

THE EUROPEAN PARLIAMENT IN THE UKRAINIAN ASSOCIATION PUZZLE

Oleksandr Moskalenko
Department of Law
University of Turku

Abstract

This article analyzes the European Parliament's engagement in EU-Ukraine relations for the main period of the Association Agreement negotiations (2010-2014). This case study reveals the growing independence and relevance of the European Parliament as an actor in EU external relations. Continuing its traditional role of promoting human rights and the principles of democratic rule, the Parliament attempted the role of agenda-setter, installing these principles in the wider context of EU relations with a target country. Furthermore, its focus on the security aspects after the commencement of the Russian aggression against Ukraine manifests its growing ambition towards a new role in EU foreign policy. Although these claims go far beyond the formal Treaty-based competences, they are in line with the trend of the "creeping parliamentarization" of the CFSP.

Keywords: European Parliament, CFSP, Association Agreement, EU-Ukraine relations, conditionality.

Introduction

Democratic conditionality has been an essential part of the European Union (EU) relations with third countries from the 1990s, giving rise to the debate on the EU as a "civilian" and/or "normative" power.¹ Certainly, the scope, patterns and goals of conditionality have been different, depending upon the framework of the EU relations with the target country, whether it was an accession, association process or a limited sectorial cooperation. In this context the European Parliament (EP) has always been a special institution. Being the

¹ For more of the debate see (Telò 2006, pp. 1-105) and (Kubicek 2003).

The European Parliament in the Ukrainian Association Puzzle

“champion of European values”,² the EP has built its international image around the promotion of human rights and principles of democratic rule, using its limited competences to full capacity (Holland 2002, p. 120).

The Lisbon Treaty considerably enhanced the position of the EP in the EU institutional system in terms of legislative and policy formation procedures, which also altered the EP’s role in EU external relations, taking into consideration the wide-spread perception of EU external governance being the extrapolation of its internal rules in the outer world (Lavenex 2004, p. 683). However, the EU external relations are not homogeneous due to the special status of the Common Foreign and Security Policy (CFSP), which is no longer a “second pillar”,³ nonetheless, it is still based on a special set of provisions (Wessels & Bopp 2008, p. 2).

The Lisbon formula, which inter-connected the EP’s consent right for international treaties with the ordinary legislative procedure,⁴ covers up to 80 policy areas. Moreover, Art. 218 TFEU as well as the framework agreement of 2010⁵ confirmed a number of important rights for the EP, including the general principle of equal treatment with the Council.⁶ These privileges solidly based on its “hard power” consent right made the EP an independent and powerful player in EU external relations (Passos 2011, p. 51). In the CFSP, the EP’s competences are much narrower and are mostly limited to informational rights.⁷ Moreover, it is the European Council and the Council that are at the core of the CFSP decision-making process.⁸ As it is formally excluded from the policy-making process as well from adoption of CFSP instruments,⁹ the EP is often referred to as an “*ex post facto* information receiver” (Stavridis 2003, p. 3).

However, the case of EU-Ukraine relations undermines this limited perception of the EP’s role. Moreover, this case is of special interest from several perspectives. The scope of EU-Ukraine relations has had a compound structure

² *The European Parliament as a Champion of European Values*, 2008, Brussels: Office for Official Publications of the European Communities.

³ Art. 1 TEU

⁴ Art. 218 TFEU

⁵ Framework Agreement on relations between the European Parliament and the European Commission, OJ [2010] L 304/47, 20.11.2010.

⁶ Point 9 *ibid.*

⁷ Art. 36 TEU

⁸ Art. 22, 26, 28 (1), 29 TEU

⁹ Art. 25 TEU

covering diverse sectors as well as the special formats of the European Neighborhood policy (ENP) and the Eastern Partnership projects. Furthermore, the EU-Ukraine Association negotiations, which were initiated in the aftermath of the Ukrainian “Orange revolution” of 2004,¹⁰ developed into a dramatic process, involving various aspects of the bilateral relations. The dynamics of this process evolved into a unique situation revealing the wide spectrum of the EP’s engagement in foreign policy and demonstrating its priorities as well as ambitions frequently exceeding the limits of its formal competences.

This article provides an insight into the EP’s involvement in EU-Ukraine relations from 2010 until the summer of 2014, which was the main period of the Association Agreement negotiations. The study is embedded in a wider theoretical framework of the concept of external governance dealing with different patterns of democratization of non-member countries, as well as within the general context of the EU policy towards Ukraine. The focus is, however, on the EP’s behavior during the above period of time. The article does not study the EP’s internal voting patterns. Neither does it study the influence of the EP’s actions on other EU institutions in the context of EU-Ukraine relations.

My central argument is that the EP becomes a more independent and relevant actor for EU external relations. This study stresses that continuing its traditional role in terms of the promotion of human rights protection, the principles of democratic rule and good governance, the EP assumed the role of agenda setter by placing these principles into the wider context of EU relations with a specific target country. Furthermore, the EP’s focus on the security aspects after the commencement of the Russian aggression against Ukraine manifests its growing ambition for a new role in EU foreign policy. Although these claims go far beyond the formal Treaty-based competences, they are in line with the trend of the “creeping parliamentarization” of the CFSP. The article empirically supports major theoretical findings of the literature referred to. However, its added value is the focus on the institutional behavior of the EP in this specific case.

The article consists of three main sections, followed by conclusions. Section I provides the theoretical framework of the study by referring to the existing literature dealing with the concept of external governance and democratization of non-member states. Furthermore, this section establishes the background of the study by providing insight into the domestic

¹⁰ The negotiations were launched in 2007.

The European Parliament in the Ukrainian Association Puzzle

environment of the “post-Orange” Ukraine. The second section focuses on the Association process: the EP’s involvement in the EU-Ukraine relations during the period 2010-2013. The third section scrutinizes the period following the outbreak of the “Revolution of Dignity” in November 2013 until the summer of 2014, when the Association process was completed against the background of escalating Russian aggression.

Conditionality, enlargement and Ukraine.

This section deals with three major points. It begins with the security dimension of the European integration process, and then moves on to tackle the theoretical framework of the EU external governance and different modes of its conditionality application. The third and final issue here is the Ukrainian domestic situation in the aftermath of the “Orange revolution”, which was the starting point for the EU-Ukraine association process.

European integration has principally been an instrument of security policy (Menon & Sedelmeier 2010, p. 80), although it also expanded to other areas, such as market integration promotion, building a zone of democratic values and rights, the changing role of the state, etc. (Bulmer 2009, p. 311). From this perspective it is believed that “more Europe” *per se* is something to be welcomed (Menon & Sedelmeier 2010, pp. 80-81). Thus, the security dimension of the 2004-2007 “big enlargement” is evident. In the aftermath of the Cold War, it consolidated the new order in Europe without a system of military blocks or dividing lines. The accession process was accompanied by conditionality, which was portrayed as deliberate success stories, framed as strategic responses to security challenges (Menon & Sedelmeier 2010, pp. 81). Although this time the EU conditionality was emphasized as the main pillar of EU enlargement governance (Smith 2003), the Mediterranean enlargement of 1980s had already contained political conditionality, though on a different scale.

Modernization theory emphasizes democracy as a value on its own as it is closely inter-connected with the level of economic development, public welfare, education and urbanization (Lipset 1960, p. 31). From the security perspective, democracy promotion plays an important role bearing in mind the well-known postulate of no war between democracies. Furthermore, the correlation of democracy with peace, international institutions, and trade, makes democracy promotion a relevant strategy for the EU from, *inter alia*, the security perspective (Lavenex & Schimmelfennig 2011, p. 889). By promoting democracy in the neighboring countries, the EU aims at encircling itself with states that share the same values of peace, cooperation and trade, thus

politically eradiating security challenges by installing mutually beneficial modes of relations. The growing interdependencies with neighboring countries shift the agenda of bilateral relations towards routine topics such as standards, common projects, etc., thus following the path of the EU's own development.

Another aspect, which requires a separate focus, is the phenomenon of the "domestic analogy". In accordance with this concept, polities prefer to have an international environment that is ordered according to their own principles and procedures (Schimmelfennig 2015, p. 10). In this sense, the process of "Europeanization" is "the external projection of internal solutions" (Lavenex 2004, p. 695), that "mirrors" the fundamental principles of the EU and European integration (Peters & Wagner 2005, pp. 215–216). Certainly, the liberal values of democracy, the rule of law and human rights are at the core of these principles. Furthermore, it is the shared respect of these principles that makes the EU a specific collective identity with a specific set of common values and norms (Schimmelfennig & Sedelmeier 2004, p. 667). Thus, the EU conditionality is grounded by the self-reflection of a club with specific rules and requiring adaptation to key features of the existing membership (Steunenbergh & Dimitrova 2007, p. 2).

Besides the high rhetoric of "civilian" or "normative" power (Lavenex & Schimmelfennig 2011, p. 889), "mirroring" has practical reasoning, as the "mirrored" environment in a partner country is likely to be in the best interest of the EU and its member states. This is because they are familiar with it and know how to use it to their benefit, which implies the reduction of adaptation costs as well as advantages over non-EU actors that are less familiar with such an environment (Peters & Wagner 2005, p. 216). Another practical reason for "mirroring" is the formation of common grounds for the development of interdependences, since the more similar third countries are to the EU multi-level system of governance, the better EU rules are likely to fit (Lavenex & Schimmelfennig 2009, p. 805). This approach obviously suggests hierarchical relations between the EU and third countries; however, the very nature of the EU implies the potential to condition its policies towards the outside world (Menon & Sedelmeier 2010, p. 80).

This article refers frequently to the concept of "external governance", which is identified as the extension of internal EU rules and policies beyond its legal and geographical borders (Lavenex & Schimmelfennig 2009, p. 791; Lavenex 2004, p. 683). The process implies the transposition of EU rules into domestic law, as well as the change of domestic political practices according to EU standards. Schimmelfennig and Sedelmeier refer to three major models of external

The European Parliament in the Ukrainian Association Puzzle

governance, which are 1) reinforcement by rewards, 2) social learning and 3) lesson-drawing (Schimmelfennig & Sedelmeier 2004, pp. 661-679); however, in the context of EU enlargement the predominant model was reinforcement by rewards (Schimmelfennig & Sedelmeier 2004, p. 663) against the background of “governance by conditionality” (Lavenex & Schimmelfennig 2009, p. 794). This model implies the EU providing external incentives for a target government to comply with its conditions (Schimmelfennig & Sedelmeier 2004, p. 662). It also suggests cost-benefit calculation and compliance with the EU conditionality in the case that the rewards exceed the domestic adoption costs (Schimmelfennig & Sedelmeier 2005, p. 4).

The CEE countries enlargement is often claimed to be the most successful EU foreign policy from a number of different perspectives, including democratic consolidation, conflict resolution, and stability in Eastern Europe with the accession conditionality being the cornerstone of this success (Schimmelfennig 2008, p. 918). However, it was the conditional promise of EU membership that has been viewed as an essential requirement for effective EU democracy promotion and conditionality (Vachudova 2005). Nonetheless, there are two remarks to be made. The first is the higher domestic cost of compliance with EU conditionality for non-democratic regimes (Vachudova 2005). The second is the fact that cross-conditionality and competing geo-strategic and economic interests undermine the credibility of EU conditionality (Kelley 2004, p. 42).

The enlargement was also recognized as a powerful instrument of EU security policy for evident reasons (Menon & Sedelmeier 2010, p. 86). Furthermore, for European foreign policy, the post-enlargement era was characterized by two fundamental objectives: projecting security and stability beyond the expanded EU borders, and making the EU “a real global player” (Magen 2006, p. 400). However, in terms of the EU’s eastern borders both objectives implied increasing interaction with Russia, which at that time already perceived EU eastern expansion as geostrategic competition (Tolstrup 2014, p. 249). Although the enlargement considerably enhanced security on the European continent, it also brought the larger EU closer to troubled areas, which required adequate measures to ensure security and stability in the immediate EU neighborhood (Magen 2006, p. 401).

To achieve this strategic objective, both the European Security Strategy and the ENP implied the formation of special relations with neighbors, suggesting further development of interdependences and the promotion of good governance based on liberal values (Magen 2006, p. 401). Thus, the gradual spread of democracy, the rule of law, and prosperity in progressively wider

circles of the EU's neighbors was associated with the attainment of stability, security, and peace (Duke, 2004, p. 463). However, the ENP was designed to extend the geographical scope of EU rules without offering the prospect of full membership (Schimmelfennig & Wagner 2004, p. 658), which from the perspective of EU conditionality created a dividing line between that and the accession process. Discussing four possible scenarios for EU relations with its neighbors, Steunenberg and Dimitrova stressed that the most beneficial outcome for the EU would be a "reformed satellite" country, which had completed its transformation in accordance with the EU roadmap; however, it was not offered membership, thus avoiding the associated political costs (Steunenberg & Dimitrova 2007, pp. 5-6).

Although the application of conditionality was initially claimed as one of the main instruments for the fulfillment of the ENP goals (Schimmelfennig 2015, p. 18), in the absence of the "golden carrot of membership" (Börzel 2009, p. 29) the ability to apply conditionality as well as its effectiveness was greatly limited (Epstein & Sedelmeier, 2008, p. 799), despite the fact that ENP directly borrowed methodologies and instruments from "the enlargement template" (Magen 2006, pp. 405-406). This resulted in the conclusion that ENP rule transfer cannot be explained on the basis of conditionality due to the contrast between the processes (Casier 2011, p. 960). The crucial difference is that the EU enlargement policy managed to lock in democratic change and support democratic consolidation, whereas there is no evidence for such effects in the ENP (Schimmelfennig 2015, p. 19). Besides the problematic application of conditionality, there are two additional reasons to explain this state of affairs: inconsistency in the EU's democracy promotion (Lavenex & Schimmelfennig 2011, p. 901), and insufficient formalization of the entire process (Lavenex & Schimmelfennig 2009, p. 797). Both observations imply the conclusion that the EU has insufficient commitment to democracy promotion in its neighborhood (Lavenex & Schimmelfennig 2009, p. 808), or to be more exact, the prevalence of interest-based considerations in relations with external states (Schimmelfennig, Engert & Knobel 2006, p. 46).

However, the other side of the process is the role of the domestic institutions and politics, which greatly determine the success or failure of EU external governance (Dimitrova & Dragneva 2009, p. 855). Therefore, this article provides an overview of Ukraine in the aftermath of the "Orange Revolution". The revolution not only changed the internal Ukrainian political landscape, but also injected "dynamism into Ukraine's relations with the EU" (Wolczuk 2009, p. 197). In fact the Association process, which was started in 2007, was greatly inspired by the revolution and was often viewed as an advance to Ukraine

The European Parliament in the Ukrainian Association Puzzle

rather than recognition of Ukrainian success on the path of democratization. After the “Orange revolution”, Ukraine was characterized by two features: a specific political system with a privileged position for oligarchs and the “shuttle diplomacy” it employed in an endeavor to press the EU for candidate country status whilst simultaneously preserving special relations with Russia. In many ways, the Ukrainian revolution of 2013-2014 was shaped by these basic contradictions: between the oligarchic system of governance and the interests of Ukrainian society, and those between the two diverging vectors of Ukrainian integration – the EU and the Russian-led Customs Union.

There is a vast literature providing insight into both the nature of oligarch groups and their penetration into the Ukrainian political and institutional systems (Dimitrova & Dragneva 2013, p. 664). Moreover, the survival of oligarchic groups after the “Orange revolution” and further “oligarchization of power” against the permanent tensions between Yushchenko and Tymoshenko¹¹ were viewed as factors which undermined democratization in Ukraine (Casier 2011, p. 965). Furthermore, the oligarch system was the basis of the “all-embracing” political corruption (Razumkov Centre 2009, p. 40). It is important to stress that the most powerful oligarch groups were connected to either the energy sector (Achmetov, Kolomoysky, Pinchuk) or Russian business interests in Ukraine (Firtash, Grygorishin). This fact adds another emphasis to Russia’s involvement in Ukrainian affairs, since Russia was Ukraine’s key trade partner, particularly as its energy supplier (Dimitrova & Dragneva 2013, p. 663).

To complete the picture, there is another phenomenon to mention. Despite the fact that the ENP was designed as an alternative to EU membership (Lavenex & Schimmelfennig 2011, p. 899), Ukraine persistently demonstrated its aspiration to acquire the EU candidate country status. This aspiration was ignored by the EU officially; however, it was tackled at non-official levels and by non-binding documents under the euphemism of the “European perspective for Ukraine” often with further reference to Art. 49 TEU (Magen 2006, p. 412). Thus, the phenomenon of “self-imposed” democratization (Casier 2011, p. 971) developed into an important factor in the EU-Ukraine relations.

Earlier research shows that the EU enlargement and neighborhood policies implied a distinct security aspect, emphasizing the interconnection of security with promotion of liberal values, which was at the core of conditionality in both cases. However, the application of conditionality without offering the membership perspective lost much of its practical relevance and effectiveness.

¹¹ President and Prime-Minister of Ukraine at that time.

Moreover, the lack of EU commitment to a coherent application of the policy ended up in a general picture of inconsistency and ineffectiveness (Lavenex & Schimmelfennig 2011, p. 887). The “Orange revolution” in Ukraine failed to rid its political system of the dominance of oligarch groups. Furthermore, the interdependence with Russia was a significant factor for Ukraine’s convergence with EU rules (Dimitrova & Dragneva 2013, p. 662), as Russia regarded democratic developments in Ukraine as a geopolitical threat to its interests (Schimmelfennig 2015, p. 21).

Ukraine, Association and Conditionality.

This section covers the main period of the Association Agreement negotiations (2010-2013) and investigates the EU conditionality agenda, separately stressing the EP’s role in the negotiation process. In addition, it studies the reasons for the failure of the Association process.

The decisions to open the association and accession negotiations are two major events in terms of the integration threshold (Schimmelfennig 2008, p. 922). Thus, association itself is often considered to be an incentive to bargain against conditionality (Lavenex & Schimmelfennig 2011, p. 893). However, association may imply a step towards membership (European Agreements) or may exclude any such perspective (Euro-Mediterranean Association Agreements). Certainly, the level of conditionality differs for various types (Schimmelfennig & Scholtz 2010, p. 449); however, the boundaries between them can also be rather blurred due to individual peculiarities. Nonetheless, the Spanish association case of 1962 established that the EU cannot have an association with a non-democratic country (MacLennan 2000, pp. 65-81). In terms of eligibility for association, reference is often made to the Freedom House rating of 3 for two years being sufficient for the initiation of an association process (Schimmelfennig 2008, p. 925).

In 2006, only Montenegro and Ukraine were eligible for association (Schimmelfennig 2008, p. 923). However, the situation with democracy in Ukraine was far from satisfactory, despite the scores from Freedom House.¹² Against the background of substantial progress in the field of formal democracy, the situation with substantive democracy remained problematic, which was due to the influence of oligarch groups on Ukrainian politics (Casier 2011, pp. 958-964). This disproportion also reflected the asymmetry of the one-sided EU emphasis in the democracy promotion process (Casier 2011, pp. 956). It can also be explained by the facts that, firstly, formal institutional change can

¹² In 2006-2010 (2,5; 2; 3) <http://www.freedomhouse.org>

The European Parliament in the Ukrainian Association Puzzle

be achieved more rapidly than change in practices (Lavenex & Schimmelfennig 2011, pp. 901-902), and, secondly, that the phenomenon of “self-imposed conditionality” also mostly focused on formal institutional reforms.

A closer look at this phenomenon reveals the wish of the ruling oligarchs to acquire EU candidate country status for Ukraine without taking the risk of developing institutes of substantive democracy, which would endanger their privileged position in Ukrainian economy and politics. The policy of “declarative Europeanization” (Wolczuk 2002) was initiated by pre-Orange President Kuchma and was characterized by rhetorical commitment to “European values” against the background of Kuchma’s own “blackmail and bribe” style of rule (Wolczuk 2002, p. 10). The essence of the policy was a manipulative strategy aimed at counter-balancing the growing expansionism of Putin’s Russia and had nothing to do with any genuine endeavor for the democratization of the country.

However, despite these facts, there was an inter-connection between the implementation of the conditionality and the Ukrainian perception of the role that the Association agreement would play. The encouraging examples of CEE countries demonstrated that reforms can alter the EU’s attitude. Moreover, the existence of the EU conditionality was also viewed as an advantage, as clear conditions provided a concrete alignment program (Menon & Sedelmeier 2010, p. 85). From the legal perspective, Art. 49 TEU set a stable ground for Ukrainian membership aspiration as one of the “easternmost countries of the EU’s ‘Europe’” (Schimmelfennig 2008, p. 922). Furthermore, it obliged the EU to be guided primarily by the democratic and human rights performance of the target countries (Schimmelfennig 2008, p. 921), which made “self-imposed democratization” a relevant strategy. The empirical data confirmed the above-mentioned inter-connection as the “European choice” narrative was central in the discourse of Ukraine’s political leaders of that time (Casier 2011, p. 967). Furthermore, the goal of EU accession was admitted by high-rank Ukrainian officials to be the major reason for the domestic reforms. Certainly, against this background Ukraine was fulfilling what it perceived to be the most necessary conditions imposed by the EU (Casier 2011, pp. 961-968).

However, the election of President Yanukovich in 2010 altered the political situation in Ukraine in several important ways. He introduced a number of institutional reforms that allowed him to restore the neo-patrimonial regime of the preceding period (Malygina 2010), thus reversing the freedoms that gave Ukraine its democratic credentials (Dimitrova & Dragneva 2013, p. 659). Against the background of the on-going Association Agreement negotiations this

shifted the priority onto the restoration of the previously-achieved level of democracy, which implied a recurrent focus on formal democracy. Thus, it was logical that the major focus of the EP's resolutions of 2010-2013 was on "European values".¹³ Six of them had a clear topical profile and were dedicated to the elections in Ukraine and to the problem of "selective justice" (the "Tymoshenko case"). The seventh contained the EP's recommendations regarding the Association Agreement negotiations.¹⁴

The resolution dedicated to the presidential election of 2010¹⁵ was positive, as the election campaign met most of the OSCE and EU standards.¹⁶ Insufficient transparency in the financing of candidates and political parties was the major reported drawback.¹⁷ The resolution recognized the 'European perspective' for Ukraine, and called upon Ukrainian politicians to continue the path of commitment to "European values".¹⁸ From this perspective, the Association Agreement was viewed as the major instrument for the "gradual integration".¹⁹ The next resolution was dedicated to the local and regional elections campaign of 2010²⁰ and stressed that the elections, "conducted technically in an orderly manner, did not set a new, positive standard".²¹ Separately, the EP emphasized the deteriorating situation in the political climate in Ukraine, with particular focus on the freedom of the press.²² Despite these facts the resolution contained a strong declaration of the "European perspective" for Ukraine; however, stressing the need to guarantee democracy and the rule of law as well as to take "decisive action in combating corruption at all levels".²³

The third topical resolution adopted after the general elections of 28 October 2012²⁴ was critical, claiming that the electoral process failed to meet major international standards²⁵ due to misuse of administrative resources and the

¹³ Art.2 TEU

¹⁴ EP resolution of 01.12.2011.

¹⁵ EP resolution of 25.02.2010.

¹⁶ Point 1 *ibid.*

¹⁷ Point 4 *ibid.*

¹⁸ Points 6, 7,12 *ibid.*

¹⁹ Points 14, 15 *ibid.*

²⁰ EP resolution of 25.11.2010.

²¹ Point 4 *ibid.*

²² Points F, 7-9 *ibid.*

²³ Points 1-3, 10, 16 *ibid.*

²⁴ EP resolution of 13.12.2012.

²⁵ Points B-D, 1-2 *ibid.*

The European Parliament in the Ukrainian Association Puzzle

lack of transparency and balanced media coverage. A separate point was made over the exclusion from the elections of the opposition leaders, held in jail as a result of politically motivated accusations.²⁶ Against this background the issue of the “European perspective” for Ukraine lost much of the previous optimism as it was directly connected to Ukraine’s tangible commitment to democratic principles, the rule of law, the independence of the judiciary and media freedom.²⁷

Three resolutions were dedicated to the infamous “Tymoshenko case”, which became the fetish of EU-Ukraine relations for the Yanukovich presidency. Two resolutions were adopted in the aftermath of the arrest of²⁸ and verdict²⁹ handed down to Mrs. Tymoshenko. The third one was adopted before the cassation (final) decision in this case.³⁰ Certainly, all three resolutions had the same focus on “selective justice” as well as personal cases against Mrs. Tymoshenko and members of her government.³¹ Against this background, the attendant focus was on the need for reform of the judiciary³² to strengthen the rule of law as one of the key elements of the development of a stable democracy.³³ In its turn, Ukraine’s acceptance of “European values” was viewed as an essential pre-condition for signing of the Association Agreement.³⁴

The only program document within the period 2010-2013 was the resolution containing the EP’s recommendations for the Association Agreement negotiations.³⁵ The recommendations covered a vast number of bilateral issues, such as energy cooperation, protection of intellectual property rights, tariffs, the agricultural sector, taxation and investments.³⁶ However, the central part of the resolution dealt with the institutional aspects and political dialogue.³⁷ Here, the emphasis was placed on the traditional agenda of “European values”, with the general message that development of the existing

²⁶ Point 3 *ibid.*

²⁷ Point 4, 9, 10 *ibid.*

²⁸ EP resolution of 09.06.2011.

²⁹ EP resolution of 27.10.2011.

³⁰ EP resolution of 24.05.2012.

³¹ Points 1-2 *supra* n. 28, 2-8 *supra* n. 29, 3-11 *supra* n. 30.

³² Points B, 6 *supra* n. 28, F, 14 *supra* n. 29, E, 14 *supra* n. 30.

³³ Points N, 5 *supra* n. 28, 8 *supra* n. 29, 14 *supra* n. 30.

³⁴ Points A, N *supra* n. 28, 1, 7 *supra* n. 29, 1, 14 *supra* n. 30.

³⁵ See *supra* n. 14

³⁶ Points 1(v), (w), (z), (ag), (ah), (ai), (al), (am), (an) *supra* n. 14.

³⁷ Points 1 (i)-1 (u) *supra* n. 14.

framework of EU-Ukraine cooperation was “in relation to the protection of human rights and fundamental freedoms”.³⁸ In this regard, the EP stressed the issues of judiciary reform, changes to the electoral legislation, media and civil society freedoms and, of course, the “Tymoshenko case”.³⁹

Thus, the EP’s involvement in EU-Ukraine relations during 2010-2013 was mostly limited to its traditional agenda of democracy, rule of law, human rights and good governance principles. As the situation deteriorated the EP was forced to concentrate upon the standards established for an Association applicant country, which first and foremost were associated with formal democracy. Thus, the EP followed a rather traditional pattern of democracy promotion through intergovernmental channels with the leverage model being dominant. In this sense, the EP’s resolutions continued to provide clear guidelines to the Ukrainian elites, highlighting the most necessary steps for reforms (Casier 2011, p. 970). Therefore, the Ukrainian case was hardly anything special from the perspective of the EP’s role in the process, except for the extraordinary Cox-Kwasniewski mission.⁴⁰

Originally launched with a limited task, the Cox-Kwasniewski mission morphed into 18 months of intensive negotiations. The arrangement to start the mission was unofficial; however, its increasing scope made the mission a generalized political instrument for EU “back-door” diplomacy, including the issue of Ukrainian legislation changes and its judiciary reform.⁴¹ The progress of the mission was recognized at the highest EU official level,⁴² as all the political prisoners (except for Mrs. Tymoshenko) were released within 2012-2013. Moreover, during those years, Ukraine continued the reform of its legal system. From this perspective, the explicit praise from the EU Foreign Affairs Council emphasized the specific role of the mission.⁴³ However, the mission failed to deal with the “Tymoshenko case”.⁴⁴ Moreover, excessive dependence on this case was one of the reasons for President Yanukovich’s U-turn on the eve of the Vilnius summit. Certainly, the EU could not compromise its basic

³⁸ Point 1 (k) *supra* n. 14.

³⁹ Points 1 (j), (l), (m) *supra* n. 14.

⁴⁰ Launched on 11.06.2012.

⁴¹ EP Monitoring Mission Report of 04.10.2012.

⁴² EU High Representative Catherine Ashton and Commissioner Stefan Füle: “Joint Statement on the pardoning of Yuriy Lutsenko” of 07.04.2013.

⁴³ Point 14, Conclusions of Council of the European Union of 10.12.2012

⁴⁴ EP Monitoring Mission Statement of 13.11.2013.

The European Parliament in the Ukrainian Association Puzzle

values,⁴⁵ especially against the deteriorating situation in Ukraine in terms of the rule of law and political freedoms; however, the independent and rather unofficial status of the mission implied a more flexible approach to this “Gordian knot”.

The abrupt end of the Association process on the eve of the Vilnius summit emphasized the failure of the EU policy towards Ukraine and the application of democratic conditionality as part of it. Indeed, against the background of the intensive and successful negotiation process,⁴⁶ the situation in Ukraine was rapidly deteriorating, which was appropriately reflected by its Freedom House rating,⁴⁷ downgrading Ukraine from “free country” at the beginning of the Association process to “partly free” at its end. The last part of this section discusses the major reasons why the EU policy toward Ukraine was ultimately both insufficient and ineffective (Dimitrova & Dragneva 2013, p. 658). Besides evident Russian counteraction, which is a topic for a separate research, these reasons include insufficient EU incentives, and incorrect cost-benefit analysis.

The major incentive that the EU offered for Ukraine was the Association Agreement itself, with a Deep and Comprehensive Free Trade Area (DCFTA) at its core (Dimitrova & Dragneva 2013, p. 660). However, unlike the Ukrainian society, the Ukrainian ruling oligarch groups did not consider it to be a sufficient incentive. The starting point is the fact that DCFTAs are “standardized and non-negotiable” (Delcour 2013, p. 349), which implied a number of important exceptions (e.g. agriculture). Furthermore, it required the Ukrainian government to make a final and irreversible strategic choice between the EU and Russia (Schimmelfennig 2015, p. 19), which was Ukraine’s largest trade partner at that time (Dimitrova & Dragneva 2009, p. 862). As stressed above, oligarch groups and their well-being was often connected with Russian energy supplies or Russian capital. It was especially true for both informal factions within the ruling Party of Regions, identified as internal Ukrainian veto players (Dimitrova & Dragneva 2013, p. 665). Furthermore, it was Dmitry Firtash, a person often associated with unofficial use of Russian state finances in Ukraine, who was reported to be the biggest financial backer of Yanukovich’s electoral campaign (Dimitrova & Dragneva 2013, p. 665).

The theory of conditionality implies that the target government seeks to balance EU, domestic, and other international pressures in order to maximize

⁴⁵ Art. 2, 21 TEU.

⁴⁶ The text of the Agreement was initialled I on 30.05.2012.

⁴⁷ In 2006-2010 (2,5; 2; 3); 2011 (3;3;3;) 2012-13 (3,5;3; 4). <http://www.freedomhouse.org>

its own political benefits (Schimmelfennig & Sedelmeier 2004, p. 664). Furthermore, if the political costs are high – the EU conditionality threatens the survival of the regime – even credible membership incentives prove ineffective (Schimmelfennig 2008, p. 918). It should be stressed that the cost-benefit analysis of the Ukrainian ruling elite certainly looked different from that of the EU. The implementation of the Association Agreement with a fully functioning DCFTA implied competition with traditionally more advanced EU companies in the Ukrainian market, which oligarch groups supporting Yanukovich considered to be their patrimonial estate. Thus, the expectations that they would welcome a DCFTA were “highly unrealistic” *a priori*, as the introduction of honest competition and an influx of foreign investments into Ukraine posed a threat to their monopolistic position (Dimitrova & Dragneva 2013, pp. 666-667).

Their expansion into the European market looked illusory due to the incompatibility of their business models with European legislation and existing business practices. Furthermore, there were well-grounded fears that liberalized access to Ukrainian goods on the EU market would be undermined by protectionist interest groups (Sedelmeier 2007, pp. 201-205). This is not to forget the separate enormous issue of differences in technical standards. Furthermore, the proper application of the EU democratic conditionality would undermine or even ruin President Yanukovich’s governance model. Thus, there were costs both domestic and international, which were extremely high. The question remained – what were the benefits?

The theory suggests that to successfully apply conditionality the EU must be able to withhold the rewards at no or low costs to itself, which implies that the EU has to be less interested in giving the reward than the target government is in obtaining it (Schimmelfennig & Sedelmeier 2004, p. 665). Clearly, the situation was different in the Ukrainian case. The Association process was continued despite the deteriorating situation in Ukraine, let alone any improvement. Furthermore, the EU was ready to sign the Association Agreement despite the failure of the Cox-Kwasniewski mission in the “Tymoshenko case”. These facts emphasize the inconsistency of EU democracy promotion for countries without a credible membership perspective, if there are important strategic, political or commercial interests involved (Schimmelfennig 2015, p. 16). Against this background, the EP’s agenda for EU-Ukraine relations remained focused on the issues of “European values” in the endeavor to make the Yanukovich regime comply with at least the minimal democratic standards.

The Revolution of Dignity and its Aftermath.

This section focuses on the emphasis that the EP placed upon EU-Ukraine relations during the dramatic period from November 2013 to summer 2014, when the Association Agreement was finally signed. This period was characterized by two separate events: the outbreak of the Revolution of Dignity and the commencement of the Russian hostilities, its occupation of Crimea and the “hybrid war” in Eastern Ukraine. During this period, the EP actively followed Ukrainian events by its resolutions, which demonstrated its new ambitions and shift of its emphases towards the issues of CFSP.

Despite the problematic situation with the substantive democracy in Ukraine, Ukrainian civil society was marked with high ratings.⁴⁸ Indeed, it was the civil society that managed to protect the basic freedoms in the course of two revolutions, both of which took place within one single decade. Certainly, the Ukrainian civil society differs from that of other European countries in terms of its structure as well as the scope and depth of its influence on the ruling regime; however, these differences should be of no surprise as they are shaped by a number of historical and political reasons. The Ukrainian civil society proved to be mature enough to resist the oppression of the Yanukovich regime, and it was solidarity with Ukrainian people “fighting and dying for European values”,⁴⁹ which was a major driving force for the EP’s resolutions, adopted through the period December 2013-February 2014.⁵⁰ Against the background of the escalation of the Ukrainian crisis,⁵¹ the EP stressed the universal nature of human rights and the formal obligations of Ukraine to ensure their implementation,⁵² reassured its solidarity with the Ukrainian protesters⁵³ and strongly condemned the increasing violence from the side of the official authorities.⁵⁴

In addition to their tone of solidarity, these resolutions also reflected the shift of the EP’s emphasis. Deploring the Ukrainian decision to withdraw from the Association process,⁵⁵ the EP called for a number of practical steps to facilitate the re-establishment of bilateral relations. These steps included two blocks of

⁴⁸ In 2006-2013 (2, 75); 2014 (2,5) <http://www.freedomhouse.org>

⁴⁹ Points 1 EP resolution of 27.02.2014.

⁵⁰ Resolutions of 12.12.2013, 6 and 27.02.2014.

⁵¹ Point C EP resolution of 06.02.2014.

⁵² Point 7 EP resolution of 12.12.2013.

⁵³ Points 1 EP resolution of 27.02.2014.

⁵⁴ Points 1-7 *supra* n. 51, points 1,2,4 *supra* n. 49, point 7 *supra* n. 52.

⁵⁵ Point 2 *supra* n. 52.

measures. The first was aimed at enhancing opportunities to develop people-to-people contacts, especially for young Ukrainians. The EP called for steps designed for a broader opening of the Ukrainian society with the issues of a visa-free regime, strengthened research cooperation, increased scholarship opportunities and youth exchange at the fore.⁵⁶ The second block was aimed at the further development of economic interdependencies with the emphasis on the energy market.⁵⁷ The EP also referred to the Association process revival⁵⁸ as a package issue together with the “European perspective” for Ukraine and financial assistance.⁵⁹

Admitting the drawbacks of the EU policies, the EP emphasized the need to articulate a more strategic and flexible policy in support of the European choice of its Eastern partners.⁶⁰ Against this background, Russian pressure on Ukraine was recognized both as one of the major reasons for the failure of the Association process and as an existential threat to the Union’s political credibility, which required an adequate response.⁶¹ Thus, the EP adopted the role of agenda-setter for EU-Ukraine relations, tackling issues beyond its traditional agenda. Its new focuses included the revival of the Association process, financial assistance, energy sector integration and a visa liberalization dialogue. Although some of the issues were previously mentioned,⁶² the new situation in Ukraine and the solidarity claim brought them to prominence, making them major directions for upgrading the level of EU-Ukraine relations through intensified sectorial cooperation.

The rapid development of the Ukrainian crisis was marked by a dramatic change in Ukrainian leadership, which made the successful completion of the Association process possible. However, it was overshadowed by the commencement of the Russian aggression in March 2014. Since then, the security dimension became the central part of the EP’s resolutions, marking its firm step into the area of the CFSP. Its new focus was on the Russian “hybrid war”, efforts to stop the “hot phase” of the conflict and the EU reaction to the Russian aggression.

⁵⁶ Point 18 *supra* n. 51.

⁵⁷ Point 11 *supra* n. 52.

⁵⁸ Points 13, 15, 22, 24 *supra* n. 49.

⁵⁹ Points 17, 18 24 *supra* n. 49.

⁶⁰ Point 18 *supra* n. 52.

⁶¹ Point 8-9 *supra* n. 52.

⁶² Points 8-10 *supra* n. 15, points 13, 19 *supra* n. 20, point 14, *supra* n. 24.

The European Parliament in the Ukrainian Association Puzzle

Obviously, the “hybrid war”⁶³ and military hostilities were the major focus. Russia’s direct use of armed force while annexing Crimea was the focus of the special resolution,⁶⁴ in which the EP recognized the invasion of Crimea as an act of aggression against a sovereign state,⁶⁵ something that constituted an evident breach of the principles of international law as well as of Russia’s obligations towards Ukraine.⁶⁶ This message was repeated in the following resolutions,⁶⁷ with the general emphasis on the unacceptability and intolerability of Crimea’s annexation. A separate topic was the provocations against Crimean Tatars and Jews that were reported after the Russian occupation of Crimea.⁶⁸ The EP stressed the responsibility of the Russian Federation to protect all civilians in the occupied territories “under the Fourth Geneva Convention”,⁶⁹ thus emphasizing the “law of war” perspective.

Another aspect of the “hybrid war”, which, however, also falls within the scope of the “the Hague and Geneva law of war”,⁷⁰ was the indirect Russian involvement in the conflict in the Eastern Ukraine, which included the unofficial use of regular troops and supplies of weapon, tanks and heavy artillery to the rebels as well as their training and coordination. The storming of administration buildings in Kharkiv, Luhansk and Donetsk was appropriately recognized as “a false pretext” for further Russian military aggression in the endeavor to “repeat the ‘Crimea scenario’”.⁷¹ The EP condemned these actions “in the strongest possible terms” and urged Russia “to immediately withdraw its presence in support of violent separatists and armed militias” as well as to remove troops from the eastern border of Ukraine.⁷² In the summer of 2014, the EP made a statement about its awareness of full-scale Russian engagement in the Eastern Ukraine;⁷³ however, the call on Russia to immediately withdraw all its military assets and forces from Ukraine and to end direct or indirect support of the separatists⁷⁴ remained unheeded.

⁶³ Point 5 EP resolution of 15.01.2015.

⁶⁴ EP resolution of 13.03.2014.

⁶⁵ Points A, 1 *ibid.*

⁶⁶ Point 2 *ibid.*

⁶⁷ Points N, 3, Resolution of 17.04.2014, B, 7, resolution of 17.07.2014, E resolution of 18.09.2014, F resolution of 15.01.2015.

⁶⁸ Point 14 *supra* n.64.

⁶⁹ Point 12 EP resolution of 17.04.2014.

⁷⁰ Special wartime conventions of 1899, 1907 and 1949.

⁷¹ Points 1, 2 *supra* n. 69.

⁷² *ibid*

⁷³ Points 4, 9 *supra* n. 69.

⁷⁴ Point 3 EP resolution of 18.09.2014.

With the launch of the “hybrid war”, the issue of energy supplies was transformed from an important yet routine part of EU-Ukraine relations into one of the major battlefields of this war. Parliamentary debates on this topic stressed the need to assist Ukraine in resisting the Russian “gas warfare”,⁷⁵ as well as the importance of a new strategic approach to energy security. Among the measures to assist Ukraine, the EP emphasized political support in the negotiations to facilitate “an agreement allowing Ukraine to pay a competitive price, which is not politically motivated”,⁷⁶ the issue of so-called “reverse-flow supplies” to Ukraine from the EU,⁷⁷ and the need to reform the Ukrainian energy sector.⁷⁸ Of strategic importance was the issue of Ukrainian integration into the Energy Community,⁷⁹ with its primary objective of building “a fully functioning free gas market in Europe”,⁸⁰ one which would include the EU’s neighborhood countries.⁸¹ From this perspective, the EP stressed the need for the full enforcement of already established rules, including the Third Energy package.⁸²

The Russian practice of using energy supplies as a means of geopolitical warfare made it a target for counter-measures. Thus, the EP declared the reduction of EU dependence on the Russian gas and oil and diversification of energy supplies to be a strategic objective,⁸³ calling for the development of a genuine Common External Energy Policy.⁸⁴ Furthermore, the EP called for a “non-discriminatory pursuit of the pending court case against Gazprom”,⁸⁵ and placed a special emphasis on Russian energy companies and their subsidiaries in terms of the EU sanctions.⁸⁶

With regard to efforts to stop the “hot phase” of the conflict, the EP stressed that there was no alternative to a peaceful settlement.⁸⁷ However, it admitted

⁷⁵ Point 28 EP resolution of 17.07.2014.

⁷⁶ Point 28 *supra* n. 75.

⁷⁷ Points 28 *supra* n. 69; 29 *supra* n. 75; 29 *supra* n. 74; 18 *supra* n. 63.

⁷⁸ Point 18 *supra* n. 63.

⁷⁹ Points 28 *supra* n. 69; 18 *supra* n. 63.

⁸⁰ Point 31 *supra* n. 74.

⁸¹ *ibid*

⁸² Points 28 *supra* n. 69; 19 *supra* n. 63.

⁸³ Points 28 *supra* n. 75; 26 *supra* n. 74; 20 *supra* n. 63.

⁸⁴ Point 19 *supra* n. 63.

⁸⁵ *Ibid*.

⁸⁶ Points 23 *supra* n. 64; 7 *supra* n. 69.

⁸⁷ Point 1 *supra* n. 74.

The European Parliament in the Ukrainian Association Puzzle

that the basis for the conflict resolution must be the sovereignty of Ukraine and its territorial integrity as well as the full and unconditional withdrawal of Russian troops, its military equipment and mercenaries from Ukraine.⁸⁸ The conflict resolution process was viewed at two levels – on the one hand, direct Russia-Ukraine dialogue, and, on the other, international negotiations with different possible configurations thereof from “quadripartite meeting”, to the Geneva or Normandy format.⁸⁹ Moreover, admitting the crucial role of the OSCE,⁹⁰ the EP persistently reiterated the idea of a greater EU involvement in the conflict resolution. After the start of the “Minsk peace process” in the format of Germany, France, Russia and Ukraine in July 2014, the EP urged the High Representative and the EEAS “to have a stronger presence and greater visibility in the dialogue mechanisms”,⁹¹ calling for strategic thinking at the EU level and for “unity and cohesion among EU Member States”.⁹²

In terms of the EU reaction to the Russian aggression, the EP stressed three major points: sanctions, limits on military cooperation and strategic change in the EU-Russia relations format. It welcomed the introduction of sanctions, usually suggesting their wider application, should the situation deteriorate.⁹³ However, the goal of the sanctions was to alter the Russian policy and to ensure a peaceful solution.⁹⁴ Thus, the EP repeatedly emphasized the reversibility and scalability of the restrictive measures, depending upon the situation in Ukraine.⁹⁵ For this purpose, the EP called for the adoption of “a clear set of benchmarks” for both the adoption of new and the lifting of currently imposed sanctions.⁹⁶ This multi-level conditionality was viewed as a safeguard mechanism for the de-escalation of the conflict as well as a chance for the normalization of EU-Russia relations. However, it was proposed that the lifting of already imposed sanctions would take place only after practical steps by Russia for the conflict de-escalation.⁹⁷

Military cooperation and arms trade was recognized as a separate topic. Immediately after Crimea’s annexation, the EP called upon Member States to

⁸⁸ *Ibid.*

⁸⁹ Point 9 *supra* n. 63.

⁹⁰ Points 1, 5 *supra* n. 74; 23 *supra* n. 63.

⁹¹ Point 11 *supra* n. 75.

⁹² Points 24 *supra* n. 63.

⁹³ Points 23 *supra* n. 64; 12, 13 *supra* n. 75; 10 *supra* n. 74.

⁹⁴ Point 8 *supra* n. 63.

⁹⁵ Points 11 *supra* n. 74; 8 *supra* n. 63.

⁹⁶ Points 12 *supra* n. 74; 7 *supra* n. 63.

⁹⁷ *ibid*

halt the export of arms and military technology to Russia, as it “can endanger the stability and peace of the entire region”, separately calling for the inclusion of arms and dual-use technologies in the sanctions lists.⁹⁸ The EP also welcomed the French decision to halt the delivery of the Mistral helicopter carriers and called on the Member States to take a similar line regarding exports not covered by the EU sanctions decisions,⁹⁹ emphasizing that military cooperation with Russia would contradict the EU Code of Conduct on Arms Export and the 2008 Common Position defining common rules governing the control of exports of military technology and equipment.¹⁰⁰ The EP viewed sanctions as a part of “a broader EU approach towards Russia”¹⁰¹ as the general climate of the EU-Russia relations suffered a dramatic transformation. In this context, the EP emphasized the need to rethink relations with Russia, abandon the strategic partnership and find a new, unified approach¹⁰² based on a more coherent and firmer strategy.¹⁰³

Conclusions

This study argued that the security aspect has been at the core of the European integration process. Furthermore, it has been an essential element of both EU enlargement and neighborhood policies due to its interconnection with the promotion of liberal values. Against this background, the remaining formal limited EP’s role within the CFSP is irrelevant. Furthermore, the “parliamentarization” of the CFSP will be in line with the general trend of the consolidation of the EP’s competences.

The extreme case of the EU-Ukraine Association process revealed a wide range of roles available for the EP in EU foreign policy. Moreover, the dynamics of this case provoked the EP into demonstrating its growing ambitions for a deeper involvement in EU external relations, including its participation in the CFSP formation process. Although the EP’s claims go far beyond its formal Treaty-based competences, they are in line with the strategy of “creeping parliamentarization” (Rittberger 2005, pp. 197-210), which is viewed as part of a wider “supranationalization” of this policy area. Furthermore, it is recognized as being to the benefit of the CFSP (Klein & Wessels 2013, p. 455) due to the

⁹⁸ Points 22, 23 *supra* n. 64; 12 *supra* n. 75.

⁹⁹ Points 32 *supra* n. 74, 26 *supra* n. 63.

¹⁰⁰ Point 32 *supra* n. 74.

¹⁰¹ Point 8 *supra* n. 63.

¹⁰² Point 21 *supra* n. 74.

¹⁰³ Point 14 *supra* n. 75.

The European Parliament in the Ukrainian Association Puzzle

enhanced coherence and efficiency of the Union's external policies (Wessels & Bopp 2008, pp. 3-4).

The Russian "hybrid war" at the EU borders stressed the growing importance of the security issue as well as the inter-connection between military and civilian aspects of foreign policy. Against this background as well as that of the intensification of the debate over the future of the CFSP, the European Parliament used the Ukrainian crisis as an opportunity to emphasize its potential as a platform for the debate over strategic policies. This reaffirms the priority of the political component in the EP's behavior (Westlake 1994, p. 158), which has always been a factor influencing the EP's institutional future (Krauss 2000, p. 219).

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