussion on security in Europe would be conducted in coordination and with the involvement of the European Union (Idem).

Both Commission representatives, then, have accentuated the Commission’s role in turning the EU into a player with a fully-fledged place among the geopolitical powers. Furthermore, they acknowledged that the Union might diverge in its priorities from traditional allies and indicated that it might act independently and autonomously, which signals a more pragmatic and proactive approach, reminiscent of how traditional nation-states conduct their foreign policy.

It is true that every elected president promises similar opulent plans in their vision for the next five years. To some extent, von der Leyen's predecessor, Jean-Claude Juncker's Commission, comes closest to the Berlaymont's current ambitions. However, his "political Commission" looked inwards: it was concerned with an internal reform of the interinstitutional dynamics and strengthening the EU's democratic claim and legitimacy (Kassim and Laffan, 2019; Kassim, Connolly, Laffan and Bocquillon, 2019). Moreover, it conveyed that message towards European citizens and less to the rest of the nation-states. Like Juncker, to the extent that the previous presidencies included EU agency in world affairs in some form or shape, it was usually featured as a subordinate, even trivial, aspect of their overall governance programme. To the contrary, von der Leyen captured and articulated these eloquent goals into a concrete purpose: to institute "a geopolitical Commission committed to sustainable policies" that could make the EU "the guardian of multilateralism" (European Commission, 2019b).

She referred to its aspiration for a "geopolitical Commission" on the eve of taking office in November 2019, where she promised to head a geopolitical Commission that stabilises its neighbourhood, champions a rules-based global order, and counters the influence of forcible actors in the international arena. Moreover, the idea of a Union that is "more geopolitical, more united and more effective in the way that it thinks and acts" (European Commission, 2020a) was echoed in all her State of the Union speeches and permeated the ensuing work programmes and internal records. Therefore, von der Leyen made the attainment of the geopolitical Union, via the impetus of (also) a geopolitical Commission, the backbone of her policy – a fact that differs from previous EU executives, particularly in that no other president had outlined and emphasised as strongly the role of the Commission (not only of the EU) in global affairs. Furthermore, as has been demonstrated, this objective arose independently of events on the international scene and preceded the war that broke out in 2022, which speaks to its externality.

More importantly, the declared preference did not amount to mere eloquence and rhetoric. In the words of Borrell himself, "The European Union has sprung into action. While some expected us to dither, disagree, and delay, we have acted at record speed to support Ukraine, breaking taboos along the way" (Borrell, 2022b). Indeed, journalists and historians, intellectuals and decision-makers have recognised and celebrated the EU's unprecedented and swift response – not least because it seemed the war activated the EU's function as an international actor. In this line, the following section examines the Commission's actions in the light of the criteria set out in Table 1 to demonstrate that this revealed preference has indeed shaped the Commission's behaviour.

3.2. The European Union as a geopolitical actor in the Russia-Ukraine war

To start, the first package of sanctions was already agreed on 23 February 2022, a day before the invasion began. Accordingly, as political commentators have observed, the sanctions response was prepared *in anticipation* of the Russian breach of law (Tyushka, 2022), which is untypical of an EU that has often been criticised for its hesitation. Such indications of preparation and forecast – necessary features on any external action policy, as the criteria to qualify as a "geopolitical actor" settled – further imply that the Union understands the context and the role each actor plays in the ensuing power game – an aspect which Commission officials had recognised the Union used to lack. For instance, European Commission Vice President Valdis Dombrovskis urged the EU "to take the Russian threat seriously, after years of equivocation by Brussels toward Moscow" (Lynch and Moens, 2022). Unlike other times when the Union shied away from defining Putin's leadership, Dombrovskis – reflecting a sense of 'realpolitik' – claimed the following: "If we do not support Ukraine, it's not going to stop in Ukraine. Clearly Putin is now in some kind of aggressive war mood and unfortunately it is likely that this aggression will continue in other countries" (Idem). Moreover, with a clear intention to separate the actions of the Commission from those of national governments, he implied the latter still presented some "willingness to do some sort of appeasement of the aggressor" (Hanke Vela and Lynch, 2022a).

As Dombrovskis implied, the Berlaymont *was* demonstrating such shrewdness. Besides the planned restrictive measures, Ukraine's president Volodymyr Zelenskyy revealed that the EU had discussed with him at least five alternative options for responding to a Russian attack. Moreover, EU officials rejected revealing

any details, arguing that “it is a better deterrent to keep Putin in the dark about what measures might be used against him” (Cook and Casert, 2021), again demonstrating a better understanding of their challenges.

This enhanced sense of the threat is also evident from HR/VP Borrell’s analysis of Russia’s actions. He claimed that Russia sought influence over Ukraine and Belarus, as well as Central Asia, adding that the “fact that Central Asia is included in the stated perimeter of Russian security confirms that the question of NATO is a pretext, since no Central Asian state is a candidate for NATO membership”. In his view, then, Russia was acting as a revisionist power, with no legitimate justification for its actions other than his desire to “challenge the political and security order born after the Cold War” (Borrell, 2022a).

Borrell explained that Putin’s actions questioned three principles Russia had previously accepted. The first is the right of each state to freely choose to belong, or not to belong, to an international organisation and to be a party to treaties or alliances. Borrell believed that “in Russia’s eyes, this prohibition would not only apply to countries of the former Soviet Union but also to EU Member States like Sweden or Finland”. Furthermore, the second and the third principles are the non-use of force and the respect for the territorial integrity of all states (Borrell, 2022a). Throughout the conflict, the Union condemned Russia’s actions and justified its conduct based on different versions of these three principles. In doing so, the Commission reinforced the ideological perspective to guide its external action (see Table 1). For instance, on 1 March 2022, von der Leyen gave a speech before MEPs in the European Parliament’s plenary session. “This is a moment of truth for Europe”, she started:

Let me quote the editorial of one Ukrainian newspaper, the *Kyiv Independent*, published just hours before the invasion began: ‘This is not just about Ukraine. It is a clash of two worlds, two polar sets of values.’ They are so right. This is a clash between the rule of law and the rule of the gun; between democracies and autocracies; between a rules-based order and a world of naked aggression (European Commission, 2022a).

This ideological perspective was meant to support its preferred political direction. For instance, in that speech, von der Leyen added that the way Europe responded to Russia’s aggression “will determine the future of the international system. The destiny of Ukraine is at stake, but our own fate also lies in the balance”. Once this sank in, she added that it was necessary to “show the power of people that choose their independent paths, freely and democratically. This is our show of force” (European Commission, 2022a). Likewise, Dombrovskis resorted to the same ideological perspective to support further EU sanctions: “What other trigger do we need? There’s a full-blown war, Russia is committing war crimes on an industrial scale, what more do we need?” (Hanke Vela and Lynch, 2022a).

Naturally, this ideology also served to gather support to advance specific policy ideas in line with the Commission’s priorities (see Table 1). For example, the supranational institutions have wanted to strengthen and revamp the European energy system for years. However, effective change on this policy area had been strenuous given Member States’ asymmetrical dependencies on Russian supplies and raw materials. The Commission, however, relied on this ideological basis to support further progress. For instance, Commission’s Vice President Frans Timmermans frequently fell back to the material protection justification, arguing that reducing Russian energy imports meant “protecting our vital interests” (Mathiesen, 2022). The case of the energy market is further informative in that it showed that the Union could take measures that could be politically sensible (see Table 1), as great powers often do. In effect, in 2022, Russia supplied 40 per cent of the EU’s natural gas, about 27 per cent of oil imports, and 46 per cent of coal imports (Thompson and Frater, 2022). As follows, the big challenge for a wholesale break with Russia was that it would set prices soaring (Wanat, 2022a). According to Phuc-Vinh Nguyen, energy research fellow at the Jacques Delors Institute, “Cutting off Russian imports would result at a minimum in maintaining prices at extremely high levels and, most likely, if the ban were to last, to have them go higher, especially during peak periods of consumption” (Idem). And yet, the supranational institutions adamantly defended a complete ban of Russian oil. As Timmermans put it: “The barbarism that Putin is now showing in Ukraine needs to be met with resolve, and also with measures that hurt him, even if they might hurt us as well” (Mathiesen, 2022).

What was most striking, however, was that the Commission reacted in a quick and coherent way, showing none of the hesitation it had presented in previous crises and instead demonstrating a crucial condition

to qualify as a geopolitical actor. The first sanctions were immediately followed by three more packages against the Russia's financial system, its high-tech industries, and the political elite. In effect, the sanctions disconnected key Russian banks from the SWIFT network and banned the transactions of Russia's central bank, which paralysed billions in foreign reserves, thus effectively "turning off the tap on Russia's and Putin's war" – all at "the speed of light" (European Commission, 2022a). They also targeted significant sectors of the Russian economy. Ursula von der Leyen claimed the EU's initial sanctions made it "impossible for Russia to upgrade its oil refineries; to repair and modernise its air fleet; and to access many important technologies it needs" (Idem). The EU also suspended the licences of the state-owned *Russia Today* and *Sputnik* and closed its skies to Russian aircrafts.

Beyond the implementation of restrictive measures, the EU had sent its Cyber Rapid Response Team to Ukraine, pioneering a Permanent Structured Cooperation (PESCO) instrument to be deployed to a third country (Tyushka, 2022). Soon after the invasion, the Commission also agreed to supply the Ukrainian armed forces with weapons. Concretely, under the European Peace Facility (EPF), the EU provided a set of assistance measures, including personal protection equipment, first aid kits, fuel, and military equipment (Tyushka, 2022; Wunderlich, 2022). It is worth stressing that this was the first time that the EU purchased lethal weaponry for a third state. Additionally, on 13 April, the EU Council allowed for the EU Advisory Mission for Civilian Security Sector Reform in Ukraine (EUAM Ukraine) to provide support for the investigation and prosecution of international crimes committed in the context of Russia's war in Ukraine (Tyushka, 2022).

Moreover, the Berlaymont coordinated much of these efforts and remained active across a broad range of dimensions. It extended the exceptions to competition policy and macroeconomic policy coordination that were introduced in response to COVID-19 to help Member States cope with the potential detrimental effects of the war to their economies, particularly for EU countries sheltering Ukrainian refugees. It also unlocked unused regional and structural funds to be repurposed for humanitarian assistance. Furthermore, the Commission activated its Temporary Protection Directive for the first time and through the EU Civil Protection Mechanism provided medical supplies, tents, and generators to the Ukrainian population (Wunderlich, 2022).

Hence, all these actions feed into the making of a "geopolitical Europe" because it showed "early signs of the EU's adaptability to a rapidly changing security environment" (Tyushka, 2022). Along this line, the Commission also reaffirmed the EU's great power potential (Gehring *et al.*, 2017). By extending well-crafted and credible threats, the EU executive succeeded in projecting determination that coercion or force will be used (see Table 1). For instance, in her speech of 1 March, von der Leyen listed the measures the EU had taken and warned of Europe's resolution to take further measures if necessary: "And make no mistake", she said, "we will freeze their other assets as well – be it yachts or fancy cars or luxury properties. We will freeze that altogether" (European Commission, 2022a). Similarly, in the coming days to the EU-China summit on 1 April, EU diplomats stressed that von der Leyen and the President of the European Council, Charles Michel, would make it "absolutely clear" to Xi Jinping, President of the People's Republic of China, that his country will face "severe consequences" if it sides with Russia by circumventing sanctions or sending military support (Lau, 2022).

Furthermore, the Commission representatives projected themselves to the front of the conversation. Ursula von der Leyen and Josep Borrell coordinated with the US and NATO, spoke with Ukrainian leaders regularly and met with senior personalities in the government, including Ukrainian Foreign Minister Dmytro Kuleba, Prime Minister Denys Shmyhal and, of course, President Volodymyr Zelenskyy. What is more, they chose key, strategic moments in the war to show further commitment. For instance, Borrell visited Kyiv and the line of contact in Stanytsia Luhanska in the first week of 2022. This was the first trip by an EU High Representative to the line of contact in the Donbas since the outbreak of the conflict in 2014. Ursula von der Leyen also visited war-torn Ukraine, it did so at an incredibly sensible time and of great tension. Immediately after the reports on the mass civilian killings in Bucha emerged, the Commission spokesman Eric Mamer confirmed that Commission's President and Vice President would travel to Kyiv that week to meet with Zelenskyy (Jack, 2022d).

In addition, the Commission focused public attention on its predilection, stressing its role in the international response. In her speech of 1 March before the Parliament's plenary session, von der Leyen remarked: "All of these days, you see that more than 30 countries – representing well over half of the world's economy – *have also announced* sanctions and export controls on Russia" (emphasis added) (European Commission, 2022a). She implied that countries, including the United Kingdom, Canada, Norway, Japan, South Korea and Australia, were following the steps of the EU in the implementation of sanctions. Similarly, on 2 March, 141 countries of the UN's General Assembly voted to support Ukraine's sovereign rights, denouncing Russia's actions as a clear violation of the UN Charter and international law. In an opinion piece, HR/VP Borrell highlighted the EU's role in achieving that majority (Borrell, 2022e). Likewise, in the case of implementing sanctions, Borrell wrote: "We have done all this together with other countries to ensure maximum effect. The United States, the United Kingdom, Canada, Switzerland, Japan, Singapore, and many other financial and economic nerve centers [*sic*] *have joined us* in adopting tough sanctions" (emphasis added) (Borrell, 2022b). In addition, the Commission frequently spun the media narrative to the advantage of Europe. For instance, amid growing reports of disagreement and "internal splits" between Member States at the start of the war, EU officials quickly dispelled the innuendo "by forcefully stressing their unity and readiness to punish Moscow" (Euronews, 2022).

As *The Economist* (2022b) anticipated, with war at its doors, Europe indeed discovered its "capacity for action". Furthermore, the Commission's lack of hesitation in its response to the Russian aggression results even more remarkable compared to earlier crises. For instance, Capano and Greiff contended that the EU "became a bystander" in the war within the former Social Federal Republic of Yugoslavia, "the bloodiest conflict that occurred after 1945 in the very heart of Europe" (2019: 11). They added that the conflict "vividly exposed the European weakness to respond to the abrupt geopolitical changes that followed 1989 (Ibid.: 22). Since then, observers have condemned Europe's "politics of "deep concerns" and half-hearted sanctions" (Tyushka, 2022). For instance, after Putin's first invasion of Ukraine and annexation of Crimea in 2014, the Poles and Baltic countries were furious that Western European countries refused to roll out severe sanctions (Moens, Barigazzi and Lynch, 2022).

Another factor common in the 1990s and 2010s that hampered the Union's tenacious intervention in world affairs was the role of contrasting political views and interests among Member States. In the 1990s, differing political viewpoints, historical traditions and commercial interests resulted in inflexible positions and entrenched disagreements among Member States, ultimately undermining a cohesive European response to the conflict (Capano and Greiff, 2019: 11-12). Moreover, the supranational institutions lacked the competence (and the will) to enforce their preferred objectives and vision. As a result, European policy failed because the Commission could not mould Member States' interests into a common response and impose sanctions (Ibid.: 22). Consequently, the EU's incapacity to surpass its lingering internal divisions affected its potential to become the regional peacemaker and conflict mediator it had intended to be. Indeed, due to internal constraints, its actions were reduced to mere statements and declarations of intent, which remained substantially theoretical and did not affect the strategies of the opposing factions on the ground.

Moreover, the Commission capitulated on its opportunity to lead, instead yielding leadership to other international actors. For instance, the EU preferred to act via the mechanisms and instruments existing within the UN framework: the Commission frequently requested the support of the UN Security Council (Capano and Greiff, 2019: 14), while Member States preferred to sidestep the Union and do everything through the UN, usually by advocating for the adoption of UN Security Council resolutions (Ibid.: 18). Conversely, the UN had already retreated into the background in 2014, but it did so in favour of the emerging American leadership – and it appeared the EU was to follow. As observers chastised then, "the EU is in danger of becoming little more than the civilian wing of the Atlantic security alliance" (Sakwa, 2015: 553).

As is evident, the vacuum left by Europe was quickly filled by other international actors in both cases. For one, the UN, rather than the EU, became the pivotal actor in solving the Yugoslav crisis by imposing economic sanctions, deploying military troops, and creating safe areas in Sarajevo (Capano and Greiff, 2019: 16). Furthermore, Capano and Greiff found that "the EU was replaced by the Contact Group, comprised of USA, Russia, Great Britain, France, and the country in charge of the EU Presidency, in the peace negotiations;

while NATO became the Western leading military tool (Ibid.: 19). Finally, Member States also moved closer to the United States, which minimised the EU's role in the crisis.

In 2014, the EU was also “subsumed into the Atlantic system” (Sakwa, 2015: 559) to the extent that its foreign policy decisions were contingent on American policy. For instance, although the EU had initially been opposed to tough sanctions against Russia, Donald Tusk, the president of the European Council for the period 2014-2019, declared that Europe must maintain them “or risk a crisis with the White House” (Ibid.: 575). Moreover, Catherine Ashton, the first Union's High Representative of the Union for Foreign Affairs and Security Policy, also failed to forge a distinctive voice that could mediate between Washington and Moscow or reconcile the various concerns of the European capitals (Ibid.: 570).²¹ Indeed, the Russian Foreign Minister, Sergei Lavrov, is reported to have expressed surprise at “how little autonomy Europe really enjoyed when it came to the big decisions about the fate of the continent” (Sakwa, 2015: 575). As scholars put it, “This one-sided Atlanticism (...) accompanied by the entrenched fear of alienating Washington, serves only to confirm the death of Europe as the subject of its fate” (Ibid.: 569).

Moreover, to the extent that there was an exclusively European response, the baton was held by Germany. At the 51st Munich Security Conference on 7 February 2015, former German Chancellor, Angela Merkel, insisted that “there could be no military solution to the crisis in Ukraine” and defended that “peace in Europe could only be secured with Russia rather than against it” (Sakwa, 2015: 561). Naturally, several Member States disagreed with this perspective. Consequently, the multiplicity of opinions and lingering political disagreements made engagement with outside players complex and confusing. In turn, this hindered an effective response to the crisis, which sidelined the EU.

To be fair, the appointment of Federica Mogherini as the new HR/VP in the Juncker Commission altered this situation to some extent. She organised the EEAS, bolstered the Ukrainian desk, launched a review of the Eastern Partnership, and formulated the European security strategy. However, although this prompted “a discussion about the degree to which the EU needed to think more ‘geopolitically’”, the Commissioner did not define how this was to be achieved (Sakwa, 2015: 575-576). Thus, an EU “grand strategy” as that of von der Leyen, coupled with the institution's willingness to steer Europe towards a cohesive approach to the Russian question, did not exist yet. Hence, overall, the agency of the EU was found wanting (Ibid.: 570).

Many remarks can be drawn from these landmark cases. However, it suffices to say that the impotence of the EU in the past stemmed from two fundamental aspects. First, the centrality of the nation-state and its jealous defence of national sovereignty within the Union debilitated its ambitions to act with a single voice in a crisis. However, most importantly, the EU could not steer these internal divisions and direct them towards a common goal, let alone enforce a specific viewpoint of the desired outcome. Unlike present-day, earlier Commissions lacked a definite and explicit objective, supported by a specific ideological perspective, to guide its political direction in world affairs. This drew the Union towards Atlantic security, which “left the EU bereft of actor autonomy and policy instruments” (Sakwa, 2015: 574-575).

In this regard, the latter section served to determine the Commission's specific cognition and provide evidence that this preference has shaped its choices and actions. In addition, this brief historical comparison drew attention to the variables to be considered when studying the current Commission. As follows, the research can now examine if the Commission's identified preference *also* shaped its choices concerning activating the RoL conditionality mechanism against the Hungarian government. That is, the following sections will develop the causal graph set out in Figure 3. Accordingly, the research undertakes a press analysis of several major European newspapers, media outlets, official documents, interviews and opinion pieces to reconstruct the internal discussions and trace the decision-making processes throughout the first months of the war. This is followed by a discussion of the results.

21 Another interesting difference between the Union's response in 2014 and the present is the awareness of the threat (the first condition included in Table 1). In *POLITICO's* ‘EU Confidential’ podcast, journalist Suzanne Lynch interviewed Ashton, who acknowledged that the Juncker Commission did not understand whom the Union was up against in the dispute with Russia (referring to Vladimir Putin). In her commentary, she inferred that the von der Leyen Commission had been showcasing a different approach in this respect. For the episode see LYNCH, S. (2023) Ukraine grain strain - Von der Leyen 2.0 - EU diplomacy in review. [*POLITICO's* EU Confidential]. 20 April.

3.3. Intention to seize the opportunity

The Commission had envisioned becoming a competitive geopolitical actor by investing in alliances and coalitions, by promoting and protecting Europe's interests through open and fair trade and by strengthening the links between the internal and external policies. It intended to make use of "European diplomacy" to engage with partners both bilaterally and in multilateral frameworks, by negotiating agreements within its competence and mandates and work with partners (European Commission, 2020a). Nevertheless, once Vladimir Putin's intentions became clearer and the Russian threat materialised, EU diplomats portrayed the war as an opportunity for the Union to assert itself in the international arena beyond what was originally envisioned.

In the build-up to the Russian invasion, HR/VP Josep Borrell wrote in his blog that the EU "is a key player in European security". As such, it had to "seize the opportunity of this crisis with Russia to strengthen our unity and determination, to defend our security interests and that of the continent as a whole" (Borrell, 2022a). He added that, going into the meeting of EU Foreign and Defence Ministers in Brest, the EU had to substantiate its role, "backing it up with concrete action tracks, i.e., not just on what we think or want but on what we intend to do" (Borrell, 2022a). He also made clear that he would guide the Union towards the achievement of that goal:

During this week's informal Foreign and Defence Ministers meetings in Brest, we will work on the EU's precise role and contribution. We need to come with clear positions on what we want to achieve in these discussions on Europe's security architecture, and, even more, with clear actions and contributions. To achieve this aim, we Europeans must be united and formulate our answer in case Russia carries out its threats to Ukraine or the wider European security order (Idem).

Similarly, in her speech of 1 March, Ursula von der Leyen confirmed Europe would "stand up in this war, that is for sure that we will overcome, and we will prevail. We are united and we stay united" (European Commission, 2022a). Even more forceful, Commission Vice President Dombrovskis warned against appeasing the Russian leader: "Putin will continue his aggressive wars, he will always use this blackmail (...) These are lessons that should have been learned before. Appeasement of the aggressor is not working, and the aggressor needs to be stopped by all means" (Lynch and Moens, 2022).

At the Informal Meeting of Foreign Ministers in Gymnich, Borrell remarked that the aggression against Ukraine evoked a discussion on the European security architecture. "Most Ministers underlined that we are in a watershed moment", he stated, "a critical moment that will be a proof for Europe to be able to act as a political actor". To this, he explicitly stated that the "Union is certainly ready to respond directly to any aggression" (Borrell, 2022d). Days after the invasion, Borrell praised Europe's action, suggesting it had performed according to its vision:

In the week since Russia's invasion, we have also witnessed the belated birth of a geopolitical Europe. For years, Europeans have been debating how the EU can be made more robust and security-conscious, with unity of purpose and capabilities to pursue our political goals on the world stage. We have now arguably gone further down that path in the past week than we did in the previous decade (...) Russia's war has awakened a slumbering giant –one that is fully committed to supporting a free Ukraine (Borrell, 2022b).

Borrell argued that "in a world of power politics", the EU needed to improve its "capacity to coerce and defend [itself]", adding that "the essence of what the EU did this week was to use all policies and levers – which remain mainly economic and regulatory in nature – as instruments of power" (Borrell, 2022b). And, again, suggesting that the Commission would take advantage of the context, he added "We should build on this approach in the weeks ahead, in Ukraine but elsewhere too, as needed". In fact, he explicitly linked the war with the Commission's primary objective: "The core task for 'geopolitical Europe' is straightforward. We must use our newfound sense of purpose first to ensure a free Ukraine, and then to re-establish peace and security across our continent" (Idem).

3.4. The war's opportunity-structure: energy independence and forceful foreign policy

In early March 2022, an intense debate sparked throughout Europe, with all member capitals raising their concerns and advancing their arguments about why or why not the EU should decouple from Russia's energy supply to the Union. German Chancellor Olaf Scholz insisted that Europe had no alternative to Russian supplies, while Dutch Prime Minister Mark Rutte warned of the "enormous ramifications" of such a measure. In addition, Italy presented long-standing reservations about direct sanctions on the oil and gas sector, while Bulgarian Prime Minister Kiril Petkov warned that his country might seek an exemption from EU hydrocarbon sanctions if these were to emerge (Tamma and Hernández, 2022).

Until then, the energy debate had not been formally institutionalised. EU officials had shied away from any substantial measure in this regard, limiting their responses to different versions of the same line – "nothing is off the table" – and, hence, succeeding in avoiding further scrutiny. This strategy was abandoned once the Commission raised the option of an oil embargo. In a noteworthy interview with *POLITICO*, Dombrovskis revealed that the Commission was already assessing the possibility of targeting Russian oil and gas – albeit resorting to the trusted phrase, "nothing should be off the table" (von der Burchard and Sugue, 2022a). Furthermore, he advanced that new measures could be decided imminently – even before that week's EU leaders' summit in Versailles. Dombrovskis' intervention suggests that in March, EU officials were already considering an oil embargo as a likely response. Moreover, he attests to the Commission's intention to take a hard line against the Russian Federation, regardless of the costs. In his words: "Russia is now undertaking unprovoked and illegal full-scale invasion of Ukraine, so [what is the point of] us worrying about provoking Russia when it started an unprovoked war?" (Hanke Vela and Lynch, 2022a).

The Versailles Summit of 10 and 11 March was to prove decisive. Outside Brussel's halls, the United States and the United Kingdom had recently announced immediate bans on Russian energy – a development that could hurt the Union's prospects in leading the international response against Russia. On top of that, Moscow continued to issue warnings and outright threats to its neighbours. In response to the emerging debate in Europe, Russian Deputy Prime Minister Alexander Novak warned that any restrictions on Russian crude could spark oil prices and threatened to retaliate by cutting off the gas flow to Germany along the first Nord Stream pipeline (Tamma and Hernández, 2022). In this context, European Council President Charles Michel said upon arrival at Versailles that EU leaders would discuss three key issues: "Energy prices, defence, and technological innovation to create a more solid economic basis" (Eder, 2022a).

In the weeks leading up to the summit, all actors drew their red lines and took their positions. Ursula von der Leyen and the European institutions supported a decoupling from Russia's energy supply. The Commission had already proposed to slash two-thirds of Russian gas imports by 2023 and phase out Russian fossil fuels entirely by 2027 (Eder, 2022a). Its latest policy proposal suggested it would opt for a total and immediate ban on Russian energy resources, which Poland and the Balkan states had also favoured. On the other extreme, Germany, Italy, Austria, and Hungary pushed for a more moderate response. Given its current reliance on Russian energy, they argued that such a severe reaction could harm the EU. Overnight in Versailles, this view prevailed. The European leaders disagreed on a total ban on Russian oil, although they did leave open the possibility for a forthcoming decoupling. In the statement following the summit, the EU-27 committed to boosting economic independence, which implies eventually slashing Russian imports (Hernández-Morales, Wanat and Mathiesen, 2022).

The summit's outcome was insufficient, not least because of the Commission's expectations, but it was perhaps expected. According to Article 31 TEU, the Council has to adopt a unanimous decision to implement international sanctions, which seems challenging given the Member States' entrenched opinions and asymmetric reliance on Moscow's raw materials (Wanat, 2022a). For example, while France gets about 13 per cent of its oil from Russia, Austria imports 80 per cent of its gas and depends on its steady flow for its industry and energy power plants (Basso, Montanari, Killeen and Noyan, 2022). In 2022, 55 per cent of Poland's and 87 per cent of Slovakia's gas imports came from Russia (Wanat, 2022a; Hudec, 2022). And yet, Poland fervently advocated for stronger sanctions and even Slovak Prime Minister Eduard Heger, whose government had

acknowledged the adverse effects of an immediate decoupling from Russia, still pledged to support a ban on imports of Russian energy commodities (Hudec, 2022).

The Hungarian Prime Minister Viktor Orbán's reaction was quite the opposite. Following the summit, he celebrated that their "most important issue" had been "settled favourably", declaring that "there will be no sanctions covering oil and gas" (Hungary Today, 2022b). Indeed, Hungary was crucial in exempting energy supplies from the fourth round of sanctions against Russia. Orbán had made very clear in the coming weeks that "Hungary buys most of its oil and natural gas from Russia", that "90 per cent of Hungarian families heat their homes with gas", and that the "Hungarian economy could not function without oil and gas" (Hungary Today, 2022a). On 16 March 2022, the day after the adoption of the fourth package of sanctions, which included a ban on the import of Russian steel products to the EU as well as on EU exports of luxury goods, Hungarian Foreign Minister Szijjártó said that the government had managed to "ensure that the nuclear industry, natural gas, oil and coal are totally exempted from the latest round of sanctions" (Hungary Today, 2022c). As came to be usual, Szijjártó used the justification of the Hungarian people's security: "If Russian gas supplies were shut down, as some Hungarian leftists have called for, Hungarian homes would be left without heating and industry would be hamstrung". Furthermore, "without Russian oil supplies, fuel supplies would be disrupted, while without coal imports, the operations of iron and steel plants would be severely curtailed" (Hungary Today, 2022c).

To a lesser extent, Berlin wielded a similar logic. In 2022, Germany still got 55 per cent of its natural gas, 52 per cent of its hard coal and 34 per cent of its oil from Russia (Posaner, 2022). Accordingly, Chancellor Scholz argued that Germany was too dependent on Russian gas and oil imports to risk an import ban. In an official government statement, he claimed that "At the moment, Europe's supply of energy for heat generation, mobility, power supply and industry cannot be secured in any other way. It is therefore of essential importance for the provision of public services and the daily lives of our citizens" (Hanke Vela and Lynch, 2022a). He clarified that Europe's biggest economy would not make any further energy sacrifices and would keep buying from Russia (von der Burchard and Sugue, 2022a). Given that developing alternatives to Russian energy supplies could not "be done overnight", Scholz announced it was "a conscious decision (...) to continue the activities of business enterprises in the area of energy supply with Russia" (Idem).

In this context, even if the Commission intended to take a hard line by adopting a historic oil embargo against the Russian Federation, its ability to crack down on the aggressor depended on consensus among all Member States and, as is evident, that was inconceivable at the beginning of March. As the war dragged on, the EU executive endeavoured to pressure member governments to its preferred policy alternative, but the following rounds of sanctions would prove arduous nonetheless. According to one EU diplomat, by March, the debate on sanctions had moved into a second phase, where "many Member States are more cautious than in the first stages of the war" (Moens, Barigazzi and Lynch, 2022). Moreover, another EU diplomat added that the "fault lines (...) have been present from the beginning, but are starting to show more now that the sanctions are going further and further" (Moens, Barigazzi and Lynch, 2022). As will be evident, Germany and Hungary would prove particularly intractable.

3.5. The case of Hungary

Hungary did not distrust Russia before the war, unlike some of its European allies. In fact, under Orbán, both countries had forged an intimate partnership. In December 2021, Hungary's Foreign Minister Szijjártó received the Russian Order of Friendship²² from Lavrov, his Russian counterpart. By February, Orbán had visited Moscow on a peace mission, and once the war broke out, the Hungarian government dragged out its condemnation, settling for a soft accusation and shy disapproval. Its support for the Russian government, however, was more forthcoming. For instance, when the Orbán regime vetoed the accession of Finland and Sweden to NATO, Fidesz parliamentary speaker László Kövér told participants at a campaign event that "It is not right to invade another country (...) but is it serving peace or conflict to push the NATO front line into what was once Russia's sphere of interest?" (Makszimov, 2022d). Budapest also remained sceptical about

22 A state decoration that recognises and celebrates national or international efforts that improve relations with the Russian Federation.

Europe's enthusiasm for the Ukrainian cause. Orbán refused to allow weapons shipments to Ukraine to pass through its territory and opposed the idea of imposing a no-fly zone over Ukraine (Hungary Today, 2022d).

Even more frustrating for the EU, the Hungarian government remained unyielding in its opposition to adopting and implementing restrictive measures against the Russian Federation. Throughout the conflict, its anti-sanction rhetoric crippled the Union's ambition to act with a single voice in a crisis. During the first rounds, Budapest's objection was limited to expressions of sympathy with the "victims" of the sanctions' fallout. For example, after the EU revoked Russia's largest lender's license in February, the Hungarian Foreign Minister called *Sberbank* the "first victim of the Brussels' sanctions policy" (Makszimov, 2022b). However, soon after, these expressions would turn into public pledges to reject the adoption of sanctions, even if it hindered the EU's role in the war. The following month, Orbán claimed in a Facebook video that the sanctions imposed on Russia already had grave consequences, adding that they could turn dire if they were expanded to include the imports of Russian oil and gas and that extending sanctions to cover the energy sector would result in a disproportionately large burden on families and businesses (Hungary Today, 2022h).

Such claims would become Orbán's hallmark throughout the conflict and pivotal to understanding the development of Hungary-EU relations. Indeed, Budapest openly rejected banning Russian fossil fuel imports into Europe. In the words of Orbán's Press Chief, Bertalan Havasi, Hungary would oppose the extension of sanctions to the energy sector at all forums of the EU (Vaski, 2022). Senior officials and representatives reiterated that sanctions put "disproportionately and almost unbearably heavy burdens on Hungary and some other EU countries" (Hungary Today, 2022d). For instance, when on 8 March, the Hungarian forint reached historical lows, the government accused the EU policy against Russia, arguing that the restrictive measures were already causing severe losses to the Hungarian economy and that the forint was "also a victim of the Brussels sanctions" (Makszimov, 2022c). Furthermore, Hungary's Finance Minister Mihály Varga specifically blamed the energy measures: The biggest threat to the forint and the Hungarian people is that they are floating the extension of sanctions to the energy sector, adding that those who call for the extension of sanctions "want to make the Hungarian people pay the price of war" (Idem). Hungary's Foreign Minister's intervention succinctly captures the country's stance: "We made the Hungarian position clear from the start: we won't allow the Hungarian people to pay the price of the war or allow the security of Hungary's energy supply to be jeopardized". Szijjártó also added that "whereas Hungary regarded as important to maintain European unity, 'we have a red line, namely the security of Hungary's energy supply'" (Hungary Today, 2022c).

It shows how these concerns would clash with those of the European Commission, which is precisely what happened in the following negotiations. March featured a second summit and, while Hungary's narrow views on energy supply hardened; in wider Europe, the possibility of an oil embargo against Russian resources grew more enticing. Indeed, the urgency to target the energy sector as the most appropriate response to the aggression became apparent, partly because it became clear that oil revenues funded Putin's ability to wage war (von der Burchard and Sugue, 2022a). For instance, in the coming days to the European Council summit on 24 and 25 March, Irish Foreign Minister Simon Coveney stated that "Looking at the extent of the destruction in Ukraine right now, it's very hard—in my view—to make the case that we shouldn't be moving into the energy sector, particularly oil and coal, in terms of interrupting normal trade in that space" (Thompson and Frater, 2022).

Besides, EU unity had been impressive in slapping four rounds of sanctions on Russia. However, in line with its professed self-assured approach and stringent objective to lead the international response against Russian aggression, the Union had to move to the next level of restrictive measures. According to Ihor Zhovkva, deputy head of the Ukrainian presidential administration, "the European Union is lagging in the sanctions policy", adding that EU Member States "should not be afraid of an embargo on oil and gas sector. Because this is what brings additional money to Russia now" (Hanke Vela and Lynch, 2022b). Indeed, other countries had already banned imports of Russian oil, affecting roughly 13 per cent of Russia's exports. Within Berlaymont's halls, officials believed the energy embargo could send "a very strong signal" (Lau, 2022) as most Member States were too reliant on Moscow for raw materials (Wanat, 2022a).

Be that as it may, the will and ambition of the EU is one thing, while its prospects of achieving it are quite another. As Orbán's boisterous grievances showcased, the intrusion of national sovereignty prevented the Commission from steering the Union towards a more forceful and decisive approach to foreign affairs. Furthermore, achieving consensus among Member States seemed increasingly challenging now that so-called "sanction fatigue" had set in. In effect, prior to the summit, the Czech finance minister Zbyněk Stanjura had claimed that "A total ban on trade with Russia" was not realistic, especially since the measures already adopted were "working well". He added that "from what he had heard from fellow finance ministers from other countries", the proposal was unlikely to get support (Euractiv, 2022a). Similarly, Germany advocated reviewing the effect of the sanctions imposed so far (Hanke Vela and Lynch, 2022b). Moreover, Orbán warned ahead of the summit that he would join other countries in opposing sanctions on Russian energy imports, "and we will again protect Hungary's energy supply and the security of the country's ability to function" (Hungary Today, 2022d). "We must prevent ourselves from getting dragged into a conflict of war, and we must say 'no' to proposals that may lead to an air war with Russia" (Idem).

It is evident that many governments felt uncomfortable with the idea of an oil embargo. However, unlike Orbán, who threatened to block any severe measure concerning Russian oil and gas, thus, turning Hungary's concerns into open vetoes, other capitals were more willing to coerce Moscow into compliance with international law. For instance, the Czech National Bank Governor Jiří Rusnok insisted there was no need for more restrictive measures since sanctions had already landed "a devastating blow to the Russian economy" (Euractiv, 2022a). Nevertheless, as the fifth package of sanctions was being discussed and prepared, Czechia proposed to exclude all Russian banks from the SWIFT international payments system, as only seven banks were initially barred, and called on their EU counterparts to close ports to all Russian ships.

The two-day summit in Brussels centred on the response to Russia's attack on Ukraine, the security and defence situation in Europe, and Member States' energy and economic issues. It resulted in an EU-US agreement to increase the bloc's imports of liquefied natural gas from the United States and a pledge to "move quickly with further coordinated robust sanctions". In addition, EU leaders added a reference to "war crimes" committed by Moscow in Ukraine for the first time in the conclusions, preparing the ground for a legal case against the Russian leaders (Basso, Montanari, Killeen and Noyan, 2022) – but no oil embargo. Again, the result fell short of the Commission's expectations.

As such, it is perhaps not a coincidence that the day after the summit, von der Leyen decided to meet with activists from the Fridays for Future (FFF) movement to discuss, among other topics, the challenges involved in persuading the reticent Member States to back an oil embargo (Jack, 2022a). The activists specified Ursula von der Leyen's "strong commitment" to shift away from fossil fuels, which meant renouncing Russian oil in the context of war. Indeed, following this encounter, the Commission's President tweeted that "Rolling out renewables quickly" could warrant European countries "become independent of the Russian gas, oil and coal which Putin uses to finance his war machine" (Idem).

However, irrespective of how much the Berlaymont used its capabilities to frame the narrative and steer the public discourse towards its predilection, the fact remained that member governments continued to be entrenched in their views. Following the summit, for example, Orbán shared a video on social media where he said that despite some countries again raising the idea of extending sanctions to coal, gas, and oil, Hungary was able to prevent this (Hungary Today, 2022f). He added:

Such a sanction would mean that in a matter of seconds the Hungarian economy would slow down, and then stop. This cannot be accepted: it runs counter to the interests of the Hungarian people; and indeed it would mean that in reality we would be forced to pay the price of war (Idem).

Yet, it became clear that Hungary's intransigence concerning international sanctions –those targeting energy, but also allowing the transit of lethal aid across its territory or agreeing to plans to have an EU "peacekeeping" mission– was starting to exasperate other Member States, particularly those feeling the heat of the Russian aggression. Following the summit, the Czech Defence Minister Jana Černošková pulled out of the Visegrad Group meeting of defence ministers that was organised by Hungary (Jack, 2022b). Taking to Twitter, she wrote: "I have always supported the V4 and I am very sorry that cheap Russian oil is more

important to Hungarian politicians than Ukrainian blood”. Polish media followed, reporting that Monday after the European Council meeting that Mariusz Błaszczak, Poland’s Defence Minister, would also skip the V4 conference. That same day, Polish Deputy Head of the Foreign Affairs ministry, Marcin Przydacz, claimed before Polish TV that Orbán was “making a mistake” in his approach toward the war in Ukraine (Idem). Indeed, Poland had been vigorous in its efforts to pursue member capitals to move forward with stronger sanctions. The Prime Minister Mateusz Morawiecki chastised EU leaders who were “treating the sanctions as a smokescreen for their inaction”, arguing that “The sanctions are supposed to bring Ukraine peace, not to appease Europe’s guilty conscience” (Moens, 2022).

What is more, this frustration with the Hungarian regime was shared in Brussels as well –not least because it confined the EU executive to closing loopholes of sanctions already in place, instead of issuing a tougher message to the international community. EU officials were unsatisfied with the circumstances. One senior EU diplomat told *POLITICO* that the Commission had “taken a bit of a pause, but the feeling from our point is that the pause is lasting too long” and that the Commission had to “continue putting pressure on the Russian regime” (Moens, 2022). Moreover, there were indicators that suggested the Commission was pushing for more ambitious sanctions behind closed doors. Media outlets reported that in parallel, the Commission was preparing further-reaching sanctions “in case the EU needs to move fast” (Idem). In addition, that weekend, the Commission organised small working groups to try to come up with a compromise that could strike a balance between punishing Moscow and limiting the worst economic effects for EU members who rely on Russian energy.

This private discussion clarified the state of the politics surrounding a potential oil embargo. Several Eastern European governments, particularly, Poland and the Baltics, had advocated for a complete diversification of Europe’s energy supply chain since March and remained steadfast in a forceful European response to the Russian aggression. These countries pointed to the worsening humanitarian situation in Ukraine. Thus, they tended to frame the sanctions discourse as “morally inevitable”, downplaying the economic costs. To illustrate, consider Lithuanian Prime Minister Ingrida Šimonytė’s choice of words in a statement she sent to media outlets: “every single European coin paid for Russian gas and oil directly finances war in Ukraine and continuous extermination of the nation”. Likewise, when Poland’s energy minister, Anna Moskwa, first made the case for the EU oil embargo she explicitly stated: “We would be able to make this decision, keeping in mind that today Ukraine is not defending only Ukraine, but ... it’s de facto defending the whole Europe” (Wanat, 2022a).

Then, there was a large group of both Eastern and Western countries that were not very dependent on Russian oil and gas and that had been constructive on the sanctions overall but have stopped short of calling for stronger measures, to avoid mistakes but also out of respect to those neighbours who would languish (Moens, Barigazzi and Lynch, 2022). This group also included those who had originally been cautious in the imposition of tougher sanctions, but that had since changed their stance, guarantying they would not stand in the way. Slovakia and Italy are among those in the latter group.

Finally, the third group included the countries that disputed –or, even, defied– an energy embargo. Austrian Finance Minister Magnus Brunner, for instance, claimed Europe had to “stay cool” when it came to sanctions, adding that “If the sanctions hit yourself more than the other one, I ... think that’s not the right way to go” (Moens, von der Burchard, Eder and Lau, 2022). Germany also held out, fearing a deep recession could follow if energy supplies to its businesses and industries are cut too sharply in the short term. Nonetheless, since the European Council summit in late March, the German government had begun to signal a will to compromise.

On 25 March, Germany’s Robert Habeck had said that although it is “still too early for an energy embargo”, the country will come close to ending its imports of Russian oil and coal by the end of the year. He had stressed that the decision of companies to end individual import contracts by “letting their contracts with Russian suppliers run out, not renewing them and switching to other suppliers at an insane pace” was having a cumulative effect (Posaner, 2022). Moreover, on 1 April, government officials revealed Berlin was looking into forcing Kremlin-backed *Gazprom* to sell critical gas storage facilities across Germany. The nationalisation of refineries and energy infrastructure owned by Russian companies in Germany would result

in an expropriation of those sites (von der Burchard, 2022; Wickham, 2022b). Furthermore, Michael Kruse, the energy policy spokesperson of the Free Democratic Party (FDP), which was part of Scholz's governing coalition, seemed to personify the change taking place in the German ruling elite: "We cannot stand by as a sovereign state while an authoritarian regime puts the thumbscrews on us and tries to blackmail us" (von der Burchard, 2022).

Unlike Germany's efforts, EU diplomats had singled out the Hungarian government's intransigence, publicly and behind closed doors. Nevertheless, the Orbán regime was not about to change its position on the war in Ukraine any time soon – not least because it was resulting highly advantageous politically. Observers noted that Russia's invasion of Ukraine transformed the character of the Hungarian election campaign. Orbán soon came to understand that having nurtured a close relationship with Putin did not damage his party electorally –quite the opposite. Márki-Zay, the opposition's candidate for prime minister, acknowledged that Russia's invasion initially appeared to create a rallying effect for the incumbent (Bayer, 2022b). Orbán, therefore, emerged as a vocal supporter of anti-immigration policies, which were especially popular with voters in rural areas who espouse his traditional values. Moreover, the war enabled Orbán to cast himself as the guarantor of Hungary's peace and stability, who would ensure the country did not get drawn into the conflict (Idem). According to Péter Krekó, head of the *Political Capital* think tank, "the government's main message now is that it wants peace, while the opposition wants war", adding that "In a country that is close to the crisis, this kind of peace narrative approach into the election can be rather attractive" (Makszimov, 2022d). Indeed, Éva Mucsi, a 67-year-old from the southern Hungarian village of Bátaszék, embodied Krekó's outlook when she declared that the Ukraine war had a big impact on her vote –in favour of Fidesz, as she was afraid the Hungarian opposition would be putting the country at risk of getting involved, "if nothing else with its irresponsible statements" (Makszimov, 2022f).

Likewise, Europe's restrictive measures figured prominently in the electoral campaign. For instance, the week of the cancelled Visegrad meeting, several documents surfaced proving that the Hungarian government was aware and had allowed Russian hackers complete access to the IT system of Hungary's Foreign Affairs and Trade ministries. The opposition had called for the resignation of Szijjártó, who, in turn, took to Facebook to attack them and, perhaps, divert attention from the article published by *Direkt36* and *Telex*. Consider his defence: "The Hungarian left has made a promise that if they came to power, they would immediately make a decision to supply arms to Ukraine, and would immediately vote in favour of sanctions on oil and gas supplies to Europe, including Hungary" (Horváth Kávai, 2022).

This policy proved lucrative. Analysts believe that Orbán's "electoral promise not to make Hungarians pay the price of the war" was what won him a landslide election victory in April (Nattrass, 2022). Indeed, despite polling and predictions, Orbán won a fourth consecutive term in the general elections of 3 April. His ruling Fidesz party preserved the two-thirds majority in the Parliament, securing him an absolute majority. This victory meant that Orbán will remain at the EU's table of negotiations, which augured more pushback from Hungarian diplomats on the EU's foreign policy and, more generally, a brazen defiance to Brussels' ambitions to take a tough line with Moscow. In effect, in his victory speech that Sunday night, Orbán celebrated that his government had "won a victory so great that it can be seen from the moon, but certainly from Brussels" (Makszimov, 2022g). He also mentioned the Ukrainian president as one of the opponents his party had faced in the election (Bayer, 2022c), which seems fitting since that morning the Ukrainian president had taunted Orbán saying that Hungary had remained "the only one in Europe to openly support Mr. Putin" and questioned him as to why he had dedicated no effort to stop the war (Collins, 2022).

3.6. The political incentive of the Bucha atrocities and the menace of energy supply interruption

On 3 April, the same day as the Hungarian election, evidence of Russian soldiers massacring hundreds of Ukrainian civilians in execution-style killings surfaced. As Ukrainian troops recaptured the city of Bucha, on the outskirts of Kyiv, images emerged of the bodies of dozens of men and women lying on streets, some with their hands tied behind their backs. The graphic videos, which revealed undeniable war crimes according to the EU, generated enough momentum towards action. An EU source close to the matter told *Euractiv* that a

“red line has now been crossed, and therefore the mission ‘Isolate Russia from the world’ is launched” (Basso, Montanari, Killeen and Noyan, 2022).

Immediately, the EU threatened the Russian Federation with deeper sanctions. Ursula von der Leyen tweeted that “perpetrators of war crimes will be held accountable”, and Charles Michel said that “Further EU sanctions and support are on their way” (Collins, 2022). The following day, HR/VP Borrell publicly condemned the reported atrocities committed by the Russian armed forces: “Haunting images of large numbers of civilian deaths and casualties”, he claimed, “as well as the destruction of civilian infrastructures, show the true face of the brutal war of aggression Russia is waging against Ukraine and its people” (Council of the EU, 2022b). He also pledged that “The EU will continue to support Ukraine firmly and will advance, as a matter of urgency, work on further sanctions against Russia” (Idem).

The shocking images of mass graves and dead bodies littering the streets, along with accounts of torture, rape and murder, also united decision-makers across Europe in condemnation of the actions of Russian soldiers. France’s Foreign Minister Jean-Yves Le Drian stated that the most substantial possible economic and international pressure on Russia must be “maintained and reinforced” to compel the country to end its war on Ukraine (Collins, 2022). French EU Affairs Minister Clément Beaune made the case as well, arguing that oil sanctions were needed to stop Russia because the sector “brings in even more foreign currency in total than gas. Hitting oil, if I may say so, is very important” (Hanke Vela and Lynch, 2022d).

In that line, French President Emmanuel Macron – who held the rotating presidency of the Council at the moment – called for more sanctions and said it would coordinate with Berlin. In effect, the surfacing evidence affected Germany mainly, with officials implying the government had softened its opposition to a ban on oil (Moens, von der Burchard, Eder and Lau, 2022). German Finance Minister Christian Lindner indicated that a move on oil was under consideration, saying that “at the moment it is not possible to cut the gas supplies, so we have to differentiate with oil, coal and gas” (Idem). Moreover, the German Chancellor told reporters in Berlin that Germany “will decide on further measures in the circle of allies in the coming days” and vowed that “President Putin and his supporters will feel the consequences”. On 4 April, the German government said Scholz would “coordinate” with Macron (Idem).

While political opinion became increasingly homogeneous and amalgamated against Russia’s war crimes, Orbán emerged as the odd man out, as he favoured his relationship with Putin. He had called and asked the Russian government for an “immediate cease-fire” in Ukraine. However, he refused to condemn the actions in Bucha explicitly, instead requesting an investigation since “we live in a time of mass manipulation” (Jack, 2022c).

By then, EU officials were aiming to finalize the fifth package of sanctions before the next meeting of EU ambassadors. Therefore, it was known that including measures to limit Russian energy imports would not be feasible for the meeting on 6 April, regardless of the unexpected convalescence of opinions. However, the Union still needed to display its awareness of the developments in Russia so as not to become politically irrelevant. Accordingly, the Commission President promptly outlined the measures already agreed upon. In her speech, she acknowledged the “gruesome pictures from Bucha and other areas from which Russian troops have recently left”, adding that “These atrocities cannot and will not be left unanswered” (Moens, 2022). Thus, the day after the release of the images, the Commission President described the package’s content, to be put to EU ambassadors for approval at the COREPER II meeting, which included bans on Russian vessels and trucks entering the EU and stricter sanctions on four key Russian banks. The package also listed family members of oligarchs, strengthened export controls and hit more trade in goods used for military purposes. Further, under the resulting agreement, Russian coal deliveries worth around 4 billion a year would be phased out of the bloc’s energy imports.

While the sanctions went further than previously planned, there was increasing pressure to do more in the days ahead. For instance, Ireland’s Simon Coveney argued that “The sanctions issued so far are clearly not working (...) If sanctions don’t bite, if they aren’t forcing a rethink, then they aren’t working” (Basso, Montanari, Killeen and Noyan, 2022). On the other hand, EU diplomats argued that stopping short of an embargo on Russian oil and developing a compliance package for existing sanctions hampered the Union’s

image, especially after the reported atrocities over the weekend (Moens, von der Burchard, Eder and Lau, 2022). Ursula von der Leyen herself insisted in her announcement that the EU's proposed sanctions would "cut deeper" into the Russian economy but were not the end of the bloc's ambitions (Moens, 2022). She claimed that "More work is ongoing on stronger sanctions, including on Russian oil" – a claim she would back publicly again days later when she and Borrell visited Kyiv (Lynch, 2022b).

Notably, von der Leyen decided to disclose that the Commission will cut funding to Hungary for eroding the bloc's RoL standards on the same day as the sanctions' announcement. The president explained that the decision came after carefully assessing Budapest's responses to an informal letter the Commission had sent in November asking for information on its RoL concerns (Bayer, 2022d; Wanat and Bayer, 2021). The announcement seemed to put pressure on Orbán, since the next day, he took a conciliatory tone toward Warsaw, arguing that Hungary's "alliance with Poland must be solidified as we cannot remain standing alone in this storm" (Jack, 2022c). It is worth recalling that Hungary and Poland had formed a strong alliance in their attacks on democracy and the rule of law. Where unanimity was required – as in the sanction mechanism under Article 7 TEU – Hungary and Poland protected one another (Hutton, 2018; Jaracszewski and Theuns, 2022; Tamma, 2022). Nevertheless, Deputy Prime Minister and leader of the ruling Law and Justice party, Jarosław Kaczyński's reply to the Hungarian Prime Minister exposed fissures in the partnership. In an interview on 8 April, he slammed Orbán for refusing to condemn Russia's war crimes: "When Orbán says that he cannot see what happened in Bucha, he must be advised to see an eye doctor" (Jack, 2022c). He criticized the Hungarian leader's continued dialogue with Putin and warned that it could have implications for the Warsaw-Budapest alliance: "We cannot cooperate as we had in the past if this continues" (Idem).

Simultaneously, the day of Kaczyński's interview, when EU ambassadors were to meet to discuss the Commission's proposed fifth package, the most senior German politician in the EU, the head of the EPP, Manfred Weber, called for Russian oil to be banned immediately and for gas imports to be stopped "as soon as possible" (Hanke Vela and Lynch, 2022d). He said that Europe could not continue financing the Putin system "that is waging this horrible war" and that "as the Russian crimes continues" the EU must "take the next step to stop Putin". He concluded that, "Since the 24th of February, Europe is living in a new world. It changes everything" (Hanke Vela and Lynch, 2022d). Likewise, among the German ruling coalition parties, there was a growing consensus that paying Putin for oil will have to stop.²³ After a visit to Ukraine the chairs of the Bundestag's Foreign Affairs, European Affairs, and Defence committees – who belong to the governing Social Democrats, Greens, and liberals, respectively – called for an EU oil embargo "as soon as possible" (Lynch, 2022b).

On 18 April, Russia launched an offensive in Ukraine, renewing its bombardment in the east and south of the country, in what Kyiv said was part of a plan to seize the entirety of the country's eastern Donbas region (Gijs, 2022b). Russia's latest offensive in eastern Ukraine raised pressure for action. The next day, Ursula von der Leyen, Charles Michel, NATO Secretary-General Jens Stoltenberg and the leaders of Germany, France, Italy, the United Kingdom, Poland, Romania, and Canada held a videoconference with President Biden to discuss the situation in Ukraine (Idem). Then, on 20 April, Michel made a surprise visit to Ukraine to meet with Zelenskyy, who, in the joint press conference, called on the EU to adopt an oil embargo against Russia, noting that if the bloc does not take this step, the response to Moscow "will not be tough enough" (Newsroom *Infobae*, 2022).

More importantly, the developments in the war sparked an overwhelming majority of European lawmakers to demand an immediate full embargo on Russian oil, which built pressure across the bloc, in line with the Commission's ambitions. French Economy Minister Bruno Le Maire told French *Radio Europe 1* that "the renewed attacks have increased the urgency of weaning Europe off its dependency on Russian energy" (Gijs, 2022b). Mario Draghi also gave a statement suggesting that he believed EU unity would prevail over national interests. As former president of the European Central Bank, Draghi's words had weight, not least because Italy imported around 40 per cent of its gas from Russia. Moreover, he argued that "diversification

23 Germany was not only under pressure by the EU. Around this time, when Scholz was on his first visit to London, *The Times* reported that U.K. Prime Minister Boris Johnson would pressure his German counterpart to limit his imports of Russian oil and gas (Eder, 2022b).

is possible and feasible in a relatively short time”. He compared the search for alternative energy supplies to the vaccination campaign: like the COVID-19 pandemic, Europe’s “economic goal is to preserve growth and jobs”; however, “a lot will depend on the course of the war”. This is why the government’s determination to end Russian energy imports is paramount (Hanke Vela, 2022b).

On 23 April, fifty MEPs wrote a joint letter to Scholz, calling him to support an EU embargo on Russian oil. While they understood Germany’s fears about the economic costs if Russia decided to cut off gas supplies to the country as retaliation, the signatories made apparent these fears were “highly overstated” (Agence Europe, 2022). However, soon after, Poland’s state gas company *PGNiG* and Bulgaria’s Energy Ministry revealed that the Russian gas company *Gazprom* was poised to suspend deliveries to both countries (Reuters, 2022). Thus, after weeks of dithering and teasing, the war had finally reached the Berlaymont. Ursula von der Leyen described the Kremlin’s instrumentalisation of its energy leverage over Europe as “an instrument of blackmail” – “unjustified and unacceptable” (Murphy and Davies, 2022). Henceforth, the Union now had to add the direct and tangible threat to its interests (the halting of gas supply to Poland and Bulgaria) to the already urgent imperative of condemning Russia’s war crimes.

This context, particularly the prospect of a significant energy standoff, further reinforced the Union’s imperativeness to confront Russia’s actions. Soon after, Habeck declared that “Berlin could handle an embargo on Russian oil imports” and suggested the country could end its dependence on Moscow within “days”. But, more importantly, it had clarified that it would do so under specific conditions, which were *already under discussion* with the EU executive (Moens and Hernández, 2022).

As follows, Germany’s sudden conversion²⁴ solved the Commission’s most prominent strategic problem in the endorsement of the oil embargo, since without the “bloc’s kingpin”, it would have been almost impossible for it to impose an import ban on Russian oil (von der Burchard and Sugue, 2022a). Therefore, for the first time since the war began, the Commission found itself able to steer the Union towards adopting a more commanding stance in the Russia-Ukraine crisis. It enjoyed the policy and political momentum required for a shift in the institutional status quo (Bunea, 2020: 445), which would confer substantial reputational gains, particularly by allowing the Commission to project the Union’s capacity to use its economic and commercial weight and its institutional capacity to respond to political issues and to exert real influence in world affairs (Bloj, 2021). However, while one of its significant obstacles appeared settled, the other impediment –Hungary’s inflexibility in its defiance against the EU’s imposition of an oil embargo– remained unwavering. Indeed, Foreign Minister Szijjártó stressed again that Budapest would not support any sanctions on the Russian energy sector. Consequently, Orbán emerged as the single biggest roadblock to ratcheting up a forceful message against Moscow.

3.7. The Commission’s bargaining power: grants and linkages

It is well known that formulating the Union’s official proposals always involves bargaining between institutions and, naturally, with Member States. Furthermore, research shows that the Commission is a political entrepreneur, using incentives and seizing political opportunities to facilitate competence or status gains in interinstitutional negotiations (Bunea, 2020: 440). Thus, building on the literature acknowledging the Commission’s rationalist and strategic thinking (Falkner, 2018; Closa, 2019; 2021; Bunea, 2020) and considering the Commission’s decisions in the present case, it is reasonable to suggest that the Berlaymont envisioned a scheme to overcome the Budapest cooperation problem that arose during the negotiation on the proposal for a sixth package of sanctions.

Firstly, the Hungarian government’s policy on sanctions was in direct contradiction to the Commission’s overall goal of ensuring “a stronger Europe in the world” (enhancing its global role), particularly in its role in “addressing (...) crises and conflicts, through the mobilisation of all our instruments”, as well as advancing “EU strategic interests and objectives abroad and defend a rules and values-based international

24 It is worth noting that the Austrian government was not only persuaded by the images like the rest of member capitals, but it was also pushed by Germany’s changed policy stance.

order” (European Commission, 2020c). Secondly, the saliency of the Bucha atrocities, the renewed attacks in Ukraine, and Moscow’s direct assault on the EU’s interests all operated as incentives which naturally pressed the Commission to challenge Orbán’s stance. Finally, given Germany’s dramatic turnaround, the oil embargo was expected to feature in the forthcoming negotiations. Indeed, on 27 April, Ursula von der Leyen revealed that the Commission had prepared meetings over the weekend between EU countries and the senior members of her team to discuss the new sanctions’ proposals. She said the Commission had been working closely with the Member States to develop a European response, and journalists reported a broad sense of optimism concerning the success of the weekend meetings.

This context made the Commission’s efforts to persuade Hungary all the more likely. Indeed, the incentive to use its bargaining power against Budapest depended on the Commission’s anticipation of Hungary’s opposition to its draft proposal. According to previous studies of the EU executive, when the Commission incurs a hostile negotiation partner or predicts losses, it is stimulated to apply a range of strategies to increase its bargaining power and try to prevent or reduce the magnitude of these losses by moving negotiations outcomes closer to its ideal point (Bunea, 2020: 445).

The Commission’s goal, then, was to enhance its negotiation leverage and maximise its chances to shape the outcome of the weekend’s negotiations to pass the proposal. It needed to predispose, or press, the Hungarian government towards supporting the oil embargo. To do so, the Commission expanded negotiations along a new issue dimension. Indeed, the same afternoon that Ursula von der Leyen announced the Commission-Member States meetings over the weekend, she also revealed it had notified the Hungarian government of the activation of the RoL conditionality mechanism against it.

The timing is the first striking feature in the progression of events and an obvious factor to consider.²⁵ The Commission has had countless occasions to initiate the legal process against Hungary. In fact, per the informal initial steps envisioned in the process towards triggering the RoL conditionality mechanism, the Commission sent a letter to the Hungarian government, asking questions concerning public procurement, risk of conflict of interest and corruption, on 19 November 2021. Hungary had two months to respond, which would then “feed into the Commission’s assessment” of whether it should move ahead with the penalty process (Wanat and Bayer, 2021). The answers were received in January, by February at the latest considering the time constraints of administrative bureaucracy. And yet, the Commission still delayed its actual application.

Furthermore, as has been heavily criticised in scholarly circles,²⁶ the Commission then proceeded to wait for the CJEU’s ruling on the legal feasibility of the instrument. Two weeks after the Court ruled against Poland’s and Hungary’s claims to illegitimacy, the Commission published its guidelines on how it would use the conditionality mechanism but did not make any further movements publicly. Moreover, officials indicated that plans to activate the mechanism “had been put on ice” (Bayer, 2022a) – that is, until April, when right in the middle of the highly politicised discussion on the plausibility of an oil embargo, the Commission decided to trigger the conditionality mechanism against Hungary, who coincidentally was hampering the implementation of said oil embargo. Henceforth, in view of the broader context in which the main actors were engaged, it seems unlikely that both decisions are unrelated. In addition, as early as March, EU diplomats involved in the RoL saga conceded that “other considerations could play a role” in the EU’s decision over whether to withhold regular budgetary funds, such as the possibility that Hungary could block future Russian sanctions in retaliation (Bayer, 2022a). In short, Commission officials themselves connected the two issues, or at least noted their conditionality on each other.

25 As suggested earlier in the chapter, it is further telling that the Commission’s announcement to trigger the conditionality mechanism applied only to Hungary. Various scholars have put forward the supposition that the Commission’s decision to waive the activation of the mechanism in the case of Poland was a reward for Warsaw’s efforts in the war. Concretely, Poland has served as a reliable ally for the EU, leading the humanitarian and political response to Russia’s invasion of Ukraine. Henceforth, it is argued that “going after Hungary and giving Poland more slack would signal that Poland’s unity with the rest of the EU and its risk-taking vis-à-vis Russia warrant a reward” (Fox, 2022). If, as has been extensively argued, Poland’s efforts in the Ukraine crisis played a role in the Commission’s final decision to refrain from initiating the political process against Warsaw, then why would Hungary’s obstructions not feature in its reasoning as well?

26 Kelemen was particularly unsympathetic of the Commission’s decision to suspend the application of Regulation 2020/2092 pending the outcome of ECJ rulings, observing that it was “unlawful, and political crises are no excuse for suspending law enforcement” (Kelemen, 2022: 177).

Besides, most EU diplomats in Brussels noted that since the war had break out, the EU's attention had shifted and had been, in words of an EU official, mostly "occupied with the Ukrainian crisis, understandably" (Bayer, 2022a). If that is the case, then it is reasonable to expect that the Commission envisioned the triggering of the RoL conditionality mechanism and its potential effects as part of the broader backdrop of the energy negotiations.

3.8. The RoL as a bargaining chip

The Commission aimed for cooperation during the following weekend's negotiations, which implied it needed Hungary's commitment to renounce its veto on sanctions to the Russian energy sector. The Commission effectively introduced a new variable into the energy negotiations by publicly initiating the RoL disciplinary procedure against Hungary alongside the sanction negotiations. This enabled the Commission to press Budapest to its preferred outcome in two ways.

Firstly, introducing the RoL dimension into the Russian sanctions' negotiations played out as a bargaining strategy that enabled both parties to exchange mutual gains and, hence, achieve cooperation in the forthcoming negotiations. By holding a simultaneous discussion of the two – at first sight, separate– issues, the Commission opened an array of alternatives for Budapest. To start, the benefits of adopting an oil embargo accrue primarily to the Commission, while the costs fell initially on Hungary. The introduction of another issue (the granting or freezing of funds via the RoL conditionality mechanism) to the sanction's negotiation would ideally increase the possibility of redistributing benefits. It is worth stating that since the Commission was already withholding funds from the recovery package against Hungary, it had to reintroduce the prospect of awarding or suspending EU money through another instrument for the strategy to be credible. In addition, both parties had to present different preferences over the two alternative agreements, which had to be valued differently for this scheme to work. Accordingly, where the Commission prioritised adopting an oil embargo (first issue: sanctions negotiations), Hungary favoured securing EU funding (second issue: RoL conditionality mechanism).

Henceforth, it is presumed that by forcing Hungary to negotiate the two issues simultaneously, the Commission could induce the Hungarian government to forego its preference for the sanction's outcome because the strategy allowed each side to receive concessions on the issue it believed of greater relative importance. Hungary's sacrifice on its "red line" (sanctions that would affect its energy sector) would pose no problem if the EU funds were guaranteed, while the Commission could adopt the oil embargo and, consequently, project determination in the international arena to the detriment of the RoL protection within the Union. In this way, the Commission forced Budapest to moderate its stance on the oil embargo, which it could not have done without introducing another issue to negotiate. Indeed, Budapest's "red line" on the Russian sanctions could become more flexible when considered together with the possibility of favourably settling the issue of funds raised by introducing the RoL conditionality mechanism. Accordingly, introducing a new dimension with which to negotiate increased the Commission's prospects of securing cooperation with Budapest.

Moreover, using monetary means via introducing the RoL conditionality mechanism made sense in the case of Hungary. For one, the Commission knew Orbán needed EU funds to fix his budget. He all but claimed so when in a letter earlier that month, the Hungarian Prime Minister had asked the Commission for loans of billions of euros to "help manage the fall out of the Ukraine war" (Makszimov, 2022e). Orbán is reported to have stated in the letter that "Hungary is asking only for the earliest possible and effective access to the EU funds earmarked for it, and for the flexible use of these funds for the purposes best suited to the crisis" (Idem). Orbán's backtracking from a prior position of not requesting the money from the recovery fund further attests to his need for funding. As such, EU diplomats were convinced Hungary would eventually be persuaded to agree to the oil embargo. In fact, several diplomats had said that the Hungarian concerns regarding the energy sanctions were economic, not political, which paved the way for a political compromise to address those worries (Moens and Hernández, 2022). The introduction of a second dimension in the negotiations of sanctions (the RoL conditionality mechanism) provided the opportunity to contemplate such a political commitment in the first place.

Secondly, given the information available to the Commission, introducing the RoL dimension into the sanction's discussion also worked as a form of extortion to encourage Budapest's commitment. Concretely, the logic behind a coercive use of linkage is to incite states to "adjust their behaviour when they realise that they are better off cooperating than trying to gain an advantage that may be neutralised" (Bailer, 2010: 749-750). Analysts, journalists, and policymakers had stressed Hungary's economic situation: skyrocketing inflation, energy prices, and public debt had coalesced into a grave financial crisis. Moreover, after the pre-election spending spree, the incumbent government had to rein in a swelling budget deficit, which was expected to worsen due to the foreseen economic stagnation from supply chain disruptions and the effects of the war. For instance, Havasi, Orbán's Press Chief, underlined that the economic impact of the war raging on Hungary's borders, which "had seen nearly half a million Ukrainian refugees arrive in recent weeks, was a heavy burden on the economy" (Makszimov, 2022e).

Moreover, the Commission's efforts to make the whole process visible support this argument (Bunea, 2020: 445). By choosing to announce the intention of activating the RoL conditionality mechanism against the Hungarian government prior to its actual implementation, the Commission not only indicated that coercion could be used but the announcement itself already produced effects which would not play well among Orbán's constituents and would become a tough sell for him in the domestic political context (Hegedüs, 2022). Indeed, the announcement prompted the Hungarian Finance Minister to reassure investors and markets that the Commission's move to launch the disciplinary procedure that could freeze funding for the country would not result in Budapest losing out on EU money (Makszimov, 2022h). Henceforth, the Commission effectively projected its resolve, enhancing its negotiation leverage as the impending suspension of capital in an economy that urgently demanded funding could easily persuade the Orbán regime into agreeing to the oil embargo.

The likely caveat raised here is that this strategy could be read as a blatant power play by the Commission. In this view, as the EU executive relied on a cooperative arrangement with Budapest to achieve its preferred outcome, this approach would rather be counterintuitive, augmenting controversy and conflict. Nonetheless, that the ultimate goal was to opt for cooperation does not automatically imply that the Commission would avoid conflict altogether. One, in view of Budapest's disposition until then, the Commission considered and anticipated a more adversarial negotiation partner. Most importantly, introducing a scenario where Hungary lost funds via the conditionality mechanism expanded the agenda of possible benefits to be derived by adding a second dimension to the discussion. Through this strategy, the Commission superficially devised the political incentive to shift the *status quo* and achieve concessions on one troublesome negotiation.



Figure 4: Chronology of events leading to activation of RoL conditionality mechanism against Budapest.

4. Discussion of results

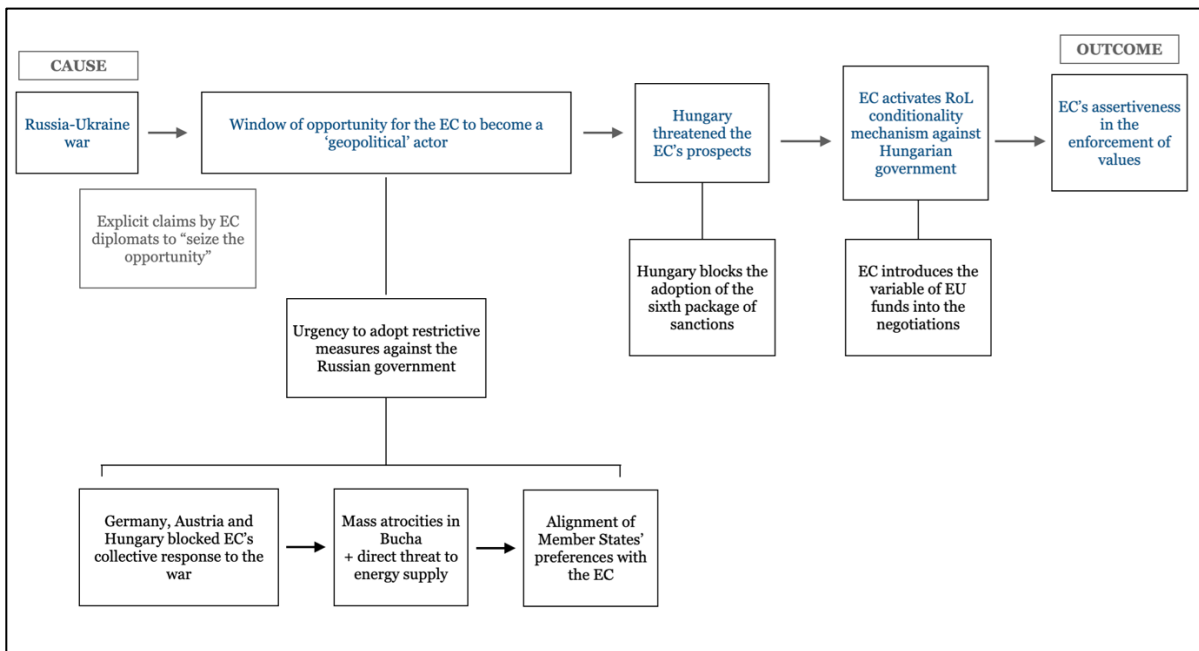


Figure 5: Event-history map of the Commission's assertiveness.

The research sought an explanation as to the Commission's apparent and unexpected assertiveness in the enforcing of the Union's fundamental values. It presumed that the Russian Federation's invasion of Ukraine and the ensuing military emergency it sparked in Europe influenced the Commission's behaviour. The causal process fleshed out above elucidates *how* the war led to the observed outcome of an assertive Commission in the enforcement of the RoL. The findings, moreover, call for some additional remarks.

4.2. War as a window of opportunity

As is evident from the explanation, the essential background condition which set in motion the series of enabling experiences that made possible the observed outcome was the state of war in Europe. Indeed, the hostile context provided a uniquely conducive environment for rapid institutional development. In the first place, as theorists have posited, war induces shared "security imperatives" that stimulate a collective response (Kelemen and McNamara, 2022: 972; Genschel, 2022). This dynamic was evident after unveiling the war atrocities committed by the Russian army in several Ukrainian towns. Following the discovery, the Irish Foreign Minister declared, "Ireland will be pushing hard for a significant ratcheting up of sanctions beyond where we have gone to date". Taoiseach Micheál Martin echoed this opinion saying that "every conceivable pressure" needed to be put on Russia to bring an end to the war following the "appalling and barbaric crimes" committed by the country's troops. Likewise, several representatives of the Italian government agreed with the proposal to stop oil imports from Moscow. Foreign Minister Luigi Di Maio confessed that "The atrocities of Bucha show us not only that the war in Ukraine is not over, but also that its intensity and atrocity continue to increase" (all in Basso, Montanari, Killeen and Noyan, 2022).

These images managed to unify almost all governments on needing a stricter approach to Russia because it produced a strong sense of loss aversion. Indeed, the military threat was already close – the war was not happening in faraway Asia, the Middle East, or the Caucasus Mountains, but in the immediate EU frontier. Furthermore, it is hard not to despair when seeing war up close. As the words of Di Maio suggest, the images brought the reality of the war closer to home: it made the risk of loss of life, liberty, and wealth real and immediate to European citizens and their governments (Genschel, 2022). The Ukrainian president acknowledged this collective sentiment in an address following the reporting. Zelenskyy warned that Ukraine is not the last target of Russian aggression: "from Odesa there is only one step to Moldova. Therefore, the fate of the entire Central Europe and the Black Sea region is decided on the territory of Ukraine", which means "defending the freedom of Ukraine means protecting the security of Europe" (Neagu, 2022).

This logic was reproduced when Putin cut off gas supplies to Bulgaria and Poland. It stimulated an even stronger reaction from European actors because it operated as a direct liability and an immediate peril to their wealth and future security. Moreover, the disruption made it clear that the EU's energy architecture had led to imbalances and unendurable vulnerabilities, which further crippled the EU in defence of its interests. As a result, the Member States that were unconvinced were forced to rethink their long-running relationship with Russian energy. This was the case in Germany, for example.

Hence, the war's looming effects, particularly the threat to Europe's energy supply, highlighted the comparative advantage of cooperation. It became evident that Member States could only achieve the required level of resilience demanded by the exigencies of the threat together, *within* the framework of the European institutions. The feeling of insecurity, then, increased the willingness of member capitals to support the Union's efforts in developing a collective defence action (i.e., an oil embargo, which simultaneously operated as the first step in Europe's de-Russification of its energy architecture).

The capitals' agreement on the urgency to confront Russia coincidentally corresponded with the Commission's preference, both in the specific adoption of the oil embargo and in the broader goal of strengthening the EU to become an adequate geopolitical power that could be able to respond to the aggression and deal with the ripening effects. Indeed, governments were willing and ready to contribute additional powers for the Union to become more prominent internationally. For example, José Manuel Albares, the Spanish Minister of Foreign Affairs, advocated "for an EU common defence policy", arguing that the Russian invasion of Ukraine has revealed the urgency (Heller, 2022). In particular, he insisted that the "humanitarian catastrophe in

which Russia is plunging Europe” requires the design of a new economic order and forces the EU to rethink strategies and have a stronger voice at a global scale (Idem).

Moreover, EU diplomats implied that this priority change was motivated by the desire to ensure that Europe’s voice continued to matter internationally. Here it is worth recalling that, after von der Leyen outlined the fifth package of sanctions after the surfacing of the images, EU officials had lamented that the package did not include an embargo on Russian oil and, given that other actors had already banned oil imports, it cramped the Union’s reputation. This assertion suggests that acting as a geopolitical power (swiftly, coherently and to the rhythm of international events) had become a priority for all.

Hence, in second place, the war shifted the system of preferences within the Union to the convenience of the Commission –which is no small thing, as a handful of national governments have often prevented the EU from speaking with a single voice on the global stage (Koenig, 2022). Indeed, the unanimity requirement has been particularly detrimental to the EU’s capacity to act, to the extent that observers celebrated Europe’s “newfound unity” as they were “more accustomed to recriminations and rivalry from EU nations over foreign policy” (Van Der Staak, 2022). The same is true of achieving an independent energy policy –a traditionally challenging endeavour partly because of Member States’ asymmetrical and extended reliance on energy imports. In this case, one should also count the Russian factor, as European capitals had very different political and economic relations with Russia, which crippled an effective EU response to the security of energy supply risks (Anghel *et al.*, 2020: 16-17).

Therefore, change in these areas would only happen if political will, unity, and coordination among the EU-27 existed. Hence, what the war did was accelerate the process towards consensus. Additionally, it created the optimal conditions for institutional change if seized. As the war shortened the time to negotiate, the Commission’s priorities faced less pushback due to the hostile context. Thus, in third place, the war increased the uncertainty and the time constraints – a circumstance that the Commission harnessed to advance its goals: implement an oil embargo, secure a tough response against Russian aggression, and achieve legitimacy in world affairs.

In sum, without a military threat, the Commission lacked a solid justification to support its claim to extend its powers to turn the Union into a geopolitical power. Likewise, without the effects of the war, the EU would have remained crossed with lingering tensions, as the national elites would have lacked the political incentives to cede power. Consequently, the research confirmed that an external shock indeed increases the demand for collective solutions to shared problems, paving the way for rapid institutional development. The war designed a conducive environment (the impulse of shared security imperative + Member States’ support + time constraints) that resulted in a competent Commission in foreign policy and an assertive Commission in enforcing values. Indeed, concerning foreign policy, it enabled the Commission to progress towards reducing the EU’s external vulnerability. In this respect, the oil embargo was a leap in the quest for energy independence and, therefore, in its acknowledgement as a geopolitical actor.

Furthermore, in the case of enforcing values, the high levels of violence and the saliency of the hostile events in the war spurred the political incentive (enabled by the security imperative) that aligned Member States’ preferences with that of the Commission. Now that the oil embargo was a demand of all Member States, the EU executive had the encouragement and the backing to be more assertive against Hungary, resulting in the effective activation of Regulation 2020/2092 as a bargaining strategy.

4.3. Caught between two normative sets?

As the investigation revealed, the activation of Regulation 2020/2092 is better understood in the context of the Russia-Ukraine war. The operationalisation of the RoL conditionality mechanism does appear as a paradigm shift in the Commission’s traditional response to centralised enforcement because, instead of seeking dialogue and repeated confidential exchanges to preserve favourable relations with the capitals, its activation publicly and visibly demonstrated that it was willing to confront a member government (even despite the potential risks to the fulfilment of other of its responsibilities). However, its activation did not stem from any change of heart towards prosecuting RoL violations.

As the research showed, all the necessary factors aligned for the Commission to adopt the restrictive sanctions against the Russian energy industry, which was imperative in the war to turn the EU into a geopolitical actor. Indeed, the EU had to react quickly and coherently to international crises. Most importantly, the hostile context remedied the traditional impediment to effective EU responses: Member States' preferences converged with the Commission's. In this context, the Hungarian veto was the only obstacle hampering the Commission's achievement of its objective. As such, demonstrating rational, farsighted, and strategic thinking, the Commission used the instruments at its disposal to design its preferred negotiation conditions, enhancing its bargaining weight. By initiating the RoL disciplinary process alongside the sanction's negotiations, the Commission brought the possibility of granting (or suspending) European funds to the table. Knowing that securing European funds was Hungary's top priority, the Commission intentionally opened this other front, virtually linking the two negotiations, to secure concessions on adopting the oil embargo. It also permitted persuading Budapest in the traditional way: by demonstrating that, unlike past Commissions, the von der Leyen Commission was bark *and* bite.

The Commission only chose to "enforce values" as leverage to advance its interests elsewhere. Therefore, the outcome observed (i.e., the assertiveness of the Commission in the enforcement of values) was not the end goal of the Commission but an unforeseen (although welcomed) effect of its cross-policy strategy to persuade the Hungarian government in the sixth package of sanctions' negotiations. This further draws attention to two developments currently occurring at the institutional level: firstly, the Commission is caught between two normative standards but increasingly favouring one. A transition seems underway: the Union is moving from its origin as a peace project, based on an identifiable civilian agenda, to a competitive geopolitical actor – keeping in step with changes in the world order.

In effect, the return of great power competition is challenging its normative commitments, and so, also the fundamental premises of the EU's model (Anghel *et al.*, 2020: 8–9). This reality has placed the Union at a crossroads, where its most recent actions are likely pointing which way it is to lean in the future: as it is increasingly attentive to the power-driven world, interests naturally prevail over values and norms, not least because when these values and norms encountered a resistant other (in this case, Russia and the conflict brought about by Moscow) the norms themselves become geopolitical, even if their intent is inherently benign (Sakwa, 2015: 564). This was confirmed by the Commission's instrumentalisation of the enforcement of the RoL to achieve another objective deemed more important.

Secondly, as the Commission's assertiveness in the enforcement of the RoL was an unintended consequence, the research argues that the EU executive prioritises other roles (becoming an international actor over the Union's role as a prosecutor) and policy areas (Foreign policy over Justice and Home Affairs) before its responsibilities as Guardian of the Treaties. In this respect, the investigation joins the panoply of authors who have theorised the Commission's faulty approach to the enforcement of EU values from heterogeneous perspectives and reached the same conclusion. For instance, Bárd and Kochenov's Commission (2022), which tended to "look away"; Professor Pech's Commission (2022) which "derailed its duties", and Kelemen's and Pavone's "policy of forbearance" (2022).

Chapter V. Conclusions

The present investigation provided the opportunity to analyse a novel political phenomenon. It set out to answer two overarching questions: what explains the Commission's newfound assertiveness in its approach to the enforcement of fundamental values, and what effect, if any, the return of the war in Europe may have exerted on it. As was explained, the academic input primarily centred on the Commission's deficiencies in its enforcement responsibilities, which, in turn, muddled scholars' attention regarding the informal changes taking place at the institution. As a result, given that little prior knowledge about this phenomenon existed, the investigation set out to remedy this predicament and persuade readers to reconsider their outlook.

The research found that the EU executive triggered the RoL conditionality mechanism as a bargaining strategy to advance its preferred policy outcome in an interinstitutional negotiation. Concretely, it gave the Commission leverage to press the Hungarian government into unblocking the discussion on the oil embargo for its adoption. This was a priority of the Berlaymont because the endorsement of international sanctions would reinforce the EU's credibility as a geopolitical actor by contributing to defining and projecting a genuine common foreign policy. However, as a result, the investigation found that the Commission does not prioritise enforcing values. In this respect, although the RoL conditionality mechanism was activated and, with any luck, will help to temper the slide towards authoritarianism in Hungary, this outcome was not the end objective. Indeed, the research found no evidence that the war propelled a collective impetus within the Commission to support a more rigorous enforcement policy.

Conversely, the ambition to turn the European Union into a geopolitical actor is prominent in the ideology and the Commission's work. The von der Leyen executive embodies an ambitious administration with a specific plan for the Union on the international chessboard. Therefore, the eruption of the Russo-Ukrainian war provided the opportunity to substantiate the Commission's potential in steering the EU towards geopolitical agency on the world stage. Hence, the exogenous shock played an essential role as a driver of institutional change.

Unlike bellicist traditional theories, which sustained that a hostile context could prompt a state's coercive capacity, fiscal revenue or administrative power, the research found that the war generated a favourable environment for change by increasing the urgency and legitimacy of actions and spurring the alignment of Member States' preferences. Furthermore, the Commission seized the unique opportunity-structure brought about by the aggression. As such, the investigation proposes that the combination of three factors – an external shock, Member States' support and the existence of a political entrepreneur that can harness the opportunity to achieve specific goals– can generate institutional change.

In this specific case, the Russian invasion of Ukraine and the subsequent military emergency created an opportunity for the von der Leyen Commission to advance its preference to turn the EU into a geopolitical actor. As the war had facilitated the decision-making process in that it had convinced all Member States to adopt the oil embargo, Hungary's threat to veto the adoption of the sixth package of restrictive measures against the Russian Federation undermined the Union's credibility and risked the Commission's claim to make the EU a legitimate power player in international relations. As follows, confronting Budapest via the RoL conditionality mechanism allowed the Commission to achieve unanimity in adopting its draft proposal for the sixth package of sanctions. Indeed, after the weekend meetings following the implementation of Regulation 2020/2092, von der Leyen unveiled its proposal, which finally included a crude and refined oil embargo.²⁷

The research then unveiled a different causal process to explain how war might generate institutional change. Indeed, rather than focusing on the insights of traditional bellicist theory, it identified the underlying drivers and mechanisms that have remained unexplored in crisis literature and attested to the influence

27 It is worth noting that Orbán crippled the actual endorsement of the sixth package in the Council afterwards. Nonetheless, for this investigation what is important is the process that enlists and concerns the European Commission, i.e., the elaboration of planned and settled draft proposals. What happens afterwards, whether the policy is approved or rejected by the Council, escapes the scope and the interest of the research.

of the structural environment where the institutions are embedded in affecting institutional change. In so doing, it provided one answer as to what happens within institutions once a crisis triggers change. In addition, it offered new evidence on the workings of the Commission and the logic behind the enforcement of values. Yet the research is also marked by apparent shortcomings: a limited power to deepen its findings, mainly by accessing direct data to the Commission's negotiations. Nonetheless, this represents a venue for further research and motivates a research agenda aiming to systematically reconstruct the complexity of negotiations by mapping the positions of the institutions and the national elites, their strategies, and decision-making outcomes, ideally through field work and interviews. Furthermore, future studies could also examine several other variables, including the influence of earlier crises, that might have affected the actions of the Commission at present (i.e., its learning process). Finally, further studies can also give substantial attention to rival explanations and compare these findings with similar cases to generalise the causal theory put forward here.

Lastly, a final remark about the Commission is in order. The strategic thinking portrayed by the European Commission also points to broader changes at play. As Oran R. Young stated, "An account about the nature of institutional bargaining serves as a springboard for pinpointing the role of leadership" (1991: 281). Indeed, employing insight and creativity to devise an innovative option that could finally manoeuvre the procedural impediment brought about by the Hungarian veto and, hence, overcome the bargaining deadlock points to an increasingly decisive and confident Commission. In this sense, it is relevant that its success was achieved through the skilful use of threat strategies combined with economic bargaining power and that this enabled it to create the conditions necessary to achieve its objective. This logic, coupled with its definition of a common strategy, imposition of penalties, and effective moulding of national interests, scores favourably for evaluating the Commission's overall performance. It further attests to its will and capability to lead the Union towards agency (actorness) in world affairs.

The capacity to adequately respond to the regional (and global) conflicts in the international context suggests the Union is learning (and increasingly speaking) the language of power. Furthermore, it is a testament to the maturity of the integration process, as Member States are willing to trust the European Commission in making more political decisions that affect all. In this respect, it seems the world has "witnessed the belated birth of a geopolitical Europe" (Borrell, 2022b). But at what cost? In this respect, the research engendered a new set of questions and, possibly, a preliminary answer: is the primacy of power over law the correct approach to the forthcoming challenges waiting to assail Europe? What value does having a voice on the world stage muster if it does not have anything worth saying? It is questionable that the continuous disregard for the Union's fundamental values would be rewarding. Indeed, being a competitive geopolitical player holds limited value if there is no clear link between the pursuit of European interests and the protection of the values on which it is built, especially if the European project is to move forward without dramatically sacrificing its original meaning. The power of the Union lies precisely in its joint prioritisation of law *and* values – a combination hardly found elsewhere beyond the shores of Europe.

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Resumen: La ejecución de la Comisión Europea ha sido objeto de un intenso debate académico. Muchos consideran que el ejecutivo de la UE ha evitado de forma deliberada su tarea de sancionar el incumplimiento de los Estados miembros, especialmente en lo que respecta a los valores fundamentales de la Unión. No obstante, la activación del denominado mecanismo de condicionalidad del Estado de Derecho, establecido en el Reglamento 2020/2092 contra el reglamento húngaro, sugiere que la Comisión se ha convertido en un actor mucho más firme. Este trabajo de investigación nace motivado por el estallido de la guerra entre Rusia y Ucrania y analiza su influencia en los resultados observados a través del proceso de búsqueda. Se ha llegado a la conclusión de que esta nueva firmeza se debe a que la guerra supuso para la Comisión una oportunidad para poder avanzar en sus intereses de política exterior. A medida que la Comisión de von der Leyen priorizaba convertir a la UE en un actor “geopolítico”, necesitaba imponer rápidamente sanciones contundentes contra la Federación Rusa para mantener su relevancia internacional. Sin embargo, el veto húngaro obstaculizó todas sus expectativas. Por lo tanto, la Comisión utilizó el Reglamento 2020/2092 para ejercer presión sobre Budapest y lograr su alineación con los objetivos políticos preferentes. Como conclusión, esta investigación revela que la aplicación de los valores fundamentales ocupa un lugar secundario en las prioridades de la Comisión.

Abstract: The European Commission's enforcement track record has been the subject of much academic discussion. It is widely held that the EU executive has deliberately averted its task of sanctioning Member States' noncompliance, particularly concerning the Union's fundamental values. Nonetheless, activating the so-called rule of law (RoL) conditionality mechanism comprised in Regulation 2020/2092 against the Hungarian government suggests that the Commission has become a much sterner actor. Propelled by the outbreak of the Russia-Ukraine war, the investigation studied the influence of the war on the observed outcome through process tracing. It found that the newfound assertiveness resulted from the window of opportunity the war presented the Commission to advance its foreign policy interests. As the von der Leyen Commission prioritised turning the EU into a 'geopolitical' actor, it needed to quickly impose forceful sanctions against the Russian Federation to remain relevant internationally. However, the Hungarian veto handicapped its prospects. Thus, the Commission used Regulation 2020/2092 to exercise leverage and pressure Budapest to converge with its preferred policy goals. As a result, the research revealed that enforcing fundamental values is a subordinate concern for the Commission.

Palabras clave: Estado de derecho, incumplimiento, ejecución, Comisión Europea, Hungría, guerra Rusia-Ucrania.

Keywords: Rule of law, noncompliance, enforcement, European Commission, Hungary, Russia-Ukraine war.

