



Turun yliopisto
University of Turku



**THE EUROPEAN PARLIAMENT IN EU
EXTERNAL RELATIONS:
THE CASE OF UKRAINE AND BEYOND**

Oleksandr Moskalenko



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ABSTRACT

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European integration has principally been an instrument of security policy, with its primary objective to prevent a war in Europe. Due to the success of the EU project, this goal has been achieved. However, today it is the EU's own neighbourhood that has become the source of instability. The Lisbon Treaty has preserved the "second pillar" via special rules for the Common Foreign and Security Policy. Despite the limited competences for the European Parliament within this policy area, the post-Lisbon practice has revealed that its actual role has been far more diverse and extensive than the Lisbon Treaty suggested.

This research provides a study of the role that the European Parliament has been playing in the EU external relations of the post-Lisbon period. With reference to the case study of EU-Ukraine relations, this research demonstrates the growing role that the European Parliament has been playing concerning the security aspects of the EU foreign policy. The research is conducted at two levels. At the empirical level, it focuses on the case of EU-Ukraine relations. At the analytical level, the research is aimed at placing the empirical results into the wider context of the post-Lisbon evolution of the European Parliament, with particular focus on its role with regard to the CFSP.

From the legal perspective, this dissertation is aimed at providing insight into the instruments and mechanisms utilised for the post-Lisbon transformation of the Parliament's role for EU external relations. This study is inter-disciplinary. The general methodological approaches affecting this research can be referred to as "law and political science". The research has been influenced by the ideas of constitutionalism and social constructivism. However, the major theoretical framework that this research utilises is new institutionalism.

Summarising the findings of this dissertation, the following conclusions should be emphasised. The Parliament's institutional role in the studied case is connected with the phenomenon of EU identity construction with further reference to the concept of the EU as a normative power. Thus, the Parliament assumed the role of "democratic supervisor" over the actions of other EU foreign policy actors. Although its role of agenda-setter in the EU-Ukraine relations follows the general trend of the Parliament's pattern of involvement in EU external relations, the Ukrainian case has revealed growing Parliament's ambition for the CFSP.

Regarding the legal perspective, the Parliament's performance in the Ukrainian case as well as its general evolving role in the CFSP certainly exceeds formal Lisbon rules. However, this research supports the claim that the EU's constitutional law cannot be understood through legal positivism only. In addition to regulation by positive law by the provisions of the founding Treaties and inter-institutional agreements, this area is also significantly influenced by legal and political concepts and principles. In a practical sense, it is the liberal democracy model that has often been used as a reference point in terms of the role that a representative assembly should be playing in the public sphere.

The EU's constant evolution triggers a rethinking of its identity, the principles underpinning its institutional system and a reconsideration of the role that particular institutions should play. Because of its *sui generis* nature, the EU is sensitive towards such transformations. It implies a higher level of exposure for the EU to public debate in its Member States and academic discourse due to the fact that the latter serve as reference points for its evaluation. Thus, the regulative influence of legal concepts and principles is important for the evolution of the EU. However, if compared to positive law, their influence is more intricate and less visible. Often they do not provide direct regulation but instead create possibilities. Thus, the actual outcomes of this influence are dependent upon the EP's own institutional behaviour.

The Parliament's agenda in terms of the EU's external identity construction reinforces the appeal to the concepts of democracy and legitimacy regarding the EU's own institutional system since the core of this identity encompasses the same values. Thus, reference to these values in terms of the EU's relations with third countries inevitably raises the issue of the EU's own institutional system as well as the principles and concepts that underpin it. However, there is no linear connection between these concepts and the enhancement of the Parliament's position within the EU institutional system. Further practical elaboration of these opportunities depends upon the EP's ambitions towards particular policy areas as well as its institutional behaviour. In this sense, the Ukrainian case provides a practical illustration of the

Parliament's manifestation of its ambition. Against the background of limited competences within the CFSP, the Parliament intensely debated security issues, thus going beyond the role that the Lisbon Treaty mandated for it.

Keywords: European Parliament, EU external relations, Common Foreign and Security Policy, EU-Ukraine Association Agreement, inter-institutional agreements.

TIIVISTELMÄ

Turun yliopisto

Oikeustieteellinen tiedekunta

Euroopan unionin oikeus

OLEKSANDR MOSKALENKO: Euroopan parlamentti ja EU:n ulkosuhteet:
Tapaus Ukraina.

Akateeminen väitöskirja, 181 sivua.

Lokakuu 2017

Euroopan integraatio on toiminut erityisesti turvallisuuspolitiikan välineenä. Sen ensisijaisena tavoitteena on ollut sotien estäminen Euroopassa, ja tämä tavoite onkin saavutettu EU-projektin menestyksen myötä. Nytemmin EU:n naapurustossa on kuitenkin alkanut esiintyä epävakautta. Lissabonin sopimus on säilyttänyt ”toisen pilarin” yhteisen ulko- ja turvallisuuspolitiikan erityissäntöjen kautta. Vaikka Euroopan parlamentille on määritelty rajallinen toimivalta tämän politiikan alalla, Lissabonin sopimuksen jälkeinen käytäntö on osoittanut, että parlamentin todellinen rooli on ollut paljon monipuolisempi ja laajempi, kuin sopimus itsessään antaa olettaa.

Tämä tutkimus käsittelee Euroopan parlamentin roolia EU:n ulkosuhteissa Lissabonin sopimuksen jälkeisenä ajanjaksona. EU:n ja Ukrainan välisiä suhteita tarkastelemalla tutkimus osoittaa, että Euroopan parlamentti on kasvattanut rooliaan Euroopan unionin ulkopolitiikan turvallisuusasioissa. Tutkimuksessa on kaksi tasoa: Empiirisellä tasolla se keskittyy EU:n ja Ukrainan välisiä suhteita käsittelevään tapaustutkimukseen. Analyttisellä tasolla tutkimus taas pyrkii asettamaan empiirisen tutkimuksen tulokset laajempaan kontekstiin, joka koskee Euroopan parlamentin kehittymistä Lissabonin sopimuksen jälkeen ja erityisesti sen roolia yhteisessä ulko- ja turvallisuuspolitiikassa.

Oikeudellisesta näkökulmasta katsottuna tämä väitöskirja pyrkii lisäämään tietoa niistä välineistä ja mekanismeista, jotka ovat muuttaneet parlamentin roolia Lissabonin sopimuksen voimaantulon jälkeen. Tutkimus on poikkitieteellinen. Sen yleisiä metodologisia lähestymistapoja voi kuvata oikeus- ja valtiotieteellisiksi, ja tutkimukseen ovat vaikuttaneet myös konstitutionalismin ja sosiaalisen

konstruktivismiin ajatukset. Tutkimuksen merkittävimpänä teoreettisena kehiksenä on kuitenkin uusi institutionalismi.

Seuraavat tulokset ovat erityisen merkittäviä tutkimuksen löydöksiä tiivistettäessä: Tapaustutkimuksessa paljastui, että parlamentin institutionaalinen rooli on kytköksissä EU:n identiteetin rakentumiseen ja käsitykseen EU:sta normatiivisena voimana. Parlamentti omaksui roolin muiden EU:n ulkopoliitikassa vaikuttaneiden toimijoiden “demokraattisena valvojana”. Vaikka parlamentin rooli EU:n ja Ukrainan välisten suhteiden agendan määrittelijänä noudattelee parlamentin normaalia tapaa osallistua EU:n ulkosuhteiden käsittelyyn, Ukrainan tapaus on paljastanut parlamentin kasvavan kiinnostuksen YUTP:aa kohtaan.

Oikeudellisesta näkökulmasta tarkasteltuna parlamentin toiminta Ukrainan tapauksessa sekä sen kehittyvä rooli YUTP:ssa ylittävät Lissabonin sopimuksessa muodollisesti määritellyt parlamentin toiminnan rajat. Tämä tutkimus kuitenkin tukee väitettä, ettei EU:n perustuslakia voi ymmärtää pelkästään oikeuspositivismin kautta. Positiivisten lakien kuten perustamissopimusten ja instituutioiden välisten sopimusten säännösten lisäksi asiaan vaikuttavat merkittävästi myös erilaiset oikeudelliset ja poliittiset käsitteet ja periaatteet. Sille roolille, joka edustajiston tulisi omaksua julkisuudessa, on usein käytetty mittapuuna liberaalin demokratian mallia.

EU:n jatkuva kehittyminen vaatii EU:n identiteetin, sen institutionaalista järjestelmää tukevien periaatteiden ja sen tiettyjen instituutioiden tehtävien uudelleenarviointia. Ainutlaatuisen luonteensa vuoksi EU suhtautuu tällaisiin muutoksiin herkästi, sillä muutokset altistavat EU:n julkiselle keskustelulle sekä sen jäsenmaissa että akateemisissa diskursseissa, jota hyödynnetään myös arvioitaessa EU:n toimintaa. Tämän vuoksi oikeudellisten käsitteiden ja periaatteiden säätelevä vaikutus on tärkeää EU:n kehittymiselle. Positiiviseen oikeuteen verrattuna niiden vaikutus on kuitenkin hienovaraisempi eikä yhtä näkyvä. Lisäksi ne eivät useinkaan tuota suoraa sääntelyä vaan pikemminkin luovat erilaisia mahdollisuuksia. Niinpä niiden todelliset seuraukset ovat riippuvaisia Euroopan parlamentin omasta institutionaalisesta käyttäytymisestä.

EU:n ulkoisen identiteetin muodostamista koskeva parlamentin agenda nojautuu EU:n oman institutionaalisen järjestelmän demokratian ja laillisuuden käsitteisiin, sillä tämän identiteetin syvin olemus pitää sisällään samat arvot. Kun kyseessä on EU:n suhde kolmansiin maihin, näihin arvoihin viittaaminen nostaa väistämättä esiin kysymyksen EU:n omasta institutionaalisesta järjestelmästä sekä niistä periaatteista ja käsitteistä, jotka järjestelmää tukevat. Ei kuitenkaan ole olemassa mitään suoraviivaista yhteyttä näiden käsitteiden ja EU:n institutionaalisen

järjestelmän sisällä tapahtuvan parlamentin aseman kohoamisen välillä. Näiden mahdollisuuksien jatkokehittely riippuu Euroopan parlamentin kiinnostuksesta tiettyjä politiikan aloja kohtaan sekä parlamentin institutionaalisesta käyttäytymisestä. Tässä mielessä Ukrainan tapaus on esimerkki siitä, miten parlamentin tavoitteet tulevat esiin käytännössä. YUTP:ssa määriteltyä rajallista toimivaltaa vasten tarkasteltuna parlamentin voidaan katsoa ottaneen voimakkaasti kantaa turvallisuuskysymyksiin ja ylittäneen täten Lissabonin sopimuksessa sille määrätyn roolin.

Asiasanat: Euroopan parlamentti, EU:n ulkosuhteet, yhteinen ulko- ja turvallisuuspolitiikka, EU:n ja Ukrainan välinen assosiaatiosopimus, toimielinten väliset sopimukset

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Oleksandr Moskalenko,

Turku, October 2017

LIST OF ABBREVIATIONS

AA – Association Agreement

ACP-EU – Africa Caribbean Pacific - European Union Joint Parliamentary Assembly

CFSP – Common Foreign and Security Policy

EEAS – European External Action Service

EP – European Parliament

EU – European Union

EUROLAT – Euro-Latin American Parliamentary Assembly

EURONEST – EURONEST Parliamentary Assembly

HR – High Representative of the Union for Foreign Affairs and Security Policy

NPE – Normative Power Europe

PA-UfM – Parliamentary Assembly - Union for Mediterranean

LIST OF PUBLICATIONS

1. Oleksandr Moskalenko, “The Institutional Balance: a Janus-faced concept of EU constitutional law”, *Politeja*. 2016. Issue 6 (45). Pages 125-143.
2. Oleksandr Moskalenko, “‘Parlamentarization’ of the CFSP: wishful thinking or a rational choice?”, *Croatian Yearbook of European Law and Policy*. 2016. Vol. 12. Pages 251-273.
3. Oleksandr Moskalenko, “The European Parliament in the Ukrainian Association puzzle”, *East European Quarterly*. 2016. Vol. 44, No. 1. Pages 57-85.
4. Oleksandr Moskalenko, Vladimir Streltsov, “The European Parliament in the EU-Ukraine relations - from independence to Orange revolution”, *Eastern Journal of European Studies*. 2015. Vol. 6, Issue 2. – Pages 111 – 129.
5. Oleksandr Moskalenko, “The European Parliament in EU external relations after Maastricht: applying the “federal paradigm”” *Evropský politický a právní diskurz*. Prague, Czech Republic. 2015. Issue 1. Vol. 2. – Pages 72-80.
6. Oleksandr Moskalenko, “Role of inter-institutional agreements in the rise of European Parliament competences in external relations” *Studia Diplomatica – the Brussels Journal of International relations*. 2014. – LXVII (1). – Pages 15-27.

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PART 1

1. INTRODUCTION

At the threshold of the new millennium, the expanding scope of European integration and the “Big Enlargement” of 2004 raised the issue of the new quality of the European Union. The Laeken declaration stressed both the internal and external dimensions of this challenge. From the internal perspective, this document emphasised the need for more democracy, transparency and efficiency. From the external perspective, it contained an appeal for “Europe's new role in a globalised world”.¹ The Treaty of Lisbon followed the same logic and was aimed at strengthening both the EU’s democratic qualities and its system of external relations. The Lisbon Treaty is often called the “Treaty of Parliaments” as both the European Parliament (the EP) and national parliaments of the Member States were among the major beneficiaries of its innovations. Concerning EU external relations, the Treaty offered two major innovations: it enhanced the role of the EP in most policies other than the Common Foreign and Security Policy (CFSP) by connecting the EP’s consent right for international treaties with the ordinary legislative procedure,² and it provided for a new institutional system for the CFSP.

Although European integration has been a multi-dimensional process aimed at achieving diverse goals,³ it has principally been an instrument of security policy.⁴ In the context of the general commitment to “escaping the spectre of war”,⁵ European integration was initiated with the specific goal of preventing a war in Europe.⁶ This primary goal has been successfully achieved, and the Member States have been enjoying peace for more than seventy years. Furthermore, due to the success of the EU project, even the idea of military rivalry between the nations has become totally inconceivable. In this sense, the EU’s international performance has always been one of the core issues of the entire European project.

Ironically enough, it is now its own neighbourhood that has become the source of instability for the EU. The political turbulence and further radicalisation in Northern Africa in the aftermath of the ‘Arab Spring’ in addition to the armed conflicts in Ukraine and Syria morphed the EU neighbourhood into something

¹ Laeken Declaration on the Future of the European Union (15.12.2001)

² Art. 218 (6) TFEU

³ S. Bulmer, “Politics in Time meets the politics of time: historical institutionalism and the EU timescape”, *Journal of European Public Policy*, 2009, 16 (2), pp. 307-324, p. 311

⁴ A. Menon & U. Sedelmeier, “Instruments and Intentionality: Civilian Crisis Management and Enlargement Conditionality in EU Security Policy”, *West European Politics*, 2010, 33(1), pp.75-92, p. 80.

⁵ D. Baldwin, *Economic Statecraft*. Princeton University Press, 1985, p. 341.

⁶ J. Monnet, *Memoirs*. London: Collins, 1978, p. 289.

entirely different from the EU's initial goal of prosperous neighbours sharing the common values of human rights, democracy and the rule of law.⁷

The Lisbon Treaty was a compromise reached after the failure of a more ambitious Treaty establishing a Constitution for Europe in 2004. One of the major areas of compromise was EU foreign policy. Despite the formal abolition of the “pillars”, the Lisbon Treaty in fact has preserved the “second pillar” via special rules for the Common Foreign and Security Policy (CFSP). Furthermore, these rules have been rather restrictive concerning the role that supranational institutions are to play in this policy area. The Lisbon Treaty foresaw limited competences for the EP in terms of this policy area, which was in contrast with the EP's generally enhanced role in other aspects of EU foreign policy. However, post-Lisbon practice has revealed that the actual role that the EP has been playing regarding EU external relations, including the CFSP, has been far more diverse and extensive than the Lisbon Treaty suggested.

This research provides a study of the role that the EP has been playing in the EU external relations of the post-Lisbon period. With reference to the particular empirical case-study of EU-Ukraine relations, this research demonstrates the growing role that the EP has been playing concerning the security aspects of the EU foreign policy. The research is conducted at two levels. At the empirical level, it focuses on the particular case of EU-Ukraine relations and deals with the EP's behaviour in the context of the specific challenges that this case presented. At the analytical level, the research is aimed at placing the empirical results of this particular case-study into the wider context of the EP's post-Lisbon evolution, with particular focus on its role with regard to the CFSP. From the legal perspective, the research examines the correlation of the EP's behaviour with the formal legal rule as provided for by the Lisbon Treaty. Furthermore, it has studied the mechanisms and strategies that the EP has been using for the enhancement of its position concerning other EU foreign policy actors within the period of time involved.

In its structure, the dissertation consists of two parts. The first part includes the premises of the research, its background, an overview of the published articles and conclusions. Part I begins with the objectives and limitations of the research, the methodological framework and the reasons for the selection of the EU-Ukraine relations for the empirical case study. Next, the background debate is provided, which deals with the qualities of the EU as a *sui generis* international actor as well as with the EP's evolving role regarding the EU's international performance. This is

⁷ Communication from the Commission to the Council and the European Parliament “Wider Europe—Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours” COM(2003) 104 final of 11.3.2003, p. 1.

followed by a separate chapter that provides the reasons for the selection of the topics for the articles, brief overviews of each and an explanation of the ways in which they are interconnected. The first part is then summarised by the conclusions, which lay out the major results of the entire research. The second part consists of the six articles that make up the central element of the research.

2. RESEARCH PREMISES

This chapter deals with the premises of the research and consists of five sections. The first provides the overview of the literature and explores the current state of debate on the topic of the research. The second section consists of three subsections, which highlight a) the existing research gap; b) the focus of this research; and c) the research questions. The third section accentuates the added value of this research. Section four establishes the methodological framework, and section five explains the reasons for the selection of EU-Ukraine relations as an empirical case study.

2.1. Overview of the literature and the current state of debate.

As of 2001, there were a total of 583 academic publications dedicated to the EP.⁸ Two peaks in the number of studies coincided with the first direct elections to the EP in 1979 and with the post-Maastricht “democracy deficit” debate of the 1990s.⁹ Before the 1990s, the academic literature was mostly fragmentary, although it included a few focused studies dealing with separate aspects of EP’s status.¹⁰ The first systematised substantial studies of the EP were published in the middle of 1990s and included works by Westlake,¹¹ Ramsay,¹² Jacobs, Corbett & Shackleton¹³ and a number of others. However, these studies were mostly limited to four particular areas: 1) the EP’s general development and functioning; 2) EP elections; 3) the EP’s internal organisation; and 4) the EP’s inter-institutional bargaining.¹⁴

Certainly, the topic of the EP was also covered by literature dealing with the EU institutional, political and legal systems on a wider scale, well-known examples being works by Hartley,¹⁵ Craig,¹⁶ Evans,¹⁷ etc. In terms of the focus on the EP, these studies, however, mostly followed the above-mentioned four areas. This trend was also preserved by the next generation of books, issued at the turn of the millennium.¹⁸

⁸ S. Hix, T. Raunio, and R. Scully, “Fifty Years On: Research on the European Parliament”, *Journal of Common Market Studies* 2003, 41(2): 191–202, p. 192.

⁹ *Ibid*, p. 193.

¹⁰ J. Fitzmaurice, *The Party Groups in the European Parliament*, London: Saxon, 1975; J.-P. Jacqu e, R. Bieber, V. Constantinesco, and D. Nickel, *Le Parlement europ een*, Paris: Economica, 1984; P. Scalingi, *The European parliament : the three-decade search for a united Europe*, Aldwych 1980.

¹¹ M. Westlake, *A Modern Guide to the European Parliament*. London: Pinter, 1994

¹² R. Ramsay, *The Role of the European Parliament. Legal Aspects of Integration in the European Union*. Deventer, 1997.

¹³ F. Jacobs, R. Corbett, and M. Shackleton, *The European Parliament*, Gale Group, 1992; F. Jacobs, R. Corbett, and M. Shackleton, *The European Parliament*, John Harper Publishing, 1995.

¹⁴ S. Hix et al. (2003), op. cit., p. 193.

¹⁵ T. Hartley, *The Foundations of European Union Law*, London, 1998,

¹⁶ P. Craig & G. de B urca, *EU Law: Text, Cases, and Materials*, OUP, 1998

¹⁷ A. Evans, *A Textbook on European Union Law*, Oxford, 1998.

¹⁸ J. Blondel, R. Sinnott, and P. Svensson, *People and parliament in the European Union: participation, democracy, and legitimacy*, Clarendon 1998; P. Mathijssen, *A guide to European Union law*, Sweet & Maxwell 1999; R. Katz, &

After Maastricht, two strands of literature rapidly grew in popularity, both of which deserve separate attention. The first was literature dedicated to the “democracy deficit” debate, which was part of a wider-scale debate dealing with the constitutionalisation of the EU legal order. For this literature, the EP was one of the major focuses due to its unique status in the EU institutional system from the perspective of the legitimacy of the EU legal order and its democratic qualities. Few examples from the vast amount of this scholarship can be mentioned here, but Eriksen, and Fossum,¹⁹ Devuyst,²⁰ Hartley,²¹ Kreppel²² Lenaerts K. et al,²³ Lodge,²⁴ Mancini,²⁵ Nettesheim,²⁶ Weiler²⁷ stand out, among many others. The second strand was literature dedicated to EU external relations. Here, the EP was not usually the focus of the study due to its relatively modest role in this policy area, although there were exceptions.²⁸ Most scholarship was limited to specific case-studies, in which the EP’s behaviour was crucial for the entire case from one perspective or another.²⁹ Examples include case studies of EU relations with China,³⁰ Turkey,³¹ etc.

The post-Nice debate about the need for a new quality for the European Union caused a new wave of EP studies. Moreover, one could observe an increasing level of synergy between different strands of literature in the debate dealing with the role of the EP, with works by Costa,³² Judge & Earnshaw,³³ Maurer & Wessels³⁴ Rittberger,³⁵ Hix,³⁶ and Lord³⁷ being examples. Within this period, the studies

B. Wessels, *The European Parliament, national parliaments, and European integration*, OUP, 1999; P. Craig, G. de Búrca, *EU law : text, cases, and materials*, OUP, 2002.

¹⁹ E. Eriksen, & J. Fossum, *Democracy in the European Union. Integration through Deliberation?* London: Routledge, 2000.

²⁰ Y. Devuyst, *The European Union at the Crossroads. The EU's Institutional Evolution from the Schuman Plan to the European Convention*, Peter Lang, 2003.

²¹ T. Hartley, *Constitutional Problems of the European Union*, Oxford, 1999.

²² A. Kreppel, *The European Parliament and Supranational Party System*, Cambridge University Press, 2001.

²³ K. Lenaerts, P. van Nuffel, R. Bray, E. de Smijter, *Constitutional Law of the European Union*. L., 1999.

²⁴ Lodge J. *Strengthening the European Parliament and its Alternatives*. – Marburg: Metropolis Verlag, 1997.

²⁵ G. Mancini, *Democracy and Constitutionalism in the European Union*, Oxford, 2000.

²⁶ M. Nettesheim, “Developing a Theory of Democracy for the European Union”, *Berkeley Journal of International Law* 2005, 23(2), pp. 358-400.

²⁷ J. Weiler, “The Transformation of Europe”, *The Yale Law Journal*, 1991, 100(8), pp. 2403-2483; J. Weiler, “European Neo-constitutionalism: in Search of Foundations for the European Constitutional Order”, *Political Studies*, 1996, XLIV, pp. 517-533.

²⁸ E. Baron Crespo, *CFSP: the View of the European Parliament*, Maastricht, 1996.

²⁹ V. Donatella, *European foreign policy and the European Parliament in the 1990s: an investigation into the role and voting behaviour of the European Parliament's political groups*, Ashgate 2000.

³⁰ Y. Lan, “The European Parliament and the China-Taiwan Issue: An Empirical Approach”, *European Foreign Affairs Review*, 2004, 9, pp.115-140.

³¹ S. Krauss, “The European Parliament in EU External Relations: The Customs Union with Turkey”, *European Foreign Affairs Review*, 2000, 5, pp. 215–237.

³² O. Costa, *Le Parlement européen, assemblée délibérante*. Brussels: 2001.

³³ D. Judge, & D. Earnshaw, *The European Parliament*, Basingstoke: Palgrave, 2003.

³⁴ A. Maurer & W. Wessels, *Das Europäische Parlament nach Amsterdam und Nizza: Akteur, Arena oder Alibi?* Baden-Baden: Nomos, 2003.

³⁵ B. Rittberger, *Building Europe's Parliament: Democratic Representation Beyond the Nation State*, OUP, 2005.

³⁶ S. Hix, *The Political System of the European Union*, London: Palgrave, 2005.

³⁷ Ch. Lord, *A Democratic Audit of the European Union*, Palgrave –Macmillan, 2004.

predominantly tackled the role that the EP played from the perspective of the EU's own system, concentrating on the EP's evolving role within EU legislative and budget processes.³⁸ At the same time, academia also offered a growing number of studies dealing with EU external relations³⁹ as well as the role that the EP played within this policy area.⁴⁰

This period was also characterised by increasing numbers of publications dedicated to the CFSP,⁴¹ studying the practical experience of policy implementation within this “pillar”⁴² as well as providing a wider theoretical perspective.⁴³ Furthermore, this debate provoked the appearance of studies of the role that the EP was playing in this policy area.⁴⁴ In parallel, there has been a boom in the literature dealing with EU external governance,⁴⁵ concepts of “Normative Power Europe”,⁴⁶ civilian⁴⁷ and “soft power”,⁴⁸ as well as the literature dealing with the application of democratic conditionality.⁴⁹ This literature was often based on the success of the EU enlargement policy,⁵⁰ as well as on the successful practice of the application of

³⁸ J. Monar, “The Finances of the Union’s Intergovernmental Pillars. Tortuous Experiments with the Community Budget”, *JCMS*, 1997, 35, pp.57-78; A. Maurer “The Legislative Powers and Impact of the European Parliament”, *JCMS*, 2003, 41(2), pp. 227–247; A. Kreppel, “What Affects the European Parliament’s Legislative Influence?” *JCMS*, 1999, 37(3), pp. 521-538; G. Tsebelis, C. Jensen, A. Kalandrakis & A. Kreppel, “Legislative Procedures in the European Union: An Empirical Analysis”, *British Journal of Political Science*, 2001, 31(4), pp. 573-599.

³⁹ P. Koutrakos, *EU International Relations Law*, Hart publishing, 2006.

⁴⁰ L. Bartels, *Human Rights Conditionality in the EU’s International Agreements*, OUP, 2005; E. Fierro, *The EU’s approach to Human Rights Conditionality in Practice*, The Hague, Martinus Nijhof, 2003.

⁴¹ P. Koutrakos, *Trade, Foreign Policy and Defence in EU Constitutional Law*, Hart publishing, 2001; R. Tiersky, *Europe today: national politics, European integration, and European security*, Rowman & Littlefield 2004; M. Trybus, *European union law and defence integration*, Hart Publishing 2005.

⁴² *Between Vision and Reality: CFSP’s Progress on the Path to Maturity*, S. Duke (ed.) EIPA 2000 (2).

⁴³ K. Raube, “Efficiency and Democracy in CFSP/ESDP – The Institutional Set-up of the Constitutional Treaty”, in *Europe – The Global Challenge*, Kuklinski A., Pawlowski K. (eds.) Wyzsaka Szkola Biznesu – National Louis University (Nowy Sacz), 2005, pp. 151-160.

⁴⁴ S. Stavridis, “The CFSP/ESDP, Parliamentary Accountability, and the ‘Future of Europe’ Convention Debate”, Working Paper No. 42, 2003; U. Diedrichs: “The European Parliament in CFSP: More than a Marginal Player?” in *The International Spectator*, 2004, 39(2); B. Crum “Parliamentarization of the CFSP through informal institution-making? The fifth European Parliament and the EU High Representative,” *Journal of European Public Policy*, 2006, 13(3), pp. 383-401; *The ‘Double Democratic Deficit’: Parliamentary Accountability and the Use of Force under International Auspices*, H. Born, & H. Hängii (eds), Aldershot: Ashgate, 2004.

⁴⁵ *The Europeanization of Central and Eastern Europe*, F. Schimmelfennig & U. Sedelmeier (Eds.), Ithaca & London: Cornell University Press, 2005. J. Kelley, *Ethnic Politics in Europe: The Power of Norms and Incentives*, Princeton University Press, 2004.

⁴⁶ I. Manners, “Normative Power Europe: A Contradiction in Terms?” *JCMS*, 2002, 40(2), pp.235–258.

⁴⁷ M. Telò, *Europe: a Civilian Power? European Union, Global Governance, World Order*, Palgrave, 2006.

⁴⁸ J. Nye, *Soft Power: The Means to Success in World Politics*. New York: Public Affairs, 2004.

⁴⁹ *The European Union and Democratization*, P. Kubicek (ed.), London: Routledge, 2003. F. Schimmelfennig & U. Sedelmeier, “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe”, *Journal of European Public Policy*, 2004, 11(4), pp.661-679; J. Hughes, G. Sasse, & C. Gordon, *Europeanization and regionalization in the EU’s enlargement to central and eastern Europe: The myth of conditionality*, Palgrave Macmillan 2004.

⁵⁰ F. Schimmelfennig & U. Sedelmeier, *The politics of European Union enlargement : theoretical approaches*, Routledge 2005; *Spreading Democracy and the Rule of Law? The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders*, W. Sadurski, A. Czarnota, & M. Krygier (eds.), Springer, 2006.

conditionality for EU relations with countries outside Europe.⁵¹ In this context, the studies of the EP's role as "the champion of European values"⁵² received another impulse.⁵³ With the intensification of the debate regarding the upgrade of the EU's international role, its foreign policy was increasingly often explored from the constitutional perspective,⁵⁴ thus emphasising the growing synergy of the approach towards study of this policy area. Certainly, this perspective triggered additional interest in the role that the EP had in EU external relations,⁵⁵ including the CFSP.⁵⁶

For the post-Lisbon debate, EU external relations became one of the central topics, with a rapidly growing number of special research papers.⁵⁷ The focus on the EP's role in EU external relations became a clear trend, with a common approach being the inclusion of special chapters on the EP in recent books.⁵⁸ In addition to the debate on a new role for the EP in EU international agreements,⁵⁹ academic literature actively covered the "parliamentarisation" of the CFSP, providing insight into the EP's relations with the other elements of the post-Lisbon institutional system for the CFSP.⁶⁰ Furthermore, there was also an increase in research dedicated to different aspects of the EP's direct involvement in relations with third countries.⁶¹ Frequently,

⁵¹ S. Stavridis, "Democratic Conditionality Clause, Use of Sanctions and the Role of the European Parliament in the Euro-Mediterranean Partnership: A Preliminary Assessment", *Agora Without Frontiers*, A Quarterly Journal of International Economy and Politics, 2004, 9(4), pp. 288-306.

⁵² *The European Parliament as a champion of European values*, Brussels, 2008.

⁵³ S. Bailer & G. Schneider: "The power of legislative hot air: Informal rules and the enlargement debate in the European Parliament", *The Journal of Legislative Studies*, 2000, 6(2), pp. 19-44.

⁵⁴ *EU Foreign Relations Law: Constitutional Fundamentals*, M. Cremona & B. de Witte (Eds.), Oxford: Hart, 2008.

⁵⁵ D. Thym, "Parliamentary Involvement in European International Relations" in *EU Foreign Relations Law: Constitutional Fundamentals*, M. Cremona & B. de Witte (Eds.), Oxford: Hart, 2008, pp. 201-232.

⁵⁶ K. Raube, "European Parliamentary Oversight of Crisis Management", in *The European Union and Crisis Management*, S. Blockmans (ed.) T.M.C. Asser Press (The Hague), 2008, pp. 181-200.

⁵⁷ *The European Union's external relations a year after Lisbon*, P. Koutrakos (ed.), Cleer working papers 2011/3. Asser Institute, 2011; P. Eeckhout, *EU external relations law*, OUP, 2011; *New Approaches to EU Foreign Policy*, M. Wilga, & I. Karolewski (eds.) Routledge, 2014.

⁵⁸ R. Passos, "The European Union's external relations a year after Lisbon: a first evaluation from the European Parliament" in *The European Union's external relations a year after Lisbon*, P. Koutrakos (ed.), Cleer working papers 2011/3. Asser Institute, 2011, pp.49- 56; K. Raube "Parliamentarisation Approach: Parliamentary Control in EU Foreign Policy", in *New Approaches to EU Foreign Policy*, M. Wilga, & I. Karolewski (eds.) Routledge, 2014, pp. 125-141.

⁵⁹ Y. Devuyt, "The European Parliament and International Trade Agreements: Practice after the Lisbon Treaty" in *The European Union in the World: Essays in Honour of Marc Maresceau*, I. Govaere, E. Lannon, P. van Elsuwege, & S. Adam, (eds.). Leiden/Boston: Martinus Nijhoff Publishers, 2014, pp. 171-189.

⁶⁰ E. Wisniewski, "The Influence of the European Parliament on the European External Action Service", *European Foreign Affairs Review*, 2013, 18 (1), pp. 81-101; K. Raube, "Democratic accountability and EU diplomacy: the EEAS and the role of the European Parliament", in *The European External Action Service - European Diplomacy Post-Westphalia*, D. Spence & J. Batora (eds.) Palgrave Macmillan, 2015; K. Raube, "The European External Action Service and the European Parliament", in *Foreign Policy of the European Union*, B. Tonra, R., Whitman & Y. Alasdair (eds.) Sage, 2017.

⁶¹ *The European Parliament and its International Relations*, S. Stavridis & D. Irrera (eds.), Routledge 2015; D. Fiott, "The Diplomatic Role of the European Parliament's Parliamentary Groups", *SIEPS European Policy Analysis* 2015, 3, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2578868.

the focus has been on the parliamentary diplomacy;⁶² however, contemporary research on the EP's international role is not limited to this topic.⁶³

2.2. The research gap and the research focus.

2.2.1. The existing research gap.

There are three major lacunae that this research recognises. The first is the case of EU-Ukraine relations itself; the second is the effect that this case has had and may have for the development of the institutional system of EU external relations; the third is the influence that the Russian war in Ukraine may have for a transformation in the EU system of external relations. Due to the fact that the event analysed took place recently, there is currently an insufficient quantity of academic literature addressing any of these issues. From the legal perspective, these lacunae can be addressed by a comparative analysis between the EP's actual performance and the formal Lisbon framework, which then raises the issue of the legal instruments and mechanisms utilised for the post-Lisbon transformation of the EP's status. This perspective is also insufficiently explored in the current academic literature.

Although EU-Ukraine relations have been the focus of a number of research papers,⁶⁴ the significant role that the EP played during the Association Agreement negotiations remains under-studied. It is a complex case, one which simultaneously encompasses a number of layers and policy areas from sectorial economic cooperation to the external democratisation of Ukraine. Furthermore, this case has revealed a number of new trends for the EP's engagement in EU external relations. These trends are of academic interest, as is the study of this extraordinary case in its entirety.

The post-Lisbon institutional system for EU external relations is still undergoing its formation. Following the pattern of "incomplete contracting,"⁶⁵ the Lisbon Treaty just outlined the system's major features, traditionally leaving the details for elaboration by the institutional actors themselves. Thus, these are supranational institutions that have to solve the problems arising due to incomplete

⁶² *Parliamentary Cooperation and Diplomacy in EU external relations*, K. Raube, J. Wouters & M. Müftüler-Bac (eds.) Edward Elgar, Cheltenham, UK, 2017; *Parliamentary Diplomacy in European and Global Governance* S. Stavridis (ed.), London, Brill- Nijhoff, 2017.

⁶³ L. Redei, *Normative Parliamentarians: the European Parliament's Role in the EU's Foreign Policy Progress*, PhD thesis, Central European University, Budapest, Hungary, 2013

⁶⁴ T. Casier, "The EU's two-track approach to democracy promotion: the case of Ukraine", *Democratization*, 2011, 18(4), pp.956-977; A. Dimitrova & R. Dragneva, "Constraining external governance: interdependence with Russia and the CIS as limits to the EU's rule transfer in the Ukraine", *Journal of European Public Policy*, 2009, 16(6), pp.853-872, A. Dimitrova & R. Dragneva, "Shaping Convergence with the EU in Foreign Policy and State Aid in Post-Orange Ukraine: Weak External Incentives, Powerful Veto Players", *Europe-Asia Studies*, 2013, 65(4), pp.658-681.

⁶⁵J. Stacey, *Integrating Europe: Informal Politics and Institutional Change*, OUP, 2010, p. 34-58.

contracting.⁶⁶ From this perspective, the EP's behaviour has always been a factor influencing its institutional future in the open-ended European integration process.⁶⁷ Indeed, despite the limited extension of its competences within the CFSP by the Lisbon Treaty, the EP has managed to strengthen its scrutinising position regarding all three major elements of the post-Lisbon system of the CFSP – the HR, the EEAS and the Union's delegations⁶⁸ to a much greater degree than the Lisbon Treaty suggested. This enhancement was mostly facilitated by informal practices and inter-institutional agreements. Certainly, this development implies a high level of flexibility of the entire system, thus stressing the possibility of further modifications. In this context, the trends begun by the EP's performance in the Ukrainian case may well have considerable impact on its further evolution.

There is a final point to make here. In the new millennium, the concept of security has been reassessed. Today, security challenges are increasingly frequently associated with a combination of different civilian factors, burdened by military or police components, such as terrorism threats, civil conflicts, piracy, etc. The example of the Russian “hybrid” war in Ukraine with the synergy employed in its warfare has evidently demonstrated the growing irrelevance of the current split in EU foreign policy as well as the anachronism of a separate status for the CFSP. From this perspective, the shock from the Russian military engagement in Ukraine could well be a catalyst for the transformation of this policy area, yielding a more advanced role for the EP. Furthermore, it was the EP's intensive debate on the security issues in this case that has revealed its growing ambition vis-à-vis the CFSP.

2.2.2. The focus of the research.

This section provides the fine-tuning of the focus of this research. It begins with a wider picture and then narrows down to the main point. Although the Lisbon Treaty enhanced the influence in EU foreign policy of both Member States' national parliaments and the EP, the role of national parliaments lies beyond the focus of this research. As was emphasised, supranational integration triggered parliamentarisation at both the EU and domestic level, resulting in the strengthening of domestic oversight mechanisms⁶⁹ especially in Eurosceptic environments,⁷⁰ as the

⁶⁶ M. Pollack, “The New Institutionalism and EC Governance: The Promise and Limits of Institutional Analysis, Governance”, *An International Journal of Policy and Administration*, 1996, 9 (4), pp.429-458, p. 435.

⁶⁷ S. Krauss, (2000), op. cit., p. 219.

⁶⁸ S. Duke, “The Lisbon Treaty and External Relations”, *Eipascope*, 2008, 1 p. 13 <<http://www.eipa.eu>>

⁶⁹ Ph. Kiiver, *The national parliaments in the European Union : a critical view on EU constitution-building*, Kluwer Law International, 2006.

⁷⁰ F. Cheneval, S. Lavenex & F. Schimmelfennig, “Demoi-cracy in the European Union: principles, institutions, policies”, *Journal of European Public Policy*, 2015, 22(1), pp.1-18, p. 12

national parliaments “fought back”.⁷¹ However, study of the new role of the national parliaments, whilst rewarding,⁷² represents a separate research agenda.

Regarding the EP, the current academic debate emphasises the two major roles that it plays in EU external relations: institutional and international.⁷³ The institutional role implies the EP’s interaction with other EU foreign policy actors, and the international role refers to its direct engagement with other international actors (countries and international organisations).⁷⁴ This research supports this classification as it reflects major differences between the actors, aims and instruments involved. However, there is a need for a closer look due to the fact that the EP’s roles and functions within this division also differ considerably, as do the goals of the EP’s involvement, its competences and interaction practices. Furthermore, there is another reason for a more detailed classification of the EP’s activities as while a number of them are purely political with little or no legal regulation, others are well regulated at different levels of EU law, which provides opportunities for legal analysis.

Against the background of a general aim to stress that usually all the roles that the EP plays in EU foreign policy are mutually reinforcing and contribute to its evolving role within this policy area, it is important to note that all these roles are rather independent phenomena and often with different origins, different mechanisms of engagement and certainly different outcomes. Therefore, to set the focus of this particular research I need to provide a rather wide picture of the roles that the EP plays in the EU foreign policy as a whole. Subsequently, I will specify the exact area of interest.

Concerning the EP’s international performance, it is possible to separately stress a number of different roles that the EP is involved in. First of all, there is “parliamentary diplomacy”, which implies the direct contact of MEPs with foreign executives. This practice includes both MEP visits to different capitals and visits of foreign executives to the EP. In addition to symbolically stressing the independent international role of the EP, their speeches within the walls of the European Parliament also provide opportunities to raise issues of concern from the EP’s own agenda that MEPs may have regarding a particular country. The second role is the EP’s involvement in different kinds of election oversight missions. Finally, the third is the inter-parliamentary cooperation that the MEPs take part in. The practice

⁷¹ T. Raunio, & S. Hix, “Backbenchers learn to fight back: European integration and parliamentary government”, *West European Politics*, 2000, 23(4), p.142–168; J. O’Brennan & T. Raunio, *National parliaments within the enlarged European Union : from ‘victims’ of integration to competitive actors?* Routledge, 2007.

⁷² S. Bulmer (2009) op. cit., p. 319.

⁷³ L. Redeï, (2013), op. cit., p. i.

⁷⁴ Ibid.

includes both bilateral and multilateral formats. The largest and most influential inter-parliamentary assemblies include the ACP-EU,⁷⁵ the PA-UfM⁷⁶ EUROLAT,⁷⁷ and EURONEST.⁷⁸ A separate phenomenon is the EP's cooperation with the national parliaments of the Member States in CFSP matters.⁷⁹ Although this is not strictly international, it still stresses the international status of the EP as it is based on its collaboration with the parliaments of sovereign states. Furthermore, this status is emphasised by the goal of this cooperation, as it has been designed to strengthen the EU's international performance.

The international role of the EP is important and sophisticated, and it is an interesting phenomenon of its own. This role certainly reinforces the EP's performance within the EU institutional system as well as contributes greatly to the international identity of the EP. Therefore, this research refers to this role as well as to a number of separate international activities of the EP in the context of EU-Ukraine relations. However, the EP's international role is not the main focus of this research. From the perspective of this research, the EP's international role is viewed as mostly or even exclusively as a political phenomenon, which hardly enjoys any regulation within a formal legal framework. Therefore, this research views this EP's role as an important background element, which, nonetheless, exists in parallel with the developing post-Lisbon system of EU external relations as well as with the evolution of the EP's institutional role within this system.

One interesting fact is that within its institutional role the EP performs a number of different functions, which include a socialisation effect, the EP's role in the budgetary process, its role as a "grand debate forum" or an "idea market" and its role as an institutionalised actor for shaping EU foreign policy and scrutinizing its implementation, etc. Certainly, all these perspectives are interrelated and mutually reinforcing; however, it is important to mention that the EP's functions as an institution for socialisation also lie outside the main focus of this research, as does its role in the budgetary process, although the EP has been using the financial instruments to enhance its role in EU foreign policy and "the budget stick really works".⁸⁰

At the centre of this research lies the post-Lisbon engagement of the EP in EU external relations in the context of the CFSP. The core area of interest is the post-

⁷⁵ Africa Caribbean Pacific - European Union Joint Parliamentary Assembly.

⁷⁶ Parliamentary Assembly - Union for Mediterranean.

⁷⁷ Euro-Latin American Parliamentary Assembly.

⁷⁸ EURONEST Parliamentary Assembly.

⁷⁹ J. Wouters & K. Raube, "Europe's Common Security and Defence Policy: The Case for Inter-Parliamentary Scrutiny", Leuven Centre for Global Governance Studies 2012, Working Paper No 90, p. 8.

⁸⁰ L. Redei, (2013), op. cit., p. 73.

Lisbon evolution of the EP's institutional role, resulting in its enhancement within this policy area. With reference to the empirical case-study of the EP's performance in EU-Ukraine relations, this research studies the phenomenon of the EP's growing role as an agenda-setter for EU relations with a target country as well as the instruments that the EP utilises to influence other EU foreign policy actors. The legal perspective of this research examines the correlation of the EP's actions with the formal Lisbon framework for the CFSP as well as the instruments that the EP relies upon for the enhancement of its role.

The results of the EP's actions are not central to this research. Neither is the correlation between the EP's actions and the actual policy outcomes. In this regard, reference can be made to the literature on the subject, which emphasises the absence of immediate and direct effects of institutions on public policy. As was stressed, "the causal chains between institutional arrangements and substantive policy are indirect, long, and contingent".⁸¹ Other research supporting these findings emphasises that "the disentanglement of institutional effects is particularly difficult in multilevel and multicentered institutional settings, characterised by interactions among multiple autonomous processes."⁸² The institutional system for EU foreign policy fits this description precisely.

2.2.3. *The research questions.*

In the wider perspective, this research seeks to answer the following question: what are the pivotal factors that facilitated the post-Lisbon enhancement of the EP's institutional role for the CFSP?

This research utilises the historical institutionalism methodology; thus, it also follows a specific research pattern with interest in specific cases,⁸³ which represent empirical puzzles⁸⁴ that deviate from the theoretically predicted standard or normal development of affairs. This leads to the fact that this type of research focuses on a limited number of cases and does not tend to offer generalisations from the results acquired. On the other hand, this type of research is usually more specific, since it cares for nuances and thus provides more detailed results.⁸⁵

⁸¹ *Do Institutions Matter? Government Capabilities in the United States and Abroad*, R. Weaver & B. Rockman (eds.), Washington, Brookings, 1993.

⁸² J. March & J. Olsen, "Elaborating the "New Institutionalism", in *The Oxford Handbook of Political Institutions*, S. Binder, R. Rhodes, & B. Rockman, (eds.), 2008, p. 6. <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199548460.001.0001/oxfordhb-9780199548460-e-1>

⁸³ S. Steinmo, "What is Historical Institutionalism?" in *Approaches and Methodologies in the Social Sciences A Pluralist Perspective*, D. della Porta & M. Keating (eds.), Cambridge University Press, 2008, pp. 118-138, p. 134

⁸⁴ K. Thelen, "Historical Institutionalism in Comparative Politics", *Annual Review of Political Science*, 1999, 2, pp. 369-404, p. 373

⁸⁵ *Ibid*, p. 372-374.

Following the above pattern, this research is inductive as it begins with the particular case of the EP's involvement in EU-Ukraine relations. The issue here is the intensive EP debate on CFSP matters, which evidently exceeds the limited consultative role that the EP supposedly has for this policy area. Furthermore, after the commencement of the Ukrainian crisis at the end of 2013, the EP has frequently made security issues a central part of its involvement and places them into the wider context of bilateral relations, which does not correspond to the current separate status of the CFSP. A wider look at this phenomenon reveals the fact that after 2009 the EP has enhanced its position in the CFSP considerably further than the provisions of the Lisbon Treaty foresaw.

My research question has two perspectives, empirical and analytical. At the empirical level, the research aims at studying the EP's institutional performance in a specific case of EU-Ukraine relations. Thus, the research question here is: *What is the institutional role that the EP played in the particular case of the EU relations with Ukraine?*

At the analytical level, the research places the empirical results into the wider picture of the post-Lisbon institutional set-up in an endeavour to answer the following questions:

- How does the EP's performance in this case correlate with the general post-Lisbon enhancement of the EP's role in EU foreign policy, particularly in the CFSP?

- How does this role correlate with the post-Lisbon legal framework for the EP's engagement in EU external relations?

- What legal instruments have been utilised for the EP's promotion in the area of EU foreign policy after the Treaty of Lisbon?

2.3. The added value of this research.

This research deals with a topic which remains insufficiently explored by the existing academic literature. Furthermore, this dissertation provides three tangible contributions to the debate. The first is empirical and is aimed at covering the existing gap in the studies by investigating the particular case of EU-Ukraine relations. This case is of specific academic interest due to its extraordinary and compound nature, one which reveals the variety of roles available for the EP in EU relations with third countries.

The second contribution is theoretical and is aimed at placing the empirical results of the particular case into the wider picture of the post-Lisbon evolution of

the EP's role in EU external relations. The particular focus here is the CFSP, although due to the compound nature of both the empirical case and the EU external relations system this research naturally also covers other areas.

The third contribution is connected with the format of this research, which is inter-disciplinary, covering both legal and political perspectives. The research aims to specify the role of law as a regulator of political processes, rather than treating it as “the functional handmaiden of political actors”,⁸⁶ thus, the research is not limited by positive law, exploring the regulative values of other factors involved. The research addresses two central issues of the contemporary institutionalist agenda: understanding of the mechanisms of institutional change, and the need to comprehend the role of ideas in this process.⁸⁷

By fulfilling these three functions, the research aims to provide an insight into the mechanisms underpinning the post-Lisbon evolution of the EP in the CFSP. The research therefore contributes to a better understanding of the current transformations within the EU institutional system, in particular those concerning the EP.

2.4. Methodology

This research is inter-disciplinary, a result of a number of factors. EU phenomena are usually multi-dimensional and are traditionally studied from the perspective of several disciplines in the social sciences. Furthermore, despite their functional differences, law, economics and politics are stable sub-systems, which are closely interconnected and interrelated.⁸⁸ The classical legal dogmatic approach towards the study of institutions is today claimed to be “unpalatably formalistic and old-fashioned.”⁸⁹ Indeed, the first steps within this project, which were mainly associated with doctrinal research methodology, swiftly revealed the boundaries of this approach. Against this background, “law in context” approaches provide a wider methodological toolkit to overcome such stalemates.⁹⁰

⁸⁶ J. Shaw, & J. Hunt, “Fairy Tale of Luxembourg? Reflections on Law and Legal Scholarship” in *European Integration in Reflections on European Integration: 50 Years of the Treaty of Rome*, D. Phinnemore & A. Warleigh-Lack, (eds.), 2009, pp. 93-108.

⁸⁷ S. Steinmo, (2008), *op. cit.*, p. 129.

⁸⁸ M. King & Ch. Thornhill, *Niklas Luhmann's Theory of Politics and Law*, Palgrave, 2003, p. 3-5.

⁸⁹ G. Drewry, “Political institutions: legal perspectives”. in *A New Handbook of Political Science*, R. Goodin & H.-D. Klingemann (eds.), OUP, 1996, pp. 191–204, p. 191

⁹⁰ T. Hervey, R. Cryer, B. Sokhi-Bulley and A. Bohm, *Research Methodologies in EU and International Law*, Hart Publishing, 2011, p. 76.

The general methodological approaches affecting this research can be referred to as “law and political science”.⁹¹ The selection of this methodological approach followed from the specific topic of the research, the study of a particular institution in the dynamic context of the evolution of the EU, as well as the context of the EU’s performance in the international arena. Due to the considerable importance of political components in the EP’s behaviour, which quite often prevails over legal reasoning, the study of the EP outside the political context would hardly be possible. Furthermore, this approach “seeks to bring together understanding of the EU or international order as a legal system and as a political system”.⁹² Thus, the legal dogmatic methodology was utilised mainly from the perspective of *de lege lata* – that is, for the identification of the current legal framework regulating the EP’s engagement in EU external relations.

When considering the methodologies employed in more detail, it should be noted that due to the structure of the research (article-based) and the perspective that it provides, the study was carried out utilising a number of different methodological approaches. However, such pluralism is usually considered to enrich analysis and is thus welcomed for social science projects.⁹³ In particular, the methodological approaches laid out below may be identified as having influenced the research set-up. At the same time, they constitute methodological perspectives that could have been assigned a more dominating role for the whole research project.

The research certainly has a close connection to constitutionalism. This approach has been used for many years for describing the European integration process⁹⁴ and for studies of the EU institutional system. More widely, constitutionalism has been recognised as a “deeply contested but indispensable symbolic and normative frame for thinking about the problems of viable and legitimate regulation of the complexly overlapping political communities of the post-Westphalian world”.⁹⁵ Moreover, it is the reference of constitutionalism to “democratic theories” and the liberal model of governance⁹⁶ that is critical for the study of the EP’s current institutional role. The core of the entire project is the supra-national application of the principles of democracy, which is usually associated with

⁹¹ *Ibid.*, p. 78.

⁹² *Ibid.*

⁹³ J. Friedrichs & F. Kratochwil, “On Acting and Knowing: How Pragmatism Can Advance International Relations Research and Methodology.” *International Organization*, 2009, 63(4), pp.701–731, p. 708-710.

⁹⁴ N. Walker, “Legal Theory and the European Union: A 25th Anniversary Essay”, *Oxford Journal of Legal Studies*, 2005, 25, pp 581-601.

⁹⁵ N. Walker, “Postnational Constitutionalism and the Problem of Translation “ in *European Constitutionalism Beyond the State*, J. Weiler & M. Wind (eds.), Cambridge University Press 2003, pp. 27-54, p. 53.

⁹⁶ Ch. Lord, (2004), *op. cit.*

constitutionalism.⁹⁷ In this sense, the research supports the interconnection between the issues of legality and of optimal institutional arrangements.⁹⁸

The EU's promotion of human rights, democracy and the rule of law worldwide⁹⁹ provides another perspective affecting the research, a perspective that has been defined as cosmopolitanism "with a somewhat constitutionalist flavour."¹⁰⁰ The universal nature of these values emphasises Europe's perception of itself as a (liberal) vanguard, "characterised by (liberal) European values, which liberals are bound to protect worldwide"¹⁰¹ Therefore, the EU's assumption of the role of a guarantor of these values within and beyond its borders implies its reference to the realm of morality – "by contrasting nationalism, racism, terrorism and poverty as antagonistic and external to the principles of liberty, solidarity and diversity as positive and internal."¹⁰² The research also produces critical perspectives as it questions the current institutional set-up of the CFSP. In addition to a rather straightforward reference to the democratic oversight over the CFSP, the research also questions the EU's actual performance in a number of crisis situations, simultaneously stressing the existing institutional drawbacks as one of the reasons for the problematic performance. Moreover, the research provides a critical analysis of the CFSP institutional system in the context of the goals for this policy area as they are set out by the Lisbon Treaty.

This research has also been influenced by the ideas of social constructivism. Social constructivism is considered to be a "meta-theoretical approach to the study of social phenomena,"¹⁰³ as it perceives legal and political categories to be socially constructed.¹⁰⁴ Thus, constructivism is often perceived as a general philosophical¹⁰⁵ and social theory,¹⁰⁶ and constructivism can therefore hardly be omitted from a

⁹⁷ I. Pernice, "Multilevel Constitutionalism and the Crisis of Democracy in Europe", *European Constitutional Law Review*, 2015, 11, pp. 541–562. R. Dworkin, "Constitutionalism and Democracy", *European Journal of Philosophy*, 1995, 3 (1), pp.2–11. *Constitutionalism and Democracy*, R. Bellamy (ed.), Routledge, 2006. D. Feldman, "Constitutionalism, Deliberative Democracy, and Human Rights" in *Judges, Transition, and Human Rights*, J. Morison, K. McEvoy, & G. Anthony (eds.), OUP, 2007, pp. 443–466.

⁹⁸ Ch. Möllers, "European governance: Meaning and value of a concept", *CMLR*, 2006, 43 (2), pp. 313–336, p. 336.

⁹⁹ E. Eriksen, "The EU – a cosmopolitan polity?", *Journal of European Public Policy*, 2006, 13(2), pp. 252–269, p. 252.

¹⁰⁰ T. Hervey et al. (2011), *op. cit.*, p. 49.

¹⁰¹ K. Jørgensen, "Constructing European Diplomacy in a Changing World", in *EU Foreign Policy through the Lens of Discourse Analysis: Making Sense of Diversity*, C. Carta & J.-F. Morin (Eds.), Ashgate, 2014, pp. 79–94, p. 87.

¹⁰² A. Kutter, "(De-)Constructing the EU as a Civilising Power: CFSP/CSDP and the Constitutional Debate in Poland and France" in *EU Foreign Policy through the Lens of Discourse Analysis: Making Sense of Diversity*, C. Carta & J.-F. Morin (Eds.), Ashgate, 2014, pp. 151–170, p. 159.

¹⁰³ T. Risse, "Social Constructivism and European Integration," in "European Integration Theory", A. Wiener & T. Diez (eds.), OUP, 2004, p. 160.

¹⁰⁴ J. Shaw, "Postnational Constitutionalism in the European Union", *Journal of European Public Policy*, 1999, 6 pp. 579–597, p. 580.

¹⁰⁵ J. Ruggie, "What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivist Challenge", *International Organization*, 1998, 52(4), pp. 855–885, p. 856.

¹⁰⁶ M. Finnemore, *National Interests in International Society*, Cornell University Press, New York, 1996., p. 27.

research project like this. In a more narrow sense, constructivism offers a useful methodological perspective for the research by perceiving law as an important part of the identity-building process, since the actors derive views of their interests and identities from their relations with law.¹⁰⁷ Furthermore, constructivism stresses the role that “rules, principles, norms of behaviour, and shared beliefs” play in the perception of the world and in the formation of one’s goals and the strategies employed to achieve them.¹⁰⁸ This is also true of institutions and institutional practices, which are also recognised as socially constructed basing on the shared sense of what is appropriate.¹⁰⁹

However, the major theoretical framework that this research utilises is new institutionalism. This approach is well recognised as a suitable approach for interdisciplinary research dealing with institutional design¹¹⁰ that brings together law and politics in EU studies.¹¹¹ In terms of the correlation between the constructivism and the new institutional approaches, Bache et al. place them on different levels: new institutionalism is placed on the level that seeks to explain the EU as a political system. Constructivism, however, is offered as one of the critical perspectives for understanding the EU as a social construct,¹¹² since the EU is often recognised as a social construct “within which various actors confront each other in institutionalised settings.”¹¹³ Indeed, this correlation between constructivism and institutionalism is pretty straight-forward as institutionalism emphasises the endogenous nature and social construction of political institutions.¹¹⁴ In this context, law plays an important role from the perspective of both approaches, as it underpins the entire system. Reference to the political integration within the EU through law leads back to constitutionalism in the sense of “rendering the EU more state like”,¹¹⁵ the approach which remains persistent in contemporary EU scholarship.

The convenient starting point and most general point of the new institutionalism is that, once created, institutions “take on a life of their own.”¹¹⁶

¹⁰⁷ T. Hervey et al. (2011), op. cit., p. 81.

¹⁰⁸ A. Hurrell, “Norms and Ethics in International Relations,” in *Handbook of International Relations*, W. Carlsnaes, T. Risse, & B. Simmons (eds.), London: Sage Publications, 2002, pp. 137–154, p. 142-143.

¹⁰⁹ P. Hall & R. Taylor, “Political Science and the Three New Institutionalisms”, MPIFG Discussion Paper 96/6, 1996, p. 17, <http://www.mpi-fg-koeln.mpg.de>,

¹¹⁰ P. Chmielewski, “New Institutionalism: a Platform for Productive Integration in Social Sciences”, *Warsaw forum of economic sociology*, 2010, 1: 1, pp. 9-88.

¹¹¹ D. Wincott, “Political Theory, Law and European Union”, in *New Legal Dynamics of European Union*, J. Shaw & G. More (eds.), Clarendon Press, 1995, pp. 293-311.

¹¹² I. Bache, A. George & S. Bulmer, *Politics in the European Union*, OUP, 2010.

¹¹³ L. Redei, (2013), op. cit., p. 52.

¹¹⁴ J. March & J. Olsen, (2008), op. cit., p. 2

¹¹⁵ J. Shaw, & J. Hunt, (2009) op., cit., p. 93-94.

¹¹⁶ M. Pollack, (1996), op. cit., p. 429

They are autonomous “political actors in their own right,”¹¹⁷ which “serve to structure individual and collective choices.”¹¹⁸ Another common general point for all schools of the new institutionalism is the importance of institutions, since “political struggles are mediated by prevailing institutional arrangements”.¹¹⁹ Despite the fact that all different perspectives of institutionalism are aimed at understanding and improving political systems,¹²⁰ it is conventional to distinguish three different varieties of new institutionalism: rational choice institutionalism, historical institutionalism, and sociological institutionalism.¹²¹ However, despite the tremendous internal diversity that these schools offer, Thelen emphasises the mutually enriching and often fruitful experiments of the “border crossers”, who liberally borrowed alternative perspectives from other schools of institutionalism in order to answer specific empirical questions.¹²² Although this research predominantly refers to historical institutionalism, it continues the trend of “border-crossing” and refers to a number of concepts that are associated with other schools of institutionalism.

Taking into consideration the vast amount of literature dedicated to new institutionalism and the differences between its schools as well as the limited space of this chapter, this part just provides short references to the major concepts that have been utilised for this project. From historical institutionalism this research borrowed the idea that public (collective) interest is determined within an institutional context, thus, this determination is inseparable from institutions.¹²³ As the research focuses on the ongoing transformation of the EP’s role after the Lisbon Treaty, the reasons in favour of historical institutionalism are evident as its major interests include the process of institutions’ evolution. Path-dependence, the concept of critical junctures and the role that different kinds of shock play for the transformations of institutions were also taken into consideration. As I. Katznelson noted, the analysis of critical junctures that set countries along different developmental paths has long been the bread and butter of historical institutionalism.¹²⁴

¹¹⁷ J. March & J. Olsen: “The New Institutionalism: Organizational Factors in Political Life”, *The American Political Science Review*, 1984, 78(3), pp. 734-749, p. 738.

¹¹⁸ M. Pollack, (1996), op. cit., p. 430

¹¹⁹ D. Chrysoschoou, *Theorizing European Integration*, London: SAGE, 2001, p.113.

¹²⁰ J. March & J. Olsen, (2008), op. cit., p. 2.

¹²¹ K. Thelen, (1999), op. cit., p. 369.

¹²² *Ibid*, p. 370-371.

¹²³ J. Zysman, “How institutions create historically rooted trajectories of growth”, *Industrial and Corporate Change*, 1994, 3(1), pp. 243-283, p. 244.

¹²⁴ I. Katznelson, “Structure and configuration in comparative politics”, in *Comparative Politics: Rationality, Culture and Structure*, M. Lichbach & A. Zuckerman (eds.), Cambridge University Press. 1997, pp. 81-112.

Historical institutionalists recognise the significance of different kinds of contexts, including cultural, contemporary political and, particularly, historical. As for the latter, historical institutionalism brings questions of timing and temporality to the centre of the analysis of how institutions matter,¹²⁵ stressing that many of the contemporary implications of these temporal processes are embedded in institutions.¹²⁶ From the more particular perspective of EU studies, this research supports the well-known claim that understanding of the EU integration project can only be achieved “by examining ‘the before’, the subtext of the integration programme, the past.”¹²⁷

The last point here is the attention that historical institutionalism pays to the relations between institutions and ideas.¹²⁸ With further reference to Goldstein¹²⁹ and Weir,¹³⁰ Hall and Taylor provide examples of studies that explore the influence that ideas had on the institutional structure and the political system.¹³¹ Another focus of the new institutionalists’ research agenda is the impact of ideas and beliefs on the transformation of institutions.¹³² They essentially believe that the evolution of institutions takes place “when powerful actors have the will and ability to change institutions in favour of new ideas.”¹³³

Regarding sociological institutionalism, this research refers to the concepts of identity formation and the importance of a common cultural and social background. From this perspective, institutions are perceived as “arenas for contending social forces”, which at the same time represent “collections of standard operating procedures and structures that define and defend values, norms, interests, identities and beliefs.”¹³⁴ Furthermore, sociological institutionalism offers a broader understanding of institutions, one which includes not just formal rules, and procedures, but the symbol systems, cognitive scripts, and moral templates that

¹²⁵ K. Orren & S. Skowronek, “Beyond the iconography of order: notes for a new institutionalism” in *The dynamics of American Politics: Approaches and Interpretations* L. Dodd & C. Jillson (eds.), Boulder, Westview, 1994, pp. 311–332, p. 312

¹²⁶ P. Pierson, “The Path to European Integration: A Historical Institutional Analysis”, *Comparative Political Studies*, 1996, 29(2), pp.123–163, p. 126.

¹²⁷ P. Zumbansen, “Review Essay - Europe’s ‘Darker Legacies’? Notes on ‘Mirror Reflections’, the ‘Constitution as Fetish’ and Other Such Linkages between the Past and the Future”, *Osgoode Hall Law Journal* 2005, 43, pp. 321–334, p. 329.

¹²⁸ K. Sikkink, *Ideas and Institutions: Developmentalism in Brazil and Argentina*, Cornell University Press, 1991

¹²⁹ J. Goldstein, “Ideas, Institutions and American Trade Policy”, *International Organization* 1988, 42 (1), pp. 179–217.

¹³⁰ M. Weir, “Ideas and Politics: The Acceptance of Keynesianism in Britain and the United States” in *The Political Power of Economic Ideas* P. Hall (ed.), Princeton University Press, 1989, pp. 53–86.

¹³¹ P. Hall & R. Taylor, (1996), op. cit., p. 10.

¹³² R. Lieberman, “Ideas, Institutions, and Political Order: Explaining Political Change”, *American Political Science Review*, 2002, 96(4) pp.697–712; *Preferences and Situations: Points of Intersection Between Historical and Rational Choice*, I. Katznelson & B. Weingast (eds.), Russell Sage Foundation, 2005.

¹³³ S. Steinmo, (2008), op. cit., p. 130.

¹³⁴ J. March & J. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics*, The Free Press, 1989, p. 17.

provide the “frames of meaning” guiding human action.¹³⁵ The approach towards understanding institutions in sociological institutionalism bears the imprint of social constructivism, as institutions are thought to provide an impact on social life that goes beyond the strategic calculations of individuals and also affects “their most basic preferences and very identity.”¹³⁶ Thus, by shaping values and preferences, institutions “structure political situations and leave their own imprint on political outcomes”.¹³⁷ As for the EP’s status, it is sociological institutionalism that stresses the importance of democratic legitimacy as a separate political factor.¹³⁸

In terms of the rational choice school of institutionalism, this study supports the assumptions of the self-interest rationale in institutional behaviour and strategic goals for its maximisation.¹³⁹ However, historical institutionalists raise an appropriate question – what does it mean to maximise power within a given context?¹⁴⁰ This question not only emphasises the importance of the context and an element constraining the options, but also reduces a rather general theoretical assumption to a more understandable practical perspective.

The following two paragraphs are dedicated to a tricky inter-connection between institutions and rules, thus creating the premises for the legal perspective of the research. The most straightforward definition for institutions is one of rules,¹⁴¹ or a “collection of norms”.¹⁴² A classical definition by March and Olsen reads that “an institution is a relatively enduring collection of rules and organised practices, embedded in structures of meaning and resources”.¹⁴³ Sweet and Sandholtz describe the process of institutionalisation in the EU using three interrelated dimensions: “the rules (formal and informal) which impose constraints on actors rules; the supranational institutions that produce, execute and interpret EU rules; and interactions with transnational society.”¹⁴⁴ Although some scholars put a special

¹³⁵ W. Scott, “Institutions and Organizations: Towards a Theoretical Synthesis” in *Institutional Environments and Organizations: Structural Complexity and Individualism*, W. Scott, J. Meyer et al., SAGE, 1994, pp. 55–80.

¹³⁶ P. Hall & R. Taylor, (1996), op. cit., p. 15.

¹³⁷ K. Thelen & S. Steinmo, “Historical institutionalism in comparative politics” in *Structuring Politics*, S. Steinmo, K. Thelen and F. Longstreth, (eds.), Cambridge University Press, 1992, pp.1-32. p. 9

¹³⁸ I. Bache, S. Bulmer, & S. George, *Politics in the European Union*, OUP, 2011, p. 26-27.

¹³⁹ B. Rosamond, *Theories of European Integration*, Basingstoke MacMillan, 2000, p.116.

¹⁴⁰ K. Thelen, (1999), op. cit., p. 376.

¹⁴¹ S. Steinmo, (2008), op. cit., p. 123.

¹⁴² M. Finnemore & K. Sikkink, “International Norm Dynamics and Political Change”, *International Organization* 1998, 52(4): pp. 887–917, p. 891.

¹⁴³ J. March. & J. Olsen, “Elaborating the ‘New Institutionalism’” in *The Oxford Handbook of Political Institutions* R. Rhodes, S. Binder & B. Rockman (eds.), OUP, 2006, pp. 3 - 20, p.3

¹⁴⁴ A. Sweet & W. Sandholtz, “Integration, Supranational Governance, and the Institutionalization of the European Polity”, in *European Integration and Supranational Governance* W. Sandholtz & A. Sweet, (eds.), OUP, 1998, p. 9.

stress on formal rules,¹⁴⁵ others do not see a great difference between them.¹⁴⁶ The latter approach is rather common for the school of historical institutionalism, which refers both to formal and informal rules.¹⁴⁷ Sometimes a separate stress is placed upon the importance of informal rules, “standard operating procedures”, “soft-law” and conventions of behaviour.¹⁴⁸

On the one hand, the inclusion of informal rules as provided by this approach offers a much more genuine picture of the actual state of affairs in the EU institutional system for its foreign policy, taking into consideration the vast amount of informal arrangements and “gentlemen’s agreements”, that, despite their informality, are quite strictly observed by all actors involved. On the other hand, from the perspective of dogmatic legal scholarship, this approach is rather embarrassing, as the division between legal and non-legal norms has always been considered to be a critical point. Without denying the importance of informal rules for the EU foreign policy actors, this research endeavours to highlight the legal instruments and mechanisms involved in the formalisation of rules that support the ongoing evolution of the EP within the CFSP.

2.5. Ukraine as an empirical case

EU-Ukraine relations were selected as the empirical part of the research for a number of reasons, which will now be delineated. The starting point is the intensity and wide range of different initiatives and policy areas that the EU-Ukraine relations encompass. Another background issue is that before the collapse of the Soviet Union, Ukraine had been a part of a totalitarian country, which meant a co-relation between the needs of the Ukraine’s post-independence state-building process after 1991 and the EP’s focus on the promotion of liberal democracy values.

However, the endeavour to upgrade the level of the relations and the dramatic Association Agreement negotiations process demonstrated the wide variety of additional roles available for the EP in EU external relations. Moreover, during the presidency of Mr. Yanukovich, there was a growing contradiction between the increasing pressure to conclude the Association Agreement to ensure a tangible result for the bilateral relations and the deteriorating internal Ukrainian situation regarding political rights and the rule of law. This episode emphasises the

¹⁴⁵ W. Steeck & K. Thelen “Introduction: Institutional Change in Advanced Political Economics”, in *Beyond Continuity – Institutional Change in Advanced Political Economics* W. Steeck & K. Thelen (eds.), OUP, 2005, pp. 1-39.

¹⁴⁶ P. Pierson, (1996) op. cit., p. 126.

¹⁴⁷ B. Rosamond, (2000), op. cit., p.115.

¹⁴⁸ S. Bulmer, “The Governance of the European Union: A New Institutional Perspective”, *Journal of Public Policy*, 1993, 13(4), pp. 351-380, p. 355.

importance of placing the “democratic conditionality” agenda into the wider context of relations with a target country as well as the potential that the EP has in this regard.

The commencement of the Russian “hybrid war” revealed another perspective of the relations as the Russian military aggression against an associated partner of the EU questioned the entire concept of “normative power” as a sufficient and effective basis for relations with third countries. The war in Ukraine also emphasised the factor of Russia in other “protracted conflicts” in the EU eastern neighbourhood. Against this background, the issue of a new European security architecture has acquired a fresh perspective. This new architecture should certainly ensure a stronger interconnection of military security issues with non-military ones, such as energy and trade policies, cyber-security, etc.

From the institutional perspective, it strongly implies an evolution of the role that the EP plays in the security aspects of EU foreign policy. Moreover, the intensive EP debate over the Ukrainian events and the shift of the focus towards issues of military security demonstrated its interest in this policy area as well as its ambition for additional competences, exceeding the current Lisbon limits. The case of EU-Ukraine relations demonstrated a number of different institutional roles that the EP played. Furthermore, it demonstrated the evolution of the EP’s priorities and its behaviour over the period of twenty-three years from 1991 to 2014.

Concerning the methodology that this research utilises, the case of EU-Ukraine relations illustrates a specific pattern regarding the EP’s appeal for new competences. This pattern includes intensive EP debate and a growing political pressure on other EU external relations actors against the background of insufficient formal competences for such behaviour. The Ukrainian case being a high-profile international case that deals with a complex issue at the edge of current EP’s competences, and the parliamentary debate over such cases usually triggers internal EU discussion over an extended role for the EP in the contested policy area. Thus, this empirical study of the EP’s involvement in EU-Ukraine relations significantly contributes to a better understanding of the transformation mechanism concerning the post-Lisbon enhancement of the EP’s role in EU external relations.

3. THE BACKGROUND OF THE RESEARCH

This chapter provides the background of the research and deals with three major issues: 1) the EU's international identity; 2) the values that are at the core of its identity; and 3) a new approach towards the EP's responsibilities in the context of the post-national democracy debate. All the three discourses deal with the premises of the EU's international performance and its democratic qualities in their interconnection, thus highlighting the EP's position as the principal institution in bridging these discussions. Moreover, they appeal to the foundations of the entire EU project, revealing the roots of the contemporary phenomena that are in the spotlight in of this research. Besides shaping the background for this study, these discourses also provide useful reference points, which contribute to a better understanding of the findings that this research offers in providing a wider picture of the EU evolution process.

3.1. The EU and its international identity

This section begins with the importance of the EU's identity for its international performance and then moves to Normative Power Europe (NPE) as the major explanatory concept for EU relations with third countries. It then proceeds to shed light on the role that institutions are considered to play for identity formation as well as on the inter-connection between the concepts of normative "soft" powers.

Traditionally, actors in international relations have been Westphalian-type sovereign national states.¹⁴⁹ This type of polity has existed for centuries with rather clear ideas of what they are both internally and internationally. Certainly, the last two centuries have considerably modified both perspectives of states' functions, goals and *modus operandi*; nonetheless, the basic notions of this type of polity have been preserved, although increasingly challenged by the current global transformation.¹⁵⁰ The story with the EU is certainly different. From the landmark ECJ van Gend & Loos judgment claiming Community law to be "a new legal order of international law",¹⁵¹ the EU has been converting into a new type of polity, certainly different from a state. In this sense, the EU's *sui generis* status refers to its specific path of development as well as to its hybrid mode of governance.¹⁵² However, the *sui generis* label does not actually add much to understanding of the

¹⁴⁹ J. March & J. Olsen, (2008), op. cit., p. 14.

¹⁵⁰ H. Sjursen, "The EU as a 'Normative Power': How Can This Be?" in *Civilian or Military Power? European Foreign Policy in Perspective*, H. Sjursen (ed.), Abingdon: Routledge, 2007, pp. 67–84, p. 78–81.

¹⁵¹ ECJ judgment in Case 26-62 of 05.02.1963.

¹⁵² I. Manners, "The European Union as a Normative Power: A Response to Thomas Diez." *Millennium: Journal of International Studies*, 2006, 35(1), pp. 167–180, p. 176.

EU, as this cliché does not answer the question of what it is. Neither does it facilitate pinpointing “a good reference point”.¹⁵³

Furthermore, the EU is a polity which is dynamically evolving, with its transformation from a “regulatory state”¹⁵⁴ into a more political union¹⁵⁵ being one of the perspectives of this evolution. From this standpoint, the EU is morphing into a system of multi-level governance, with decisions “made not by Brussels but in Brussels as well as elsewhere around Europe”.¹⁵⁶ Thus, the EU has traditionally been conceptualised with the “often invisible touch of stateness”,¹⁵⁷ implying the federal perspective of its evolution. Habermas considers the EU to be a new political form. It is neither a ‘federal state’ nor a ‘federation’ but an association of sovereign states which pool their sovereignty in restricted areas to varying degree, an association which does not seek to have the coercive power to act directly on individuals in the fashion of nation state.¹⁵⁸ In the international arena, the EU is unequivocally recognised as being an atypical foreign policy actor with limited resources but with global ambitions.¹⁵⁹ Against the background of the EU currently being a “third way” between national and international politics¹⁶⁰ as well as its being a “recent political construct”,¹⁶¹ the issue of the EU’s identity has been of utmost importance for understanding the essence of this polity.

Identity is normally defined as the self-perception of an actor; however, it may also include the perception that others have regarding this actor.¹⁶² In terms of EU international performance, the need for an identity was repeatedly stressed in the academic literature.¹⁶³ Traditionally, identities are considered to be important for

¹⁵³ L. Redei, (2013), op. cit., p. 26.

¹⁵⁴ G. Majone, *Regulating Europe*, London: Routledge, 1996, p. 265-301.

¹⁵⁵ F. Cheneval, S. Lavenex & F. Schimmelfennig (2015), op. cit., p. 5

¹⁵⁶ K. Nicolaidis, ‘The new constitution as European “demoi-cracy”’, *Critical Review of International Social and Political Philosophy*, 2004, 7(1): pp. 76–93, p. 85

¹⁵⁷ J. Shaw & A. Wiener, “The paradox of the European Polity”, in *The State of the European Union: Volume 5: Risks, Reform, Resistance, and Revival*, M. Cowles & M. Smith (eds.), OUP, 2000, pp. 64-88, p. 65.

¹⁵⁸ J. Habermas, “Why Europe needs a constitution”, *New Left Review*, 2001, 11, pp. 5 – 26, p. 5.

¹⁵⁹ C. Carta, “From the ‘Magnificent Castle’ to the Brutish State of Nature: Use of Metaphors and the Analysis of the EU’s International Discourse” in *EU Foreign Policy through the Lens of Discourse Analysis: Making Sense of Diversity*, C. Carta & J.-F. Morin (eds.), Ashgate, 2014, pp. 191-207, p. 204.

¹⁶⁰ K. Nicolaidis, “The idea of European democracy”, in *Philosophical Foundations of European Union Law*, J. Dickson & P. Eleftheriadis (eds.), OUP, 2012, pp. 247–274, p. 248.

¹⁶¹ L. Aggestam, “Role Theory and European Foreign Policy: A Framework of Analysis,” in *The European Union’s Roles in International Politics: Concepts and Analysis*, O. Elgström & M. Smith (eds.), Routledge, 2006., pp. 11-30, p. 21.

¹⁶² M. Finnemore, & K. Sikkink, “Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics.” *Annual Review of Political Science*, 2001, 4, pp. 391–416, p. 399.

¹⁶³ T. Forsberg, “Normative Power Europe, Once Again: A Conceptual Analysis of an Ideal Type.” *JCMS*, 2011, 49(6), pp. 1183–1204, p. 1191–1192; E. De Zutter, “Normative Power Spotting: An Ontological and Methodological Appraisal.” *Journal of European Public Policy*, 2010, 17(8), pp. 1106–1127, p. 1107, 1115–1118.

further articulation of interests¹⁶⁴ as well as for the formation of political alliances.¹⁶⁵ Schimmelfennig argued that “social actors use and exchange arguments based on identities, values, and norms institutionalised in their environment to defend their political claims and to persuade their audience and their opponents to accept these claims and to act accordingly.”¹⁶⁶ Identity is also recognised as a property generating “motivational and behavioural dispositions”.¹⁶⁷

In addition to the above theoretical reasoning, the formation of the EU’s own international identity has been of utmost importance for practical political reasons due to the high-profile identities that the leading EU countries enjoy.¹⁶⁸ This may result in a form of competition, leading to awkward and dubious situations such as the one in Egypt in the aftermath of the “Arab spring”, when the new Egyptian government declared that they were “too busy” to receive the EU High Representative,¹⁶⁹ about two weeks later they nonetheless welcomed the UK Prime Minister.¹⁷⁰ It is identity that often provides the framework for foreign policy actors, thus influencing their behaviour as well as their collective choices.¹⁷¹ An illustration of this argument is the EU’s consistent application of political conditionality in its relations with third countries since the beginning of the 1990s. This practice provided certain guidelines for the Commission, thus restricting or stimulating its behaviour, with a recent example being the case of the EU-Korean Free-Trade Agreement negotiations.¹⁷²

In the context of this research, an important question is what the role is that institutions play in terms of the identity formation. Weber considered organisations to be social constructs, *inter alia* for establishing guidelines for acceptable types of behaviour.¹⁷³ In this sense, political actors organise themselves and act in accordance with rules and practices which are socially constructed, publicly known, anticipated,

¹⁶⁴ J. Hall, “Ideas and the Social Science” in *Ideas and Foreign Policy Beliefs, Institutions, and Political Change* J. Goldstein & R. Keohane (eds.), Cornell University Press 1993, pp.31-56, p. 51.

¹⁶⁵ M. Weir, *Politics and Jobs: The Boundaries of Employment Policy in the United States*, Princeton University Press, 1992, p. 24.

¹⁶⁶ F. Schimmelfennig, *The EU, NATO and the Integration of Europe. Rules and Rhetoric*, Cambridge University Press, 2003, p. 193

¹⁶⁷ A. Wendt, *Social Theory of International Politics*, Cambridge University Press, 1999, p. 224.

¹⁶⁸ *Transnational Identities: Becoming European in the EU*, R. Herrmann, T. Risse, & M. Brewer (eds.), Lanham, Md.: Rowman & Littlefield, 2004

¹⁶⁹ “Don’t visit us for the moment, Egypt tells EU’s Ashton” Reuters News, 09.02.2011.

¹⁷⁰ N. Gros-Verheyde, “La ‘course du Caire’, nouveau jeu européen. Ou comment griller la politesse à Lady Ashton”, Bruxelles, 21.02.2011.

¹⁷¹ D. Diermeier & K.Krehbiel, “Institutionalism as a Methodology”, *Journal of Theoretical Politics*, 2003, 15 (2), pp. 123-144, p. 127.

¹⁷² M. Elsig, & C. Dupont, “European Union meets South Korea: bureaucratic interests, exporter discrimination and the negotiations of trade agreements”, *JCMS*, 50(3), 2012, pp. 492–507.

¹⁷³ T. Koelble, “The New Institutionalism in Political Science and Sociology”, *Comparative Politics*, 1995, 27 (2), pp. 231-243, p. 233

and accepted, while simultaneously shaping these rules and practices.¹⁷⁴ Furthermore, the role of institutions goes further, as they are also thought to be able “to give legitimacy to certain rules of conduct and behaviour which concern power relations and the establishment of social and cultural norms far more than utility maximising thought.”¹⁷⁵ The idea of an interconnection between institutions and political culture is also stressed by the understanding of institutions as being an embodiment of certain conventions and customs.¹⁷⁶ Regarding the EU’s identity, Habermas emphasised the potential of the common institutions that he saw for the formation of “a post-national civic European identity.”¹⁷⁷

For the last two decades the concept of Normative Power Europe¹⁷⁸ has been offered as the major explanatory model for the EU’s external actions. Furthermore, this concept is mainly accepted by the EU itself in terms of its self-reflection.¹⁷⁹ The introduction of this concept has provoked a wide-ranging debate regarding the nature of the EU as an international actor.¹⁸⁰ In addition to providing an interesting perspective for understanding EU international behaviour, this concept fits with the EU qualities as an international actor with limited military capacities, “whose power emanates from its economic might, political unity, and a very special system of internal co-operation.”¹⁸¹ However, this concept also implies two major points to stress: the EU’s difference from traditional polities existing on “traditional Westphalian principles” and the special place for the universal norms of democracy, the rule of law and human rights for EU external performance.¹⁸²

Thus, this concept underlines the importance of the EU’s own internal order, which should be in compliance with the values and principles that the EU promotes outside of its own territory.¹⁸³ This ultimately implies a synergy between EU’s internal and external identity, with the EP’s role being of utmost importance for bridging this process. In other words, the EU’s power in international performance depends upon what the EU is itself.¹⁸⁴ Furthermore, it is the commitment to common

¹⁷⁴ J. March & J. Olsen, (2008), *op. cit.*, p. 5.

¹⁷⁵ T. Koelble, *op. cit.*, p. 233.

¹⁷⁶ The New Institutionalism in Organizational Analysis, W. Powell & P. DiMaggio, (eds.), University of Chicago Press, 1991, p. 10.

¹⁷⁷ J. Habermas, “Citizenship and national identity” in *The Condition of Citizenship*, B. van Steenberg (ed.). London: Sage, 1994, pp.20–35.

¹⁷⁸ I. Manners, (2002), *op. cit.*

¹⁷⁹ J. Howorth, “European Defence and the Changing Politics of the European Union: Hanging Together or Hanging Separately?” *JCMS*, 2001, 39, 4, pp. 765-789, p. 778.

¹⁸⁰ V. Sinkkonen, *A Comparative Appraisal of Normative Power: The European Union, the United States and the January 25th, 2011 Revolution in Egypt*, Brill, 2015, p. 2

¹⁸¹ T. Tiilikainen, “The EU in Its Own Eyes: The EU’s Power in Its Self-Understanding”, in *European Foreign Affairs Review*, 2011, 16, pp. 187-205, p. 205.

¹⁸² L. Redei, (2013), *op. cit.*, p. 31.

¹⁸³ I. Manners, (2002) *op. cit.*

¹⁸⁴ *Ibid*, p. 252.

values that has traditionally been viewed as one of the cornerstones of the entire EU project.¹⁸⁵

The debate on the EU's identity also requires a reference to the concept of "Europeanisation", which is defined as "the external projection of internal solutions".¹⁸⁶ In this sense, "Europeanisation" is of interest as it also bridges internal and external aspects of the EU as a *sui generis* polity by outside "mirroring" of the EU fundamental principles.¹⁸⁷ To some extent, it falls in line with a more general pattern of identity formation, which encompasses (includes) both the domestic and international spheres.¹⁸⁸ Thus, "Europeanisation" is not limited by external extrapolation of these principles. As Goetz argued, the EU's impact on its Member States has been an important component of the EU timescape.¹⁸⁹ Furthermore, the "mirroring" process implies compliance with these fundamental principles by both the EU and its Member States, which leads back to the debate on the EU's own democratic qualities as well as to the contemporary threats to the liberal democracy model in such countries as Hungary and Poland. Thus, the concept of "Europeanisation" focuses on the fundamental principles and values that the EU has declared as its foundation,¹⁹⁰ and this focus *inter alia* implies the recognition of the special role of the EP, which has been an epicentre of the debate regarding the EU fundamental principles and values. Furthermore, the EP's traditional agenda has had a permanent focus on the exportation of these same values and principles, which have been associated with the EP's own status within the EU.

The last part of this section deals with correlation between the concepts of normative and "soft" power, with further analysis of the major leverages that the EU has been utilising for its foreign policy. In his excellent book, Sinkkonen provides an intensive debate on this subject.¹⁹¹ This current research supports most of his findings and below stresses the major points that are of particular importance for this study. At the conceptual level, the difference between these two powers is rather

¹⁸⁵ I. Manners, "The Symbolic Manifestation of the EU's Role in World Politics", in *The European Union's Roles in International Politics: Concepts and Analysis*, O. Elgström & M. Smith (eds.), Routledge, 2006 pp. 66–84, p. 70–73.

¹⁸⁶ S. Lavenex, "EU external governance in "wider Europe", *Journal of European Public Policy*, 2004, 11(4), pp.680–700, p. 695.

¹⁸⁷ D. Peters, & W. Wagner, "Die Europäische Union in den internationalen Beziehungen", in *Die Europäische Union: Theorien und Analysekonzepte*, K. Holzinger, Ch. Knill, D. Peters, B. Rittberger, F. Schimmelfennig, W. Wagner, (eds.) Schöningh, Paderborn, 2005, pp.215–272, p. 215–216.

¹⁸⁸ J. Ruggie, "What Makes the World Hang Together? Neo-Utilitarianism and the Constructivist Challenge.", *International Organization*, 1998, 52(4): 855–885, p. 872–873; P. Katzenstein, "Introduction: Alternative Perspectives on National Security", in *The Culture of National Security: Norms and Identity in World Politics*, P. Katzenstein (ed.), Columbia University Press, 1996, pp. 1–32, p. 23.

¹⁸⁹ K. Goetz, & J.-H. Meyer-Sahling, "Political time in the EU: dimensions, perspectives, theories", *Journal of European Public Policy*, 2009, 16(2): 180–201, p. 191

¹⁹⁰ Art. 2 TEU.

¹⁹¹ V. Sinkkonen, (2015), op. cit., p. 44-48.

evident as normative power mainly refers to the type of actor, while soft power is usually viewed as a set of “non-coercive means of power”.¹⁹²

Despite the idealised approach of normative power relying predominantly on the “effect of persuasion and norm leadership”,¹⁹³ in reality it still remains dependent on other forms of power.¹⁹⁴ Regarding the military instruments, there are two points to stress. The first is the EU’s reluctance to appeal to them due to both its insufficient military capacities and the Union’s own historical experience.¹⁹⁵ The second is the EU’s idealism, as Europeans wish to exist in a “world where power doesn’t matter”.¹⁹⁶ Thus, the EU relies on economic instruments as its presence in the international arena is defined by its economic clout, the size of its populace and the commitment of its Members to the EU project.¹⁹⁷ Those instruments are trade, aid and development assistance, which have traditionally been at the core of the EU’s ability to exert its influence and promote its values beyond the territory of its Member States.¹⁹⁸ Furthermore, based upon the dominance of the liberal market principles within the EU, Damro developed an argument for the existence of “market power Europe”, viewed as the externalisation of the internal market policies and claimed to be the EU’s dominant method of external actions.¹⁹⁹

According to Nye, “soft power means”²⁰⁰ are distinguished from both economic and military means of influence,²⁰¹ and are viewed as the preferred instruments for the performance of normative power in the international arena.²⁰² This category was divided into three different components: attraction, persuasion and agenda-setting;²⁰³ however, this division is not strict due their simultaneous utilisation and obvious overlapping effects.²⁰⁴ In this context, agenda-setting was considered to be related to “institutional power”.²⁰⁵

¹⁹² *Ibid.*, p. 73

¹⁹³ T. Diez & M. Pace, “Normative Power Europe and Conflict Transformation,” in *Normative Power Europe: Empirical and Theoretical Perspectives*, R. Whitman (ed.), Palgrave Macmillan, 2011, pp. 210–225, p. 210.

¹⁹⁴ H. Haukkala, “Multi-Causal Social Mechanisms and the Study of International Institutionalisation: The Case of EU-Russia Strategic Partnership” *Annales Universitatis Turkuensis B* 313, University of Turku, 2008, p. 104–105.

¹⁹⁵ Z. Laidi, *Norms over Force: The Enigma of European Power*, Palgrave Macmillan, 2008, p. 46–47.

¹⁹⁶ R. Kagan, “Power and Weakness”, *Policy Review*, 2002, 113(6/7), pp. 3–28, p. 10–11.

¹⁹⁷ E. De Zutter, (2010), *op. cit.*, p. 1115.

¹⁹⁸ D. Mix, “The European Union Foreign and Security Policy”, *Congress Research Service 7-5700*, 2013, p. 20 <https://www.fas.org/sgp/crs/row/R41959.pdf>

¹⁹⁹ Ch. Damro, “Market power Europe”, *Journal of European Public Policy*, 2012, 19 (5), pp. 682–699.

²⁰⁰ J. Nye, *Soft Power: The Means to Success in World Politics*. New York: Public Affairs, 2004, p. 11

²⁰¹ J. Nye, “Notes for a Soft Power Research Agenda”, in *Power in World Politics*, F. Berenskoetter & M. Williams (eds.), Abingdon: Routledge, 2007, pp. 162–172, p. 163.

²⁰² A. Björkdahl, “Normative and Military Power in EU Peace Support Operations”, in *Normative Power Europe: Empirical and Theoretical Perspectives*, R. Whitman (ed.), Palgrave Macmillan, 2011, pp. 103–126, p. 109.

²⁰³ V. Sinkkonen, (2015), *op. cit.*, p. 122

²⁰⁴ J. Nye, *The Future of Power*. New York: Public Affairs, 2011, p. 91–94.

²⁰⁵ M. Barnett & R. Duvall, “Power in International Politics”, *International Organization*, 2005, 59(1): pp. 39–75, p. 51–52.

3.2. Exploring the European values

The post-Lisbon discourse has been shifted from defining and justifying the existence of the EU as an international actor towards attempts to address the question of “Europe, to do what in the world”.²⁰⁶ Following the key questions on the EU foreign policy identified by Larsen,²⁰⁷ this discourse moved from the first one, “*Is the EU constructed as an international actor?*” to the second and the third ones, “*If it is, what kind of actor is constructed?*” and “*What kind of values is this actor based on?*”

The normative power concept implies a strong interconnection of the EU as a normative power with the promotion of values that are of universal validity,²⁰⁸ as well as with the EU’s own politico-legal order, which is viewed as the internal “reference point” for its outside projection.²⁰⁹ This section provides insight into both of the issues in focus. Manners refers to nine specific values that the EU has been promoting in its relations with the outer world. They are divided into two groups of “core” and “subsidiary” norms. The “core” group includes peace, liberty, democracy, human rights, the rule of law, and the “subsidiary” one consists of equality, social solidarity, sustainable development and good governance.²¹⁰ Despite criticism of the rigid framework of the norms that the EU “absolutely must promote”,²¹¹ in fact the totality of the “core” norms²¹² refers to a very specific governance mode of liberal democracy. Furthermore, contrasting the EU’s identity with that of its Member States, Schimmelfennig stresses that the EU’s own “thin” identity is “based on values and norms, and consists in a commitment to liberal democracy.”²¹³

Thus, the core value that the EU as a normative power promotes in its relations with third countries is the liberal democracy governance model. At the same time, the issue of democracy has been at the core of the debate concerning the EU’s own qualities. Therefore, the debate on this governance mode simultaneously concerns both the perspectives that are at the core of the normative power concept. In terms

²⁰⁶ U. Krotz, “Momentum and Impediments: Why Europe Won’t Emerge as a Full Political Actor on the World Stage Soon”, *JCMS*, 2009, 47 (3), pp. 555–578, p. 568.

²⁰⁷ H. Larsen, “Discourse analysis in the study of European foreign Policy”, in *Rethinking European Union foreign policy*, B. Tonra & T. Christiansen (eds.), Manchester University Press, 2004. pp. 62–80, p. 68.

²⁰⁸ I. Manners, 2008. “The Normative Ethics of the European Union.” *International Affairs* 84(1): pp. 45–60, p. 57–58. E. De Zutter, (2010), op. cit., p. 1112–1118.

²⁰⁹ I. Manners, (2006), op. cit., p. 173.

²¹⁰ I. Manners, (2002), op. cit.

²¹¹ E. De Zutter, (2010), op. cit., p. 1110.

²¹² In this regard “peace” should be viewed as the outcome of successful promotion of liberal democracy model, taking into consideration the well-known postulate of no wars between democracies.

²¹³ F. Schimmelfennig, “The normative origins of democracy in the European Union: toward a transformationalist theory of democratization”, *European Political Science Review*, 2010, 2(2), pp. 211 – 233, p. 220

of the EU, this debate has had its specific features due to EU's supra-national qualities. Therefore, it is often connected to the issue of the legitimacy of EU's own legal order. This section begins with the importance of a shared cultural and philosophical background for the formation of common values. It then moves to the current EU democracy debate with its further interconnection with the issue of legitimacy.

The starting point here is the idea that the very foundation of individual and group interest is fundamentally rooted in their beliefs about how the world works and the group's values.²¹⁴ This approach echoes the Weberian understanding of the role that the ideas and beliefs play in terms of legitimising a political system.²¹⁵ Weber's triad of motives causing actors to believe in the legitimacy of the system includes rational, traditional and charismatic reasoning.²¹⁶ Moreover, in his understanding, the violation of traditions may have fatal consequences for the legality of the entire system.²¹⁷ Later, Jachtenfuchs elaborated the notion and content of shared beliefs about a "legitimate political order"²¹⁸ with their further interconnection with the constitutional perspective of the polity construction process.²¹⁹ Thus, the political system has to comply with the "parameters established by the dominant institutional values".²²⁰ In turn, these values are rooted in and derived from the cultural *milieu*, which is the ultimate source of "legitimacy" or "social appropriateness" in terms of the selection of particular arrangements.²²¹ Extrapolating this approach to the EU context, it should be stressed that the liberal democracy model is today "the predominant legitimating belief in the 'developed' world,"²²² shared by the political elites of the Member States,²²³ which set the parameters for the supra-national level of governance.²²⁴

Since the end of the 1970s, most Western democracies, including many current EU Member States, adopted a neo-liberal direction for their development.²²⁵ The fact that the model of the democratic welfare state is the dominant model for the EU Member States certainly influences the vision of the principles underpinning the

²¹⁴ S. Steinmo, (2008), op. cit., p. 132.

²¹⁵ M. Weber, *Economy and Society. An Outline of Interpretative Sociology*, Vol. I, Bedminster Press, 1968, p. 263.

²¹⁶ *Ibid*, p. 215.

²¹⁷ *Ibid*, p. 263.

²¹⁸ M. Jachtenfuchs, *Ideen und Integration. Verfassungsideen in Deutschland, Frankreich und Großbritannien und die Entwicklung der EU*, Habilitationsschrift: Universität Mannheim, 1999.

²¹⁹ M. Jachtenfuchs, T. Diez, & S. Jung, „Which Europe? Conflicting Models of a Legitimate European Political Order”, *European Journal of International Relations*, 1998, 4(4): pp. 409–445, p. 410.

²²⁰ G. Peters, *Institutional Theory in Political Science. The 'New Institutionalism'*. London: Pinter, 1999, p. 29.

²²¹ P. Hall & R. Taylor, (1996), op. cit., p. 16.

²²² B. Rittberger (2005), op. cit., p. 52

²²³ *Ibid*, p. 57

²²⁴ *Ibid*, p. 62

²²⁵ J. March & J. Olsen, "Elaborating the "New Institutionalism", 2005, Working Paper No.11, p. 15. <http://www.arena.uio.no>

EU institutional system that the national political elites have. Thus, the fact that liberal democracy is the shared standard of legitimate authority provides a powerful normative resource for the proponents of supranational democratisation.²²⁶ In other words, being a community, “of values and norms, in which all actors share fundamental principles of liberal democracy,”²²⁷ Member States “externalise their domestic political practices and norms about democratic governance”, extrapolating them to the supranational level.²²⁸

Despite its similarities with a federal state, the EU remains a unique polity, which suggests that EU practices can differ from the “national-level versions of democracy”, thus implying the potential “to get closer to the core ideals of democracy.”²²⁹ In terms of specific EU-related approaches to perceiving a correlation between democracy and legitimacy, it is worth mentioning the concept of input-output legitimacy, with input legitimacy stressing the procedural aspect of the decision-making process and output legitimacy the effectiveness of the decisions.²³⁰ However, the efficiency-oriented reallocation of political competences from the national to the supranational level “tends to devalue traditional democratic institutions and processes”.²³¹ Furthermore, the EU’s evolution along the path of polity construction increasingly requires its own democratic legitimacy²³² instead of reference to the technocratic legitimacy and indirect legitimacy borrowed from the Member States.²³³ Thus, the trend of strengthening democratic institutions at the EU level has been viewed as a compensation mechanism.²³⁴ Furthermore, the enhancement of the EP’s position in the EU institutional system was recognised as the central idea reflecting the commitment of the Member States to the idea of democratic governance.²³⁵

In search of the basic formula to adequately define standards for democratic legitimate governance at the supranational level, the three core principles put forward by Abraham Lincoln – ‘government of the people, by the people, for the people’ – have been recognised by most scholars.²³⁶ This formula raised an intricate

²²⁶ F. Schimmelfennig, (2010), op. cit., p. 230

²²⁷ F. Cheneval, S. Lavenex & F. Schimmelfennig (2015), op. cit., p. 10

²²⁸ B. Rittberger (2005), op. cit., p. 24

²²⁹ A. Lotz, "Normative Accountability and Supranational Democracy", 2006, p. 18, <http://aei.pitt.edu/6131/>

²³⁰ F. Scharpf, *Governing in Europe. Effective and Democratic?* OUP, 1999, p. 6.

²³¹ F. Schimmelfennig, (2010), op. cit., p. 230

²³² F. Cheneval, S. Lavenex & F. Schimmelfennig (2015), op. cit., p. 5.

²³³ M. Zürn, M. Binder, & M. Ecker-Ehrhardt, “International authority and its politicization”, *International Theory*, 2012, 4(1): pp. 69–106.

²³⁴ F. Cheneval, S. Lavenex & F. Schimmelfennig (2015), op. cit., p. 10.

²³⁵ T. Bräuninger, T. Cornelius, T. König, & T. Schuster, “The dynamics of European integration: a constitutional analysis of the Amsterdam Treaty”, in *The Rules of Integration. Institutional Approaches to the Study of Europe*, G. Schneider and M. Aspinwall (eds.), Manchester, University Press, 2001, p. 49.

²³⁶ B. Rittberger (2005), op. cit. p. 29.

debate regarding the (non)-existence of the European *demos* as a necessary component for the formation of post- or supranational democracy.²³⁷ This approach was countered by post-nationalism social philosophers who were promoting a “thin” political identity detached from the nation in contrast to the “thick” ethno-nationalism identity.²³⁸ Thus, democracy has been detached from the nation state by shifting the emphasis towards the notion of “deliberative democracy”,²³⁹ which focuses on due deliberation during the decision-making process.²⁴⁰ In other words, following legitimate procedures was reasserted as an important factor of its own. This trend reaffirmed the idea of post-modern social philosophers of democracy lying at the core of legitimacy.²⁴¹ Furthermore, in a wider context, democracy today is conceived as “a legitimation principle which lays out the conditions necessary for finding out what constitutes the “common interest” and, more generally, a community or common identity.”²⁴²

The rather innovative concept of ‘demoi-cracy’ offers a new look at the EU as a polity “evolving on the basis of mainly nationally constituted demoi”.²⁴³ Thus, “[a] democracy consisting of only one people has one *pouvoir constituant* and several *pouvoirs constitués* (parliament, executive, etc.). ... A demoi-cracy “has several *pouvoirs constituants*, i.e., constitutive member statespeoples, and also several *pouvoirs constitués*.”²⁴⁴ According to Schimmelfennig et al., this fact “does not only affect government activity, but the constitutional structure of statehood.”²⁴⁵ Nonetheless, this concept suggests that the democratic qualities of the EU should be assessed “on the balance between, and interaction of, the political rights of individuals and those of the democratically constituted statespeoples.”²⁴⁶ Thus, it nonetheless stresses the liberal democracy “core” of the concept, despite the innovative angle on the EU provided.

²³⁷ J. Weiler, U. Haltern & F. Mayer, “European Democracy and its Critique,” in *The Crisis of Representation in Europe*, J. Hayward (ed.), London: Frank Cass, 1995, pp. 4-39; J. Weiler, *The Constitution of Europe*, Cambridge University Press, 1999, p. 337.

²³⁸ L.-E. Cederman, “Nationalism and Bounded Integration: What it Would Take to Construct a European Demos”, *European Journal of International Relations*, 2001, 7(2): pp. 139–174, p. 155.

²³⁹ B. Rittberger (2005), op. cit., p. 32.

²⁴⁰ E. Eriksen, & J. Neyer J, “Introduction: The Forging of Deliberative Supranationalism in the EU?” in *European Governance, Deliberation and the Quest for Democratisation*, E. Eriksen, Ch. Joerges & J. Neyer (eds.), Oslo: ARENA Report No. 2/2003., p. 8.

²⁴¹ J. Habermas, „Die Postnationale Konstellation und die Zukunft der Demokratie“ in *Die Postnationale Konstellation. Politische Essays*, J. Habermas (ed.), Suhrkamp Verlag, 1998.

²⁴² B. Rittberger (2005), op. cit., p. 32.

²⁴³ F. Cheneval, S. Lavenex & F. Schimmelfennig (2015), op. cit., p. 2.

²⁴⁴ *Ibid.*, p. 3-4

²⁴⁵ *Ibid.*

²⁴⁶ F. Cheneval & F. Schimmelfennig, “The case for demoicracy in the European Union”, *JCMS*, 2013, 51(2): pp. 334–350, p. 340.

3.3. The EP's role is accomplishing the incomplete.

This section explores two phenomena that provide another approach towards the role that the EP has for the EU project. The first being the EU as a case of “incomplete contracting”, and the second being the central role of debate for political processes, as recognised by post-national democracy scholars.

The idea of incomplete contracting²⁴⁷ implies the existence of lacunae in the EU institutional systems, elements not covered by the founding Treaties. In turn, these lacunae cause “unintended constitutional conflicts about the allocation and distribution of political competencies in the EU multi-level system”, which are viewed as the starting point for studies of institutional democratisation at the EU level.²⁴⁸ Furthermore, this incompleteness is also recognised regarding the “practices and institutions of representative democracy”.²⁴⁹ However, practical needs for efficient functioning require the filling in of these lacunae, *inter alia*, by the process depicted as the “renegotiation of incomplete contracts”.²⁵⁰ The most vivid example of this process is the post-Maastricht period of the “patchwork” reforms with the Amsterdam and Nice treaties performing this task. In this context, the empowering of the EP, which was assessed as “the most important feature of institutional democratisation in the EU”,²⁵¹ supports the logic of social institutionalists, who argue that new institutional practices are often adopted in order to enhance the “social legitimacy” of the organisation, rather than advance its effectiveness.²⁵²

It is worth stressing the point that the EP's powers cannot be explained by the model of delegation, as the EP's relationship with the Member States are outside the principal-agent pattern,²⁵³ often used for explaining “vertical” relations within the EU. Furthermore, within the EU institutional system the EP is detached from the institutions and agencies that fulfil executive functions. Thus, unlike national constitutional systems, where governments can usually rely on the loyalty of their parliamentary majority,²⁵⁴ the EU institutional system is characterised by the structural gap between the EP and EU executives. Originally designed for the technocratic style of leadership, this phenomenon unexpectedly became an advantage to the EP as it opened opportunities to influence its institutional role by

²⁴⁷ H. Farrell & A. Heritier, “Codecision and institutional change”, *West European Politics*, 2007 30(2): pp. 285–300; J. Stacey & B. Rittberger, “Dynamics of formal and informal change in the EU”, *Journal of European Public Policy*, 2003, 10(6): 858–883. J. Stacey (2010), *op. cit.*, p. 34–58.

²⁴⁸ F. Schimmelfennig, (2010), *op. cit.*, p. 212.

²⁴⁹ G. Majone, *Dilemmas of European Integration*, OUP, 2005, p. 23–24.

²⁵⁰ F. Schimmelfennig, (2010), *op. cit.*, p. 223

²⁵¹ F. Cheneval, S. Lavenex & F. Schimmelfennig (2015), *op. cit.*, p. 10.

²⁵² P. Hall & R. Taylor, (1996), *op. cit.*, p. 16.

²⁵³ M. Pollack, (1996), *op. cit.*, p. 436

²⁵⁴ S. Krauss, (2000), *op. cit.*, p. 216.

its own behaviour. The EP does not have to support any policy or initiative coming from any other EU institution or agency. Furthermore, with the enhancement of its budgetary competences and increasing scope for the EP's veto right in EU external relations, the EP increasingly often uses such leverage to create inter-institutional conflict²⁵⁵ in order to gain institutional benefits from the situation.

A particular example is the EP's assent (consent) right for EU international agreements. The process of the EU's conclusion of these agreements differs considerably from national procedures, including the phase of ratification. Against this background, certainty concerning the EP's assent (consent) to treaties negotiated by the executive at the EU level has always been far from evident.²⁵⁶ A number of high-profile non-consent EP votes²⁵⁷ convincingly demonstrated the EP's eagerness to be treated seriously by the other institutions. This development stressed the need for the EP's involvement in the process, taking into consideration its own agenda. As this practice demonstrated, on-going cooperation with the EP enhanced the chances of positive EP votes. Thus, its detachment from the other EU institutions creates additional opportunities for the EP as well as facilitates inter-institutional cooperation.

The open-ended process of European integration and the EU's *sui generis* status leaves unanswered the question of the limits of the EP's involvement. Analogues with national parliaments are rather superficial and cannot aid in answering this question either. In this sense, the EU does not have a rigid type of constitution, which is sometimes considered to be a factor limiting the legitimacy of the institutional design as well as limiting capacities for its reform.²⁵⁸ Furthermore, the forms of the EP's involvement vary, as do the degree, throughout different policy areas. This uncertainty emphasises the dependence of the EP's role in a particular policy area on its institutional behaviour, which has always been a factor influencing its institutional future.²⁵⁹ A closer look is required at the pattern that the EP has often applied in its struggle for new competences.

This pattern includes intensive EP debate and growing political pressure on other EU external relations actors against the background of insufficient formal competences for such behaviour. Usually, such situations have been associated with high-profile international cases dealing with a complex issue at the edge of the EP's

²⁵⁵ A. Maurer, "Framework Agreements between the EP and the Commission: the "legislative contract" and the toolkit for parliamentarising the Treaty's grey area", EUSA Conference paper, Biennial Conference: 2011 (12th), p. 18 euce.org/eusa/2011/papers/7k_maurer.pdf

²⁵⁶ S. Krauss, (2000), *op. cit.*, p. 216.

²⁵⁷ For example SWIFT and ACTA cases.

²⁵⁸ J. March & J. Olsen, (2005), *op. cit.*, p. 14.

²⁵⁹ S. Krauss, (2000), *op. cit.*, p. 219.

current competences. Moreover, such a case often has a wide public resonance as the issues raised require a decision that often creates certain political trajectories. Thus, the EP's debate also targets the European mass media and public opinion. Frequently, such debates include the issue of the EP's appeal for more competences with a further shift to democracy and legitimacy argumentation. This debate often then triggers the formation of interim mechanisms facilitating the EP's involvement in the contested policy area, with further confirmation from the next amending treaty(ies) of the mutually acceptable inter-institutional practices.

The second focus of this section is the central role of debate in the post-national understanding of democracy. As was argued above, the debate on post-national democracy emphasised the importance of genuine deliberation for the decision-making process. This approach echoes the idea of stressing the differences between formal and substantive democracy.²⁶⁰ Formal democracy is understood to mean institutions and procedures at polity level that guarantee a free and fair electoral process, and substantive democracy means those principles and mechanisms that allow for ongoing societal control of policy processes.²⁶¹ This division implies different foci, with formal democracy concentrating upon a democratic institutional framework, and substantive democracy stressing less tangible elements of democracy, such as transparency, accountability and democratic surveillance outside the formal election process.²⁶²

Despite the difference in democratic practices between the EU and national states, which should certainly be taken into account, the theories mentioned above remain relevant for the EU. In terms of substantive democracy at the EU level, public debate still relates to the transparency of the decision-making process, accountability to citizens and public control.²⁶³ To enhance the democratic qualities of the EU, the political elites of the Member States gave preference to institutional solutions,²⁶⁴ which made the EP one of the central issues of the Lisbon reforms. Furthermore, this development was based on the perception of the EP "as a crucial element to enhance the EU's democratic credentials."²⁶⁵ Thus, it is the EP that should be viewed as the source of democratic innovations in the post-Lisbon period, particularly for EU external relations. In this sense, the role of institutionalised debate is reaffirmed for the permanent needs of both the policy formation process and on-going societal control over EU foreign policy. Furthermore, this common commitment to the

²⁶⁰ G. Pridham, *The Dynamics of Democratization. A Comparative Approach*. London: Continuum, 2000, p. 4–5.

²⁶¹ T. Casier (2011) *op. cit.*, p. 956.

²⁶² *Ibid.*, p 956-957.

²⁶³ A. Lotz, (2006), *op. cit.*, p. 18

²⁶⁴ B. Rittberger (2005), *op. cit.*, p. 5

²⁶⁵ *Ibid.*, p. 4.

liberal democracy model raises expectations that “in the long run, we could expect the EU to resemble a parliamentary democracy.”²⁶⁶

Regarding the significance of debate, the best starting point is a reference to the social constructivists’ argument that “talk about norms is just as important, if not more important, than how they act”.²⁶⁷ In terms of the specific EU conditions, debate was recognised as an important factor for the formation of the EU public sphere and as a “prerequisite for coping with diversity”.²⁶⁸ Schmidt divides the public sphere into two main parts: one in which policy actors engage one another in a ‘coordinative’ discourse about policy construction, and one in which political actors engage the public in a ‘communicative’ discourse about the necessity and appropriateness of such policies.²⁶⁹

As for the EP, public debate is certainly one of its major responsibilities as a parliamentary institution, since it is one of the general functions of parliaments to “ensure that policies are discussed publicly and that reasons for the decision are provided to the public.”²⁷⁰ A rather interesting point here is the interconnection of debate with the issue of legitimacy by Pitkin, who stressed that the “legitimacy of democratic political institutions is partly based on the expectation that they will provide open-ended processes without deterministic outcomes.”²⁷¹ Indeed, the transformation of the post-modern society undermined “the naïve respect and emotional affection for traditional authorities”, which today requires that “the legitimacy of competing principles and structures have to be based on communicative rationality and claims of validity”.²⁷² Furthermore, the potential merits and drawbacks of these claims need to be tested and justified through collective reasoning.²⁷³ Thus, public debate is identified as a primary instrument for the determination of collective choices and the resolution of social conflicts. In addition, political debate and competition have been also recognised as an essential source of change,²⁷⁴ something that is increasingly important in the rapidly evolving contemporary world. Concerning the issue of legitimacy, reference should be made to the EU’s self-perception regarding the statement of the Commission that the EU’s legitimacy depends on involvement and participation. “This means that the linear

²⁶⁶ *Ibid.*, p. 19

²⁶⁷ A. Björkdahl, “Norms in International Relations: Some Conceptual and Methodological Reflections”, *Cambridge Review of International Affairs*, 2002, 15(1): 9–23, p. 13.

²⁶⁸ J. Habermas, (1994), *op. cit.*, pp. 20-35.

²⁶⁹ V. Schmidt, “Discursive Institutionalism: The Explanatory Power of Ideas and Discourse”, *Annual Review of Political Science*, 2008, 11, pp.303-326.

²⁷⁰ A. Benz, “Path-Dependent Institutions and Strategic Veto Players: National Parliaments in the European Union,” *West European Politics*, 2004, 25 (5), pp. 875-900.

²⁷¹ H. Pitkin, *The Concept of Representation*. Berkeley: University of California Press, 1967.

²⁷² J. March & J. Olsen, (2005), *op. cit.*, p. 19.

²⁷³ F. Kratochwil, “The force of prescription”, *International Organization*, 1984, 38 (4): 685-708, p.701.

²⁷⁴ J. March & J. Olsen, (2008), *op. cit.*, p. 9.

model of dispensing policies from above must be replaced by a virtuous circle, based on feedback, networks and involvement from policy creation to implementation at all levels.²⁷⁵ From all these highlighted perspectives, public debate is recognised as a central element of the supranational political system.

Another issue is the EU's *sui generis* status. The academic literature accentuates the importance of “collective interpretation through social processes of interaction, deliberation, and reasoning” in case of difficulties in determining or following stable rules.²⁷⁶ Certainly, the EU is a practical illustration of such a case, which returns this discussion to the matter of “incomplete contracting”. Thus, institutionalised public debate has been viewed as a means to fill in the existing incompleteness by connecting “institutional principles and practices” to “larger issues”, which include collective identities, long-term normative commitments and causal beliefs, organising principles and power relations.²⁷⁷ Another point to stress is the fact that although parliamentary debates are not widely read and attended, they remain a tool for politicians to stay in constant interaction with society “via various means such as media and pressure groups, leading the constant (re)articulation of their discourse in various settings where exposure to a wider audience is possible”.²⁷⁸

In the particular case of the CFSP, the public debate within the EP fulfils three primary functions, with each reaffirming its increasing significance for public policies. First, this debate shapes common European policies, ensuring discussion of the entire spectrum of existing options. Second, parliamentary public debate is the only transparent way to set the CFSP priorities given the limited resources available.²⁷⁹ Third, this debate facilitates consistency of policy as well as control over the transformation of the treaty-based Union values into specific policies, thus reinforcing the EU's international identity.

From the 1970s, the EP has been increasingly operating as a parliamentary institution with the major objective of providing “an arena in which every opinion can produce itself in full light to be tested in adverse controversy”.²⁸⁰ As a result of the enhancement of the EP's role in the EU institutional system, its function as a potential forum for debate and the launching of initiatives was emphasised,²⁸¹

²⁷⁵ Commission of the European Communities “European governance. A white paper”, COM(2001) 428 final, Brussels, 25.07.2001, p. 11.

²⁷⁶ J. March & J. Olsen, (2008), op. cit., p. 8.

²⁷⁷ *Ibid.*

²⁷⁸ S. Aydin-Düzgit, “Unravelling European Union Foreign Policy through Critical Discourse Analysis: Guidelines for Research” in *EU Foreign Policy through the Lens of Discourse Analysis: Making Sense of Diversity*, C. Carta & J.-F. Morin (eds.), Ashgate, 2014, pp. 133-150, p. 139.

²⁷⁹ J. March & J. Olsen, *Democratic Governance*, Free Press, 1995.

²⁸⁰ J. Mill, *Utilitarianism. On Liberty and Considerations on Representative Government*, Dent 1972, p. 239-240.

²⁸¹ L. Corduneanu, “CFSP – Vacillating Between Supranationalism and Intergovernmentalism?” CES Working Papers, 2014, 6(1), p. 59 http://journals.indexcopernicus.com/issue.php?id=9384&id_issue=873835

Today, the provision of a ‘grand forum’ for the discussion of foreign policy is considered to be among the EP’s principal functions.²⁸² The reasoning for such debate is rather straightforward and is based on the *rationale* of exposing and discussing diverse views on strategic direction and policy priorities, thus diminishing the potential risk of erroneous decisions.²⁸³ Specific EU reasons include: the need for CFSP compliance with declared values and principles, the need for the formation of pan-European common approaches, and the need to ensure the synergy of the CFSP with other areas of foreign policy.

The initial question for foreign policy formation is the determination of the goals and values it is intended to defend.²⁸⁴ For the EU, these values are stipulated in the founding treaties;²⁸⁵ however, the transformation of those values and principles into practical policies can hardly be realistically expected outside institutionalised public debate. Against the divergence among the Member States on foreign policy issues, the need for the formation of shared aims is another fundamental challenge for the EU. In this regard, the existence of a ‘grand forum’ for the search for and debate on such common grounds is vital. Moreover, the idea that decisions must be based on common European interests implies that these interests have been previously identified, debated and consolidated. The last point here is the need for “‘cross-pillar’ interactions”,²⁸⁶ or the development of synergy between the CFSP and other areas of foreign policy. Here, the EP is in a unique position as it is already a part of the policy formation process for trade, aid and development, which implies that parliamentary public debate is inevitable both from the practical and legal perspectives.

²⁸² G. Edwards, “The Pattern of the EU’s Global Activity” in *International Relations and the European Union*, Ch. Hill & M. Smith (eds.), OUP 2011, p. 57.

²⁸³ P. Bajtay, “Shaping and Controlling Foreign Policy: Parliamentary Diplomacy and Oversight, and the Role of the European Parliament”, European Parliament, Think Tank, 2015, p. 39 <http://www.europarl.europa.eu/thinktank/en/search.html?authors=25360>

²⁸⁴ O. Waever, “European Security Identities” *JCMS*, 1996, 34(1), pp. 103-132, p.121-124.

²⁸⁵ Art 21 TEU.

²⁸⁶ J. Wouters and K. Raube, (2012), *op. cit.*, p. 18.

4. OVERVIEW OF THE ARTICLES

Part II of this dissertation consists of six articles that have been separately published in peer-reviewed journals. As the research topic requires analysis at different levels, the articles deal with the challenges correspondingly. Some of the articles are directly dedicated to the issues in focus; others provide different perspectives on the debate, concentrating on theoretical and historical aspects, which are related to the central topic.

The first article provides a critical study of the concept of institutional balance, which is often viewed as one of the key theoretical premises for the construction of the EU institutional system. The article aims to answer the question of whether the concept of institutional balance can be viewed as a stable theoretical basis for the transformations within the EU institutional system, particularly those that concern the role of the evolving EP.

It was the Maastricht Treaty that set the political trajectory for EU development for many years following, and the second article is dedicated to the evolution of the EP's role in EU external relations after Maastricht. By providing this historical analysis, the article explores the influence of the federal paradigm of the EU development on the gradual enhancement of the EP's role in the EU institutional system. The article highlights the transformation of the view concerning the EP's role within EU external relations that was marked by the Maastricht Treaty as well as the major directions for empowering the EP within this policy area.

The third article deals with the specific legal instruments that have been inter-institutional agreements. Despite remaining “a grey area” of EU law, these documents have always been significant tools for the enhancement of the EP's competences for EU external relations. For this research, the study of these documents is crucial due to the fact that substantial elements of the EU governance operates in “a constitutional twilight zone”,²⁸⁷ and these are inter-institutional agreements that have been designed to streamline the regulation of the interaction between EU institutions and agencies, which otherwise are often regulated by “few and ambiguous Treaty provisions, ... incomplete pieces of secondary legislation and a number of declarations”.²⁸⁸ The area of EU external relations certainly fits into this chaotic pattern of regulations, with informal arrangements and “gentlemen's agreements” often being treated with the same diligence as “hard” law. In this context, inter-institutional agreements have traditionally been the instruments

²⁸⁷K. Lenaerts & A. Verhoeven, “Institutional Balance as a Guarantee for Democracy in EU Governance” in *Good Governance in Europe's Integrated Market*, C. Joerges, R. Dehousse (eds.), OUP, 2002, 11(2), pp. 35- 89. p. 48.

²⁸⁸*Ibid.*

ensuring the stability of the regulation. At the same time, they have been flexible enough to satisfy the varying needs of the institutions without altering the rules of the founding treaties.

Articles four and five are directly dedicated to role that the EP played for EU-Ukraine relations. Article four covers the period from 1991 to 2004. It emphasises the rather traditional EP role of promoting the “European values” agenda in the post-Maastricht period. Article five concentrates on years 2010-2014, that is, the principal period of the EU-Ukraine Association Agreement negotiations. This essay reveals the wider involvement of the EP in the bilateral relations. Furthermore, it underlines a new EP focus on the CFSP when the commencement of Russia’s “hybrid” war against Ukraine developed into a specific factor for the EU-Ukraine relations.

Article six places the empirical data of the Ukrainian case into the wider context of the EU’s problematic performance in its neighbourhood. The article argues that the current intergovernmental set-up of the CFSP is one of the reasons for the EU’s international under-performance. Against this background, the article submits that parliamentarisation of the CFSP would provide a practical and comprehensive solution to a number of diverse problems that the EU has recently encountered.

4.1. The Institutional Balance: a Janus-faced Concept of EU Constitutional Law

The notion of the ‘separation of powers’ has been one of the core concepts underpinning the construction of democratic governance in traditional national states. However, the EU has not settled this concept into the foundation of its institutional system. Instead, the concept of institutional balance was offered, which is an original theory exclusively associated with the development of the EU institutional structure and can hardly be compared to the separation of power.

The article studies this concept from both the legal and political perspectives, as well as from the point of view of this concept’s interconnection with representative theory. Recognising the multifaceted role that this concept has been playing, the article mainly stresses its dynamic functions, suggesting one further dimension that, though not clearly articulated, is however present and implicitly discussed. It is the debate between equilibria and path-dependency with further reference to transformations’ outcomes as often being contingent and non-predictable.²⁸⁹ To some extent, the entire idea of institutional balance reflects the

²⁸⁹ S. Steinmo, (2008), *op. cit.*, p. 133.

core presumption of the importance of equilibria. In this sense, the article supports the idea of path-dependency and stresses the open-ended process of European integration. From this perspective, the evolution of the EU institutional system reflects the revision of the roles that separate institutions have been playing.

The article concludes that due to its own flaws, the concept of institutional balance does not provide any single coherent ground for the design of distribution of powers within the EU institutional framework. Furthermore, the role of this concept is limited to the provision of a dynamic conceptual vehicle for criticising or legitimising different power configurations within the EU.

4.2. The European Parliament in EU External Relations after Maastricht: Applying the “Federal Paradigm”

Crises have always been an essential part of the EU evolution process, and the current EU immersion in different types of crisis is certainly not the first troubled time in its history. However, the systemic decision taken to overcome such crises has often created long-lasting political trajectories which have then considerably influenced the EU’s development. A classic example of this observation is the case of the “Europessimism” of the 1970s-1980s, which initiated the debate on the future of the European integration process and resulted in the Maastricht Treaty, which offered a long-lasting federal trajectory.

When considered from this viewpoint, the Lisbon Treaty certainly bears the imprint of this trajectory in a number of ways, and one of these is the view of the role that the EP should have within the EU institutional system in general and for EU external relations in particular. A simple comparison of the Lisbon Treaty with the famous “Draft Treaty Establishing the European Union” of 1984 leaves no doubts concerning the ideological influence that the federal movement has had on the EU’s development.

The article offers analysis of the development of the EP’s competences after the Maastricht Treaty and covers both development of the law and the practices of the EP’s involvement in external relations. The article concludes by stressing that the application by the Maastricht Treaty of the federal paradigm to EU development facilitated the enhancement of the EP’s competences concerning EU external relations. Furthermore, the article stressed the specific legal pattern that was utilised for the consolidation of the EP’s competences. In addition to the two-fold codification of the competences at the level of the “primary law” and inter-institutional agreement, it was the Maastricht Treaty that introduced the “common

EU values” as the objectives of its foreign policy.²⁹⁰ This development created political leverage for the EP in its relations with other external relations actors and reinforced the role of the EP’s resolutions in the context of the traditional EP “European values” agenda, which obtained a connection with the goals of the EU foreign policy at the level of the founding Treaties.

4.3. The Role of the Inter-institutional Agreements in the Development of the European Parliament’s External Competences

The article provides a study of the inter-institutional agreements from the Luns-Westerterp procedure of the early years of integration until the latest Framework Agreements from the perspective of the specification and expansion of the EP’s competences for EU external relations. The study supports the understanding of the inter-institutional agreements as the principal instruments for “informal constitution building in the EU”,²⁹¹ due to their essential role in the creation of procedural rules for the practical implementation of the founding Treaties’ provisions. Furthermore, these agreements have traditionally been used for the prevention of inter-institutional tensions and for the formalisation of mutually acceptable practices.

From the point of view of this study, it is worth noting that inter-institutional agreements ensured a much wider involvement of the EP in EU external relations than the founding Treaties had suggested. Furthermore, these agreements considerably empowered the EP in both “Community” areas and the CFSP through the rules of procedure, which usually created additional leverage for the EP to further advance its influence in foreign policy issues. In fact, these inter-institutional agreements initiated such crucial developments as the EP’s equal treatment with the Council, the possibility for the EP to have its say concerning the negotiation of EU international agreements, and the EP’s involvement in the CFSP.

4.4. The European Parliament in the EU-Ukraine Relations – from Independence to Orange Revolution

The end of the Cold War fundamentally transformed the political landscape in Europe. The collapse of the Soviet Union initiated the formation of new independent states, with Ukraine being one of them. This article focuses on the EP’s engagement in EU-Ukraine relations from the first years of Ukrainian independence until the Orange revolution of 2004.

²⁹⁰ Art. J.1 of Maastricht Treaty on European Union.

²⁹¹ D. Dinan, *Encyclopedia of the European Union*. Chicago: Lynne Rienner Publishers, Boulder, 2000, p. 298.

Although this article deals with a number of other issues, in terms of the main thrust of the research there are three major points to be stressed separately. First of all, due to the Soviet totalitarian past, Ukraine's process of state-building required substantial constitutional reform. As a result, the EP's traditional agenda of promoting the rule of law, human rights protections, and the principles of democratic ruling perfectly fit the specific needs of the Ukrainian state. Furthermore, the incorporation of international standards into the Ukrainian legal system was viewed as one of the major tasks for the reform.

Second, the EP's engagement in this case was intensive and multi-level. The article identifies the EP's role in this situation as a multifaceted 'external democratisation institution' and argues that the EP proved to be an independent actor capable of developing and actively promoting its specific agenda. However, the focus of the EU conditionality was mostly on the alteration of the obsolete Soviet style legislation, with the implementation of the international treaties being at the core of the process. In this regard, the EP's engagement in this case should be evaluated as successful since the minimal declared goals were finally achieved.

Third, this success was, however, limited due to the growing divergence between Ukraine's "declarative Europeanisation"²⁹² and the authoritarian practice of governance during the Kuchma presidency. In fact, it was Ukraine's failure to truly implement the "European values" agenda principles that was one of the core reasons for both of the recent Ukrainian revolutions.²⁹³

With regard to the EP's institutional role, the article stresses its resolutions on the EU programme documents on Ukraine. These resolutions laid out the EP's priorities and had a double impact as they were addressed to both the Ukrainian authorities and the EU institutions, of which the latter were to take into consideration the EP's opinion in the course of the implementation of the EU policies towards Ukraine.

4.5. The European Parliament in the Ukrainian Association Puzzle

This article explores the role that the EP played during the principal period of the EU-Ukraine Association Agreement negotiations (2010-2014). This dramatic case revealed the wide spectrum of the EP's engagement in foreign policy and demonstrated its priorities as well as ambitions, frequently exceeding the limits of

²⁹² K. Wolczuk, "Ukraine's Policy towards the European Union: A Case of 'Declarative Europeanization'", Working paper, R.Schuman Centre for Advanced Studies, the European University Institute, Florence, Italy, 2002.

²⁹³ The Orange revolution of 2004 and the Revolution of Dignity of 2013-14.

its formal competences. This case also stressed the inter-connection of different aspects of EU foreign policy, including the CFSP.

This article demonstrated the growing influence of the EP on EU external relations as the EU-Ukraine Association Agreement dealt with EU strategic, political and commercial interests. Furthermore, the EP assumed the role of agenda-setter for the bilateral relations by going much further than its own traditional agenda for EU relations with third countries. After the commencement of the Russian aggression against Ukraine, the EP intensively debated issues of military security, thus taking a firm step into CFSP matters. Moreover, the EP made the security issue its priority in 2014, which revealed its growing ambitions towards a new role within this policy area.

4.6. ‘Parliamentarisation’ of the CFSP: wishful thinking or a rational choice?

This paper studies the institutional system of EU external relations with its focus on the current role of the EP within the CFSP. Furthermore, the article scrutinizes the idea of a deeper EP involvement in this policy area from both theoretical and practical standpoints. Despite the difference in reasoning, the paper supports this idea as parliamentarisation would reinforce the foundation of this policy area by meeting the need for more democracy. In a practical sense, it will contribute to the transparency, coherence and effectiveness of the policy formation process.

The paper also submits that a deeper EP engagement in the CFSP is a comprehensive answer to specific EU needs, which include the formation of a genuinely common European CFSP, a value-based policy formation process, and the development of synergy between the CFSP and other areas of foreign policy. From the institutional perspective, parliamentarisation of the CFSP will contribute to the harmonisation of the EU institutional system through the unification of the EP’s status and competences throughout all areas of foreign policy.

5. CONCLUSIONS

The Lisbon Treaty did not significantly change the status of the EP as an ‘*ex post facto*’ information receiver’ for the CFSP.²⁹⁴ However, the post-Lisbon institutional dynamics enhanced the EP’s role in this policy area much more than the Lisbon Treaty had intended. Summing up the findings of this research, which is dedicated to the study of this phenomenon, the conclusions below can be made.

The evolution of the EU made the EP the epicentre of a number of sophisticated discourses. They include the issues of EU identity, a new understanding of democracy, which is not attached to classical Westphalian-type national states, the limits of the technocratic mode of governance and its correlation with efficiency as well as a number of other topics. Furthermore, the post-Lisbon reality exposed the EU to a number of new challenges, both internally and externally. However, crises have always been an integral part of the EU evolution path, often stimulating political decisions leading to its qualitative transformation. With the growing understanding of the significance of institutionalised public debate for both internal political processes and polity formation processes, the EP is increasingly often recognised as the “grand forum” for debate. As the case study provided revealed, in terms of EU foreign policy the EP’s debate is not limited to policy areas in which the EP was officially recognised as a formal participant of policy-making and legislative procedures.

The case of the EU-Ukraine Association Agreement negotiations has developed into a high-profile international case, one in which the EP participated based on the new competences provided for it by the Lisbon Treaty. This case demonstrated the EP’s active involvement, its ambitions and its growing influence on EU external relations. Continuing its traditional role of promoting liberal democracy values, the EP assumed the role of agenda-setter, installing these values in the wider context of EU relations with Ukraine. The commencement of the Russian aggression against Ukraine in 2014 triggered a shift of the EP’s priorities to issues of military security, which then became the EP’s second focus for this case.

Although these agendas look very different, in fact they are not, as European integration has principally been an instrument of security policy.²⁹⁵ Concerning security, the traditional EP emphasis on “European values” plays an important role bearing in mind the well-known postulate of no war between democracies. This postulate goes down to the Kantian ideas of Perpetual Peace, with the simultaneous

²⁹⁴ S. Stavridis, “The CFSP/ESDP, Parliamentary Accountability, and the “Future of Europe” Convention Debate”, Working Paper No 42, 2003, p. 3.

²⁹⁵ A. Menon & U. Sedelmeier, (2010) *op. cit.*, p. 80.

evolution of the international system to shape the appropriate behaviour of states and the character of the states themselves.²⁹⁶ This approach was reaffirmed by recent researchers, who claim that a peaceful order does not need to be post-international.²⁹⁷ What matters is that those states take on a particular democratic (or in Kant's terms 'republican') character, which significantly diminishes the probability of conflict among this community of states.²⁹⁸ Furthermore, the correlation of democracy with peace and international cooperation makes democracy promotion a relevant strategy for the EU from a security perspective. The growing interdependence with neighbouring countries based upon shared values is a sophisticated way of eradicating security challenges politically.

The EP's institutional role in this case is connected with the phenomenon of identity construction. In this sense, reference is often made to the concept of the EU as a normative power, the core of which includes the values that inspired the EU's own creation.²⁹⁹ In this way, the EP assumed the role "democratic supervisor" over the action of other EU foreign policy actors. It is important to stress that the EP succeeded in developing direct relations with all major elements of the post-Lisbon system for EU external relations, that is, the HR, EEAS and Union delegations, to a degree significantly beyond the formal Lisbon limits. This development created a stable ground for the EP's active involvement in the Ukrainian crisis.

Although the EP's role of agenda-setter in the EU-Ukraine relations follows the general trend of the EP's pattern of involvement in EU external relations as an EU international identity shaper, the Ukrainian case has revealed two important points that are relatively new. They are the EP's ambition concerning the CFSP as it is – that is, the policy area, dealing with security, and the EP's ambition for a deeper involvement in the political processes within this policy area. This development can be explained by at least two factors. First, there is a growing interconnection between different aspects of foreign policy, which was manifestly demonstrated by the Russian "hybrid" war. Second, there is the growing role of institutionalised public debate as an instrument for the determination of collective choices in political processes, which are open-ended.

An important development is the ongoing transformation of the EU policy dispensing pattern from the linear model towards the circle based on "feedback, networks and involvement" throughout all the stages of the political cycle from the

²⁹⁶ I. Kant, *Perpetual Peace*, Englewood Cliffs: Prentice Hall, 1957.

²⁹⁷ M. Doyle, *Liberal Peace: Selected Essays*, London, Routledge, 2011.

²⁹⁸ B. Rosamond, "The EU's Normative Power and Three Modes of Liberal Communicative Discourse" in *EU Foreign Policy through the Lens of Discourse Analysis: Making Sense of Diversity*, C. Carta & J.-F. Morin (eds.), Ashgate, 2014, pp. 210-226, p. 221.

²⁹⁹ Art. 21 (1) TEU.

formation of a particular policy to its actual implementation. This development alters the understanding of the role that the EP debate plays, as today it increasingly often performs the function of a feedback mechanism, implying continuous parliamentary control over EU policies, including its foreign policy. Furthermore, the post-Lisbon EP debate on foreign policy issues exceeds its traditional liberal values agenda, or put differently, places this agenda into the wider context of the EU's relations with the country in focus. Thus, the debate has evolved into a dynamic model of surveillance over the situation in progress as well as over the performance of other EU foreign policy actors, which modifies the agenda for particular cases and creates a certain template for evaluating other EU foreign policy actors' performance. This practice can be interpreted as steps towards the substantive democracy pattern, thus implying certain signs of the democratisation of the EU institutional system.

Regarding the legal perspective, the EP's performance in the Ukrainian case as well as its general evolving role in the CFSP certainly exceeds formal Lisbon rules. However, this research supports the claim that the EU's constitutional law cannot be understood through legal positivism only.³⁰⁰ In addition to regulation by positive law, this area is also significantly influenced by legal and political concepts and principles. Furthermore, the EU's constant evolution triggers frequent rethinking of its identity, the principles underpinning its institutional system and reconsideration of the role particular institutions should play. Unlike more stable state constitutional systems, the EU is much more sensitive towards such transformations due to its derived nature, being a construct of its Member States, which still remain "Masters of the Treaties". It implies a higher level of exposure for the EU to public debate in its Member States and academic discourse due to the fact that the latter serve as reference points for its evaluation.³⁰¹ When speaking about EU constitutional law, these factors cannot be ignored as they are present at the "constitutional 'founding moments', when political elites ponder over the creation of a system of 'rules about rules'."³⁰² Although both positive law and the factors mentioned above that lie beyond it have contributed to the post-Lisbon enhancement of the EP's position within the CFSP, the mechanisms of influence nonetheless differ; these will be summarised below.

At the level of positive law, the EP's status and competences are regulated by the provisions of the founding Treaties and inter-institutional agreements. The inter-institutional agreements traditionally start from the points where the founding Treaties stop. A common element for the inter-institutional agreements is that they

³⁰⁰ P. Eleftheriadis "Aspects of European Constitutionalism", *European Law Review*, 1996, 21 (1), pp. 32-42.

³⁰¹ P. Schumaker, *From Ideologies to Public Philosophies: An Introduction to Political Theory*, Oxford, Blackwell, 2008, p.1.

³⁰² B. Rittberger (2005), *op. cit.*, p. 5.

usually go beyond the limits of the founding Treaties. Thus, they are based on the founding Treaties rather than constrained by them. Noting a considerable number of informal rules also performing regulative functions, it should be stressed that these informal accords may later be “formally institutionalised in subsequent EU treaties,”³⁰³ as well as in inter-institutional agreements. This practice emphasises the fact that the actual rules for the behaviour are created by the actors themselves with the inter-institutional agreements stabilising these rules by granting qualities of legal norms to politically acceptable practices.

Regulation by the founding (amending) Treaties has a double-fold nature. The rather straightforward approach is the direct establishment of certain rights for the EP as well as obligations for other EU institutional actors towards the EP. In this sense, the Lisbon Treaty was called “the Treaty of parliaments” as it had considerably widened the EP’s rights, *inter alia*, in the EU external relations by inter-connecting its consent right with the ordinary legislative procedure.³⁰⁴ The much more indirect way is the enhancement of the EP’s position by referring to the liberal democracy model and/or principles and values that have traditionally been recognised as the core of this model. This practice was initiated by the Maastricht Treaty, which introduced the common EU values as the objectives for its foreign policy.³⁰⁵ The Lisbon Treaty reaffirmed this approach by Art. 21 TEU, which established a legal obligation for all EU foreign policy actors to comply with these values in their international performance.³⁰⁶ Although these norms certainly belong to positive regulation and therefore establish tangible rights and obligations, thus creating leverage for the EP in terms of its relations with other EU foreign policy actors, nonetheless, the mechanism by which their influence on the promotion of the EP’s status is exerted is closer to that of legal concepts, as will be explored below.

The regulative influence of the legal concept and principles is more intricate and less visible. They do not provide direct regulation, but instead create possibilities. Therefore, the actual outcomes of this influence are dependent on the EP’s own institutional behaviour. The starting points here are the two basic legal and political concepts of democracy and legitimacy. In a practical sense, it is the liberal democracy model that has been often used as a reference point in terms of the role that a representative assembly should be playing in the public sphere.³⁰⁷ As was stressed, “the EP’s strength lay in its normative force, whereby it was able to claim

³⁰³S. Hix, “Constitutional Agenda Setting through Discretion in Rule Interpretation: Why the E.P. won at Amsterdam”, *British Journal of Political Science*, 2002, 32(2), 259-280, p. 273.

³⁰⁴ Art. 218 (6) TFEU

³⁰⁵ Art. J.1 of Maastricht Treaty on European Union.

³⁰⁶ Art. 21 TEU.

³⁰⁷ F. Schimmelfennig, (2010), *op. cit.*, p. 213.

a moral authority due to its democratic credentials.”³⁰⁸ Of interest here is that the EP’s agenda in terms of the EU’s external identity construction reinforces the appeal to the concepts of democracy and legitimacy regarding the EU’s own institutional system since the core of this identity encompasses the same concepts and values. Thus, reference to these values in terms of the EU’s relations with third countries inevitably raises the issue of the EU’s own institutional system as well as the principles and concepts that underpin it. However, there is no linear connection between these concepts and the enhancement of the EP’s position within the EU institutional system. Further practical elaboration of these opportunities depends upon the EP’s ambitions towards particular policy areas as well as its institutional behaviour.

The Ukrainian case provides a practical illustration of the EP’s manifestation of its ambition regarding the particular policy area of external relations. Against the background of limited competences within the CFSP, the EP intensely debated security issues, thus going beyond the role that the Lisbon Treaty mandated for it. This case also illustrates the importance of external shocks for the development of the EU institutional system. The Russian “hybrid war” became a serious challenge to both the EU’s Eastern policies and its own security. Furthermore, the synergy of this war placed stress upon the current structural split of EU foreign policy and difference in competences that the EP has in different areas of EU external relations. The EP preferred the problem-oriented approach, without following the Lisbon dividing lines, which reaffirmed the interconnection between security and civilian aspects as well as the importance of institutionalised public debate for both. For the EU institutional system, further “parliamentarisation” of the CFSP implies its harmonisation as it would equalize the EP’s status and unify institutional procedures and practices.

³⁰⁸ L. Redeï, (2013), *op. cit.*, p. 20.

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