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**ST 43: Le Parlement européen, acteur international et institution parlementaire internationale (IPI): exemples et comparaisons avec d'autres IPIs.**

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**Péter Bajtay**

**Parliamentary actors and tools  
in shaping and controlling EU foreign policy**

## 1. The European Parliament: a new actor in the international arena<sup>1</sup>

With the end of the Cold War, the collapse of the Soviet Union and of the bipolar world, a new international order has emerged, fundamentally affecting the European continent. Stronger internationalisation and wide-spread democratisation are new features of the international system. New democracies have been founded on the ruins of totalitarian regimes and the public, political and economic demand for not simply an enlargement of the European integration process to the East but for the unification of Europe has mobilised minds and souls on both sides of the former East-West border. The central “founding” values of the early years and decades of European integration – such as peace, prosperity and supranationality – have been enriched and complemented with a new focus on democracy, human rights and the rule of law as from the beginning of the 1990s (Weiler 2014).

Also, a rather inward-looking and introverted European integration process was transformed by its main stakeholders, the Member States, into an institutional and policy framework more open to a fundamentally changed international environment. Preceded by the formalisation of European Political Cooperation under the 1986 Single European Act, the 1993 Maastricht Treaty created the European Union and reinforced the EU’s rule-based competences in external relations/foreign policy also by establishing the Common Foreign and Security Policy as one of the pillars of the new architecture – a value-based policy field aimed at internal and external interaction to defend and promote the common values and interests of Member States. Simultaneously, the changing international environment and the democratisation process combined with growing public demand for more transparency have created the need for a more democratic EU decision-making to be reinforced with the European Parliament at its core. Parliamentary involvement in decision-making reflected upon the democratic principle that people should participate in the exercise of power through their elected representatives (Kuiper 2013: 869)

### 1.1. *Legitimacy, actorhood and impact*

The European Union is widely considered a kind of “unidentified political object” (Jacques Delors quoted in Zielonka 2013: 1), a *sui generis* political actor, a normative power with sovereignty (and policy impetus) shared between Member States and various institutional players (Cameron 2012: xiv). No other international organisation involves as many players interacting on as many different levels of governance as the EU, leading to a high complexity of

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<sup>1</sup> The views expressed in this paper are those of the author and do not necessarily correspond to the position of the European Parliament. The current paper is a shorter version of a study by the author published earlier this year by the European University Institute (Péter Bajtay: Democratic and efficient foreign policy? Parliamentary diplomacy and oversight in the 21<sup>st</sup> century and the post-Lisbon role of the European Parliament in shaping and controlling EU foreign policy. *EUI Working Paper Series RSCAS 2015/11*, Florence (Italy), European University Institute, February 2015). Péter Bajtay, PhD, is an EU civil servant and policy adviser at the European Parliament’s Committee on Foreign Affairs.

decision-making (Welle 2013: 7). In this peculiar complex web, the Union entertains a “tripartite” way of approaching the world outside through intergovernmental and supranational methods/bodies and via its own Member States (Abdelal and Krotz 201: 2. and 5).

The international system is largely determined by the actions of state actors and non-state actors as well as the interaction between them. While the state actors (government and parliament), dominated traditionally by executives, enjoy legitimate rights and responsibilities in forming opinions and making decisions, so-called non-state actors (NGOs, multinational companies, advocacy groups etc.) are entrusted with rights without legitimate responsibilities (they indeed form opinions without making legitimate decisions). The European Union, having the potential for autonomous action and impact, acts as a peculiar “state-like” actor in foreign policy and international relations. But does its Parliament, a particular institutional part of this state-like entity, qualify as a genuine actor in EU foreign policy and on the international scene?

### *1.1.1. The nature of EP actorhood*

Under the peculiar democratic order of the EU (Magnette and Nikolaidis 2009: 54) recognised as a “representative democracy” since the Lisbon Treaty (Article 10(1) TEU), no government is emerging directly as a result of European elections. For the time being, voters cannot sanction the executive, elections are currently not about keeping or removing the Commission. In this sense, the widely perceived democratic deficit is a “structural one” since EU voters have no choice on how they are governed (Weiler 2014). Unlike in EU Member State national parliaments, although like in the US Congress, the parliamentary majority in the EP is not “the extended arm” of the other “state-like” branch. MEPs are not “mouthpieces” of the executive, their policy approach or value choices are not necessarily determined by political affiliation to the Commission.

Under the traditional democratic arrangements of the government-parliament structure, the parliamentary majority normally tends to restrict itself to pursuing (foreign) policy positions different from that of *its* government (Monar quoted by Viola 2000: 28). The majority, which determines the political orientation of the House, usually identifies itself with the government line and prefers to refrain from pursuing autonomous (foreign) policy. As Thym put it, “in international relations, this support is even more pronounced than in domestic policies, where parliamentarians are inclined to stand up for the specific interests of their constituency or social support groups” (Thym 2011: 8).

In contrast, the absence in the European Parliament of such a “restrictive” institutional set-up provides MEPs with the opportunity to take foreign policy positions and views freely *without being politically obliged* to support the position of the Council, the HR/VP and the Commission, which together are the executive organs of EU foreign policy. Consequently, the EP enjoys considerable political autonomy, the potential for developing an own policy identity coupled with independent legitimacy with the ambition for independent actions – this provides the opportunity to pursue an autonomous foreign policy not necessarily in line with the actions pursued by the other institutional actors (Thym 2011: 24. and Zanon 2005: 107). However, can

this potential created by the qualitative institutional difference be translated into impact/influence in a policy field so dominated by executive actors?

### *1.1.2. Making impact, exerting influence*

The main requirement of actorhood in the international system, i.e. to be recognised as an actor, is the ability to make an impact and exert influence internally (on related decisions) and externally (on third parties and on international relations overall). An actor disposes of the capability of internal cohesion and of being “discernible” from the external environment (Sjoestedt quoted in Viola 2000: 2).

For a long time, the European Parliament was considered “immature”, an unreliable actor not capable of acting responsibly, a body just releasing reports, haggling over budget lines (Lalone 2005: 46 and 48) and acting as a talking shop with a declamatory character (Viola 2000: 39); its positions carried little weight and were therefore not to be taken seriously by Member States.

But that image was to change, talking power was to be complemented with smart power, due to the factors outlined above. Within the context of democratisation and growing public (and parliamentary) demand for a more democratic EU regime, a gradual parliamentarisation of the EU polity has taken place in the last thirty years (since the first direct election of MEPs in 1979).<sup>2</sup> The five major revisions of the Treaty since then have increasingly affected the European Parliament, entrusting it with new legislative and budgetary powers. Indeed, expanding EU competences in certain fields, including foreign policy, have been accompanied by a stronger parliamentary dimension of those policy areas. As a matter of fact, however, the Parliament has not become an equal player in all fields of European external action and it has been more empowered on internal EU policies than in the sphere of external action.

Relevant treaty changes in favour of reinforcing parliamentary involvement have been largely conceived in the EP as opportunities to build up internal capacities, provide more expertise in order to improve its internal/external reputation, enhance credibility and raise its international profile. Internal reforms such as “Raising the Game” in 2003-2004 were, on the one hand, a reflection of the EP’s determination to this end and, on the other, to back up more competences with more capacities and expertise, also in order to be able to maximize its involvement in foreign affairs (Keukeleire-Delreux 2014).<sup>3</sup> The EP turned itself more and more into a “working parliament” where MEPs become heavily specialised and which is increasingly

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<sup>2</sup> The European Parliament is not the only IPI (International Parliamentary Institution), which is directly elected and enjoys legislative powers. For instance, the Andean Parliament (PARLANDINO), is a directly elected body and the East African Legislative Assembly (EALA) is entrusted with legislative competences. However, the EP is the only directly elected supranational legislature in the world.

<sup>3</sup> Further reinforcement of capacities – for instance, internal expertise on specific crisis areas/crisis-related topics, their rapid deployment combined with rapid provision of external expert support – is still to be considered in order to avoid risks of overstressing the available limited capacities and so weakening EP ability to pursue legislative and political priorities.

focused on legislative actions (Crum and Fossum 2013: 259).<sup>4</sup> Expanding competences combined with more expertise have made the EP capable of projecting a united and consistent image, both internally and externally, and above all, of being able to make an impact on EU decisions and third countries as well.

However, real (parliamentary) impact is difficult to measure, in particular as regards foreign policy where informal factors play a significant role. Indeed, this is the field where, due to the absence of formal legislative powers, especially in hard foreign and security policy, the *potential* of impact can also be decisive in shaping policy – executives often anticipate parliamentary reactions, calculate the costs and consequences of parliamentary satisfaction or dissatisfaction when making foreign policy choices (Carter and Scott 2012: 241). Former Trade Commissioner Pascal Lamy was quoted as calculating that EP support for his policy actions would strengthen his position both in WTO negotiations and within the Commission itself (Lalone 2005: 47). Research into the EP's handling of the Yugoslav crisis in 1991/1992 suggests that, despite the EU's evident failure to prevent the armed conflict, parliamentary involvement was useful in publicising issues and mobilising public opinion as well as in strengthening internal parliamentary cohesion on a sensitive foreign policy matter (Viola 2000: 177). In another instance, MEPs were perceived to have played a decisive role in contributing to (an unusually) peaceful and democratic transition of power in Albania after the 2013 elections or in resolving a domestic political crisis in the former Yugoslav Republic of Macedonia in early 2013.

In most of these cases, the EP exerted moral force and provided the EU action with “soft legitimacy”. Over the years, the Parliament has built up a reputation of guardian of European values and strong supporter of human rights worldwide. A promoter of democracy and the rule of law, it is a driving force for political conditionality in EU foreign policy. According to the former Chair of the EP's Committee on Foreign Affairs, this is not exercised formally, is not apparent in any legal process but is taken on board informally by the Council and Commission (Saryusz-Wolski quoted in Bickerton 2011: 104).

Foreign policy and external actions are policy fields primarily of a strategic nature, where – in contrast to predominantly rule-based internal policies – non-legislative decisions and informal factors play a decisive role in pursuing interests and objectives. This necessarily limits parliamentary involvement. Consequently, the limited role of legislative/budgetary actions coupled with the Member State's reluctance to share (all of the executive's) sovereignty are the two main factors which inevitably restrain the impact and influence of the European Parliament on the conduct and direction of EU foreign policy. In this context, the “effect of hopelessness”, an element of inability and frustration to be able to impact on EU foreign policy, are apparent among Members (MEP quoted by Viola 2000: 248).

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<sup>4</sup> This focus is not necessarily a favourable development for EP bodies working in the field of foreign affairs given the peculiar nature of this policy area where informal debates, exchanges and a number of non-legislative actions constitute important instruments in shaping and controlling policy (See also Crum and Fossum 2013: 259).

## **2. Shaping and controlling EU foreign policy in a post-Lisbon framework: role, competences, tools and bodies of parliamentary diplomacy and oversight**

As discussed before, the five main treaty changes of the last thirty years entrusting the European Parliament with more legislative and budgetary powers have been a response, on the one hand, to the democratisation process of the post-Cold war era and, on the other, to growing public (and parliamentary) demand for more democratic legitimacy of the EU. These changes have been accompanied, but also generated, by constant inter-institutional battles over competences, on the extent of influence over policy-making in the EU context. This particularly applies to foreign policy and external action, traditionally so dominated by the Member State governments and where informal factors as well as soft power play a crucial role. The EP's growing ambition, authority, ability and attitude in this field have fuelled into inter-institutional tensions. Legislative activism, the "obsession to enhance its own powers" (Grant et al. 2013: 25), has led a number of observers to argue that there is no need for more powers of the EP at this stage of European integration (see for instance Ibid and Rossi 2011: 106).

The European Parliament's overall role is to translate the values, interests, policy choices of EU citizens into binding and non-binding instructions to the executive conducting European external action. Parliamentary involvement in this regard relates to the shaping of the policy and controlling of the policy implementation by the executive. These two main fields of parliamentary activity, parliamentary "diplomacy" and oversight, cannot be artificially distinguished, because they are interconnected and interdependent fields – the policy is also being shaped when exercising control and the other way around. The EP enjoys a well-established institutional set-up with available tools and instruments to ensure a wide-ranging, bilateral, multilateral, regional and global reach in the international system.

### ***2.1. Hard (legislative) powers***

The Lisbon Treaty created opportunities for the future development of EU foreign policy, also by codifying for the first time clear values, objectives and principles in this domain. It stipulated a greater role for the EP in external actions overall by expanding parliamentary legitimacy and oversight. What originally used to be under the Single European Act (Article 30 SEA) a parliamentary right to be regularly informed on European Political Cooperation and to be closely associated with the EPC was substantially extended in 2009 and complemented with additional legislative and budgetary powers. Overall, consultation and information rights have been extended in both legislative and non-legislative actions, legal procedures of consent and co-decision have been made the norm and budgetary provisions on CFSP have been reinforced. A "Treaty of Parliaments" (Elmar Brok quoted in Beichelt 2012: 143) was created by increasing EP powers and significantly boosting the role of EU Member State national parliaments. Nevertheless, formal (hard) powers have not been extended to all fields of European external action and Parliament continues to have only limited control functions over the Council's competences in the field of CFSP.

### *2.1.1. Consent to all international agreements*

#### 2.1.1.1. Accession Treaty

One of the most important powers of the EP in EU external action has been maintained by the Lisbon Treaty (only the name has changed from assent to consent procedure): parliamentary consent continues to be required for the accession of a new Member State to the EU, before the conclusion of the Accession Treaty by the Council and its ratification by all Member States. Although formally Parliament is only entitled to approve or reject accession, it still enjoys tremendous impact on both the internal and external conditions of the enlargement process, the “most successful EU foreign policy field”, due to a combination of formal and informal powers and a variety of tools and instruments available. In addition, impact is also “facilitated” by inter-institutional collaboration, in particular long years of practice of very close working cooperation between Parliament and Commission.

#### 2.1.1.2. International agreements

The Lisbon Treaty unified the procedures on the conclusion of international agreements and now basically all such EU agreements require Parliament’s consent before conclusion by the Council (Article 218 TFEU). Giving the EP an authoritative role in this domain is the most important increase in Parliament’s competences in the field of the Union’s treaty-making competences.

Formally and according to its rule-based powers, the Parliament is not entitled to modify the agreement. The Council and Commission expect it to endorse a text negotiated behind closed doors and on the basis of a mandate (negotiating directive) not being subject to formal parliamentary involvement. The arguments by the executive for doing so are well-known: successful international negotiations require secrecy, expertise and flexibility which are incompatible with parliamentary control (Thym 2009: 315). Consequently, there is limited room for formal parliamentary manoeuvre.

However, the EP has often been reluctant to take note of the request for consent merely passively but has been determined to influence the negotiations by providing ex-ante control as well (Rossi 2011: 102). Its overall aim is not to act as a rubber-stamp but to influence the content of the agreement (Passos 2011: 54) according to its own views directly legitimised by EU citizens, and, by doing so, to shape policy. The primary instruments to act in this way are parliamentary resolutions, which formulate Parliament’s positions, provide conditions for consent, a sort of “second mandate” to be considered by the Council and the Commission (Ibid: 55) and therefore facilitate consent. They often, although not exclusively, refer to political conditionality like human rights considerations, good governance, the functioning of democracy and the rule of law as well as social and labour issues. However, there is very little or no feedback from Commission and Council services on whether EP positions have actually been taken into account since draft agreements are not shared with the Parliament.



In order to shape policy, i.e. to define (and be able to defend) credible and substantial positions, systematic access to relevant information appears to be crucial. The Lisbon Treaty clearly set the legal framework by stipulating that Parliament “...shall be immediately and fully informed at all stages of the procedure” (Article 218(10) TFEU). Practice, however, looks different. The EEAS often appears reticent to share documents with the Parliament fearing they would end up in the public domain. Everyday practice, although improving, still shows that the EEAS seldom takes initiative and it is the EP which has to enquire about the next round of negotiations or request debriefings. Indeed, the Council is regularly informed about the negotiation process through comitology, while the EP has no formal say over the negotiation directive deciding on the launch of talks. Despite the fact that Article 218(10) applies to all kinds of information, including classified ones, without laying down any exceptions, mandates are considered classified information by the Council and therefore, if MEPs wish to access them, they have to follow a cumbersome procedure. Currently, the Council limits access to rapporteurs and political group coordinators; repeated calls by Parliament to expand this scope to office holders, including shadow rapporteurs, on a “need-to-know-basis” have gone unheeded. Council also critically and suspiciously views the EP-Commission Framework Agreement, under which the Commission accepted to provide all relevant information during the negotiation process that it also provides to the Council. Lack of information or difficulties in accessing them at any stage of the procedure do not facilitate Parliament’s consent, and therefore, overall, may occasionally bear negative consequences for the EU’s bilateral relations.

Parliament has rarely rejected consent to an international agreement but sometimes delayed approval on purpose in order to ensure its positions to be taken into account in the final text of the agreement (for instance, agreements with Israel, Turkmenistan, Syria or Morocco) (Corbett, Jacobs and Shackleton 2011: 343). The 2010 EU-US SWIFT agreement on the sharing of financial data, when the EP overwhelmingly voted against consent, has set a well-known precedent with significant implications for EU external relations (Monar 2010: 143). Despite repeated early warnings by Parliament to this end, many of its substantive concerns have been disregarded, by doing so putting at risk the EU’s international credibility. In fact, the rejection of the agreement was not only a spectacular signal of the changed inter-institutional power balance following the Lisbon Treaty and that majority support in the European Parliament may not be taken as granted, as might be the case in national parliaments dominated by government majorities. It was also proof that the EP has the ability and ambition to shape EU external action on its own.

### *2.1.2. Co-decision in European external action*

#### 2.1.2.1. Common Commercial Policy (CCP)

A substantial change to the EP’s hard powers occurred in particular in the field of the Common Commercial Policy. An area, with no EP role at all and which had not even been subject to consultation pre-Lisbon, has become a sphere of significant potential impact to be exerted by the EP following the entry into force of the new Treaty. According to Article 207

TFEU, all autonomous measures under the CCP (trade defence instruments, General System of Preferences, antidumping, rules of origin etc.) have become subject to the ordinary legislative procedure. By formally acknowledging the EP as an equal player with the Council in this legislative competence, the Parliament has been entrusted with a decisive role in legitimising CCP action. This power was first used in providing a safeguard clause to the EU-South Korea Free Trade Agreement in 2010 (Corbett and Jacobs and Shackleton 2011: 254).

#### 2.1.2.2. External Financing Instruments

When examining the changes introduced by the Lisbon Treaty with respect to parliamentary involvement in shaping and controlling European external action, a widely “forgotten” innovation relates to European external cooperation assistance. Either it is examined as part of new budgetary provisions or simply neglected.

The EU’s cooperation assistance to third countries is implemented through external financing assistance instruments which are managed by the Commission and the EEAS. They are major vehicles of EU foreign policy as they lay down the EU’s guiding principles and objectives under Article 21 TEU and Articles 207, 208, 209 and 212 TFEU.

Under Article 212(2) TFEU, the field of economic, financial and technical measures including assistance to third countries, has become subject to the ordinary legislative procedure. Following the entry into force of the Lisbon Treaty, the Parliament not only co-decides with the Council on the development cooperation instrument (DCI), as before, but also on the financing aspects of all other instruments (Instrument for Pre-Accession Assistance, Instrument for European Neighbourhood Policy Initiative, Instrument contributing to Stability and Peace, Partnership Instrument and European Instrument for Democracy and Human Rights). This includes co-legislative functions both on deciding the seven-year budgets available to the individual instruments under Heading 4 (External Action) of the Multiannual Financial Framework (MFF) and the strategic objectives, thematic priorities, financing and implementing modalities of assistance. Consequently, Parliament enjoys, on an equal footing with the Council, formal policy-making powers in this field.

As a result of eighteen months of inter-institutional negotiations in 2012/2013 on Heading 4 of the MFF 2014-2020, Parliament was able to ensure that the instruments are flexible and complementary, whilst also addressing longer-term strategic programming interests, that they have proper budgets to meet the ambition and strategic interests of the Union, that European external action is provided with more transparency and visibility, and not least that human rights, democracy promotion and the rule of law are mainstreamed and endowed with more conditionality.

In fact, these newly acquired formal powers are stronger than the new EP competence to give consent to basically all international agreements, since this allows Parliament to formally shape, on an equal footing with the Council, European external action and not simply approve or refuse an agreement.

### *2.1.3. Budgetary powers*

The legislative competence to decide on the budget is a classical parliamentary hard power. The European Parliament approves the EU's seven-year budget under the Multiannual Financial Framework, including its Heading 4 on European External Action, endorses the annual budgets and controls spending of the Institutions via the discharge procedure. This formal role provides the opportunity not only to approve budgetary headings and items but to exert influence on the policy actions behind them.

There is, however, no full control. Although the Lisbon Treaty made the CFSP budget, including the EEAS budget, part of the EU budget and so subject to annual parliamentary approval, EP budgetary powers remain rather limited in the field of CFSP. MEPs are formally not consulted before the adoption of individual CFSP decisions with budgetary implications and the EP is not involved at all in deciding on expenditure on EU military missions because they do not form part of the EU budget but instead are directly financed by EU Member States under the Athena mechanism ("costs lie where they fall"). The spending on military missions appears as a "shadow budget" with no parliamentary control whatsoever (Brok and Gresch 2004: 220).

## *2.2. Soft (non-legislative) powers*

Unlike many EU national parliaments operating under the "constraints" of their parliamentary systems with majorities dominated by their governments in policy-making, the European Parliament and its influential Members always had the ambition and attitude to maximise parliamentary authority and make full use of the acquired formal powers for the sake of taking European integration forward. Ambition and attitude are even stronger driving forces in areas not falling under the remit of hard legislative powers but where parliamentary bodies and Members have to reach beyond formal competences in order to make an impact informally and shape policies (Thym 2009: 19). The impact internally on the position of EU institutions and Member States as well as externally on policies and actions of third partners is rather indirect but reach further than the normative parliamentary powers under the Treaty may suggest (Ibid: 20). That impact broadly aims at pursuing EP priorities in EU foreign policy, notably to promote a more coherent and cohesive European external action, to pursue a more strategic approach in the shaping of EU priorities and to uphold democracy and the rule of law in relations with third partners.

### *2.2.1. Parliamentary competences in the Common Foreign and Security Policy*

CFSP is an inter-governmental area where binding and non-binding arrangements are combined providing room for formal and informal parliamentary influence in policy-making. It is a matter, however, pre-dominantly at the discretion of the Council and its Member States.

Although formal powers have somewhat intensified due to the last treaty changes, Parliament's post-Lisbon competences in CFSP largely remain the same as before and Member States continue to be the key source of legitimacy, in particular for the Common Security and Defence Policy (CSDP). Even though the EP has been constantly empowered in other fields of European external action, this was – due to “conceptual considerations” (Thym 2009: 16-17) - not the case with respect to CFSP/CSDP decision-making despite the fact that the Council acts as a legislative and executive organ in this policy field. Some observers call this “collusive delegation” whereby national executives have established an inter-governmental policy to escape national parliamentary control without establishing an oversight at the supranational level (Lalone 2005: 39).

Nevertheless, the Parliament is not completely powerless and it aims to make CFSP more coherent and transparent in order to maintain public support and popular commitment for the EU's global engagement (Albertini 2010: 1). It primarily enjoys treaty-based information and consultation rights under Article 36 TEU with collaborative arrangements established. In this context, the High Representative is invited to consult Parliament “on the main aspects and basic choices” of the CFSP and CSDP regularly by presenting an annual report to the EP and participating in twice-yearly parliamentary debates (in addition to regular discussions in the Committee on Foreign Affairs) covering the full range of current EU foreign policy activities. Members can also address questions and make recommendations to the Council without, however, a formal obligation to be provided with relevant answers. A rather undervalued and unused treaty provision concerns the phrase of Article 36, which obliges the HR/VP to “...ensure that (Parliament's) *views* are taken duly into consideration”<sup>5</sup>. An invitation to tango to shape policies by considering the particular positions and views produced by the EP and its Members on the thematic and geographical issues of EU foreign policy – an enhanced follow-up mechanism may facilitate the implementation of this commitment.

A variety of other instruments of non-binding nature help Members to make an (indirect) impact on CFSP policy issues and developments. Under the 2002 EP-Council inter-institutional agreement concerning access to sensitive information, five Members (plus one substitute) of an EP special committee gained access to confidential Council documents and briefings. According to the former Chair of Parliament's Foreign Affairs Committee, however, the range, detail and quality of the requested information remains unsatisfactory and the related procedures cumbersome (Albertini 2010: 2). Another interinstitutional agreement agreed between the Parliament and Council in 2006 on budgetary discipline and sound financial management provides for joint consultation meetings on the financing of the CFSP between the bureaus of Parliament's Committees on Foreign Affairs and Budget on the one hand and the Chair of the Political and Security Committee (PSC) on the other. The minimum five meetings a year aim to assess the financial implications of decisions adopted by the Council in the framework of the CFSP. As such, they cover EU civilian missions as well but not military operations. Although no formal decisions are taken and parliamentary involvement in the financing of EU missions remains limited, Members can obtain first-hand information from a Council body on financial planning and spending in the area of CFSP. These regular discussions reach beyond their formal remit because Members proactively use the opportunity to also state their position on broader strategic issues of EU foreign policy including conflict-torn countries and regions.

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<sup>5</sup> Author's italics (PB).

### 2.2.1.1. Informal practices in Common Security and Defence Policy (CSDP)

A paradox of the international system is that the “harder” a particular field of foreign policy becomes, the less parliamentary involvement and control is required to legitimise that field and its policy decisions. Security and defence policy is considered by governments an area which, they traditionally argue, requires a high degree of secrecy, confidentiality and flexibility in order to be able to act rapidly and take decisions efficiently in promoting/defending national/EU security interests (Peters et al. 2008: 1 and Böcker 2012: 23). On the other hand, this field would qualify to be a subject to parliamentary control precisely because security and defence policy decisions are of strategic nature, value-choices are made and politically allocated, and may entail potentially high risks for the citizens (Lord 2011: 1138-1139). Democratic accountability is therefore of fundamental importance in order to ensure public support (Mittag 2002: 1).

The CSDP follows the traditional pattern of very limited control rights by Parliament. The EP has no formal say in authorising the launch of an EU crisis-management mission, neither a civilian one nor a military one. It can neither co-decide on legal obligations nor on individual mission budgets (Wouters and Raube 2012: 152). Some information and consultation rights have been enshrined in the Lisbon Treaty’s Article 36, which includes CSDP among the fields where the HR/VP has to regularly consult Members, primarily via twice-yearly plenary debates and through the informal mechanism of Joint Consultation Meetings. Parliament is, however, largely reliant on the Council’s goodwill to receive timely and relevant information. In fact, this field suffers from a double democratic deficit since EU Member State national parliaments are not sufficiently involved either in the scrutiny of its policies and decisions.

In order to compensate for the lack of power in this field, the European Parliament has developed informal practices and tools to be able to shape CSDP and provide some sort of democratic scrutiny. It regularly addresses questions to the HR/VP and Council, examines policy/capability/institutional developments in plenary sessions, committee meetings, in hearings and workshops, sends ad hoc missions on field trips as well as adopts (non-binding) own-initiative reports and recommendations. Parliament has also established a practice of a sort of ex-ante scrutiny when Members, in a parliamentary resolution, comment on a planned EU mission. In 2004, a Sub-committee on Security and Defence was set up under the Committee on Foreign Affairs to provide a forum for deliberations on CSDP issues of public concern. This proactive ambition and attitude is, however, insufficient to provide substantial control mechanisms over a policy field exclusively dominated by the Member States in the Council.

### 2.2.2. Oversight of the European External Action Service

The European External Action Service (EEAS), the EU’s “foreign ministry”, has been one of the main institutional innovations introduced by the Lisbon Treaty. Not a new EU institution but rather a new “service” in the EU’s institutional architecture, which is expected to

be instrumental in making EU external action more coherent by combining relevant forces of the Commission, Council Secretariat and Member States, and headed by the “triple-hatted” High Representative/Vice-President.

The EEAS and the HR/VP are politically accountable to the Council (Batora 2010: 9) and democratically controlled by the European Parliament<sup>6</sup>. The creation and regular scrutiny of the EEAS has been a reflection on how effectively parliamentary hard and soft powers, formal competences and indirect influence can be combined to ensure parliamentary involvement and maximise the EP’s impact on EU foreign policy beyond its treaty-based formal role (Wisniewski 2013: 87).

In the course of setting up the EEAS in 2010 via the so-called “quadrilogue”, MEPs successfully combined their (soft) right of consultation on the proposal of the HR/VP with their (hard) legislative and budgetary powers over the new staff regulation and the financial regulation in order to ensure EP interests and priorities in the operation of the new external service. By doing so, the EEAS gained more democratic legitimacy and the Parliament was recognised as an equal player and important institutional actor beyond the role formally suggested by the Treaty (Ibid: 100).

Increased parliamentary influence was reflected in the politically-binding Declaration on Political Accountability, which was issued shortly afterwards by the HR/VP on the cooperation between the HR/VP-EEAS and the Parliament. The Declaration provided inter alia for enhancing the status of the Joint Consultation Meetings, affirming the right of the EP Special Committee to access confidential information on CFSP/CSDP, mandating the HR/VP to appear before Parliament twice a year and, not least, allowing exchanges of views with leading EEAS officials including Heads of Delegation and EU Special Representatives.

The exchange with Heads of EU Delegation has been a major innovation of shaping and controlling EU foreign policy. Although initial parliamentary demands for US-style hearings and powers of appointment and recall of future EU ambassadors were rejected by Member States, a rather successful practice of exchanges was developed. After their appointment by the HR/VP but prior to taking up their post in the third country, EU ambassadors, selected upon Parliament’s priorities and in agreement with the HR/VP, appear before a closed meeting of the Committee on Foreign Affairs (AFET). They inform Members on the country concerned and the EU priorities/objectives to be pursued in relations with the partner country. Even more importantly, Members may use these opportunities to question the ambassadors, share their views with them of the particular relationship as well as their advice and suggestions on the conduct of the relations. Although Parliament is formally not entitled to block an appointment or the taking up of ambassadorial duties, the result of such an exchange is invaluable: on the one hand, Members’ knowledge, expertise and political insight may enrich that particular geographical relationship and, on the other, it may provide the ambassador with a democratic legitimacy strengthening the EU’s standing in the partner country and the ambassador’s acceptance in the recipient country. Of course, exchanges of views with appointed EU Special Representatives before the launch of their mandate may have a similar effect on the EU’s thematic priorities as pursued by the EUSRs. In order to maximise parliamentary impact by regular dialogue, both EU ambassadors and EUSRs occasionally return to AFET and report back to Members on geographical and

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<sup>6</sup> The Parliament endorses the nomination of the HR/VP as member of the College of Commissioners. (S)he is subject to a collective vote of consent by the EP and so accountable to Parliament.

thematic policy developments and achievements - this ensures both an informal control mechanism and the room to shape EU policies.

### *2.2.3. Regular contacts with third partners*

Parliament serves also as a vehicle for consultation with third partners, countries and international organisations. It provides a public forum both for representatives of partner countries and organisations, influential non-state actors as well as for leading policy makers from the Council, EEAS, Commission and Member States in the pursuit of open bilateral and multilateral relations. In the sixth parliamentary term (2004-2009) alone, AFET was addressed more than four-hundred times by visiting presidents, prime ministers, leading government officials as well as prominent representatives of international and non-governmental organisations (Albertini 2010: 2). Parliament is widely and increasingly used by external and internal actors as an open forum for pursuing foreign policy interests and trying to make an impact on international developments. In this context, the EP itself plays a proactive role to enhance parliamentary diplomacy, complemented by the activities of its many inter-parliamentary delegations as well as pre-planned and ad-hoc missions to third countries by individual Members and various parliamentary bodies.

Parliament's ambition and attitude to play an increasing role in international relations, combined with the formal and informal powers acquired to be used in bringing the cause of EU foreign policy forward, have enhanced its authority on the international scene. The EP has become a respected and influential international actor over the years, an institution perceived by partners to be *capable* of exerting influence on developments and decisions both externally and internally. It succeeded in projecting a united and coherent image abroad and it obtained a level of international perception among many third partners and observers which often go beyond the treaty-based roles and competences it actually enjoys.

### *2.2.4. Democracy promotion including election observation*

Being perceived on the international scene as a capable moral force with a strong focus on strengthening human rights, promoting democracy and enhancing the rule of law worldwide, the Parliament is increasingly (asked to be) involved in the building of parliamentary democracy, a notion believed to be a stabilising factor domestically and in international relations overall.

Based on the EU's comprehensive democracy support policy as an integral part of European external action and emerging in the late 2000s, democratisation would not just be promoted by the EP during the election period as it used to be with the monitoring of parliamentary elections but throughout the full electoral cycle, particularly following the elections. EP real added value was understood to be moving beyond election observation to have a comprehensive impact on the process of democratisation in a particular country by maximising the contribution to broader democracy-building efforts.

In 2007, the Parliament set up the Office for the Promotion of Parliamentary Democracy (OPPD) with the primary aim to engage in demand-driven, technical and capacity-building assistance to strengthen the role of parliaments in democratisation processes. It has the objectives of supporting parliaments to enhance their institutional capacity in implementing the essential functions of law-making, oversight and representation. In Parliament's democracy support programme, priority is given to the parliaments of countries of the Eastern neighbourhood but support is also provided among others to the Pan-African Parliament, the parliaments of ECOWAS, SADC, EAC<sup>7</sup> as well as to regional parliaments in Latin America. Of course, election observation has remained a key instrument in promoting democratisation, with the EP organising some 10-12 election observation missions to countries agreed beforehand with the Commission and the EEAS. MEPs are normally the EU chief observers of such missions under the EU flag.

### *2.3. Tools of parliamentary control*

“Scrutiny is a bit boring. We want to...shape the emergence of common policies.” (Wouters and Raube 2012: 158). The opinion expressed by an MEP might not be representative but reflects Parliament's ambition and attitude to act as a recognised institutional player in EU foreign policy. Nevertheless, over the years the European Parliament has acquired all those tools and mechanism of parliamentary control which are also available to other directly elected national parliaments. They are rule-based tools rooted in Parliament's Rules of Procedure or informal instruments and practices developed to enhance oversight functions.

In order to make the executive accountable, Parliament can raise questions, hold interpellations, organise public debates (both on plenary and committee level) including hearings and workshops, adopt resolutions and own-initiative reports, set up special committees of inquiry, confirm appointments and launch no-confidence and impeachment procedures. The most widely used tools are the (written and oral) questions, public debates and resolutions/reports.

While, over the years, the EP has obtained and proactively made use of such instruments also in the field of foreign affairs, it is increasingly challenged, as all other parliaments today, by the need to effectively and consistently apply them to maximise the very parliamentary task of control over executive actions and decisions. This requires *inter alia*, on the one hand, to be able to create popular demand from European societies and sustain it through the media and, on the other, to enhance internal expertise able to help translating ever-complex issues initiated/governed by the executive into issues comprehensible to EU citizens. Access to the necessary information from all relevant sources and the ability to absorb and make effective use of them appear to be crucial in this context.

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<sup>7</sup> ECOWAS = Economic Community of West African States, SADC = Southern African Development Community, EAC = East African Community



## ***2.4. EP parliamentary bodies in the field of external policies***

Altogether, there are some 113 (!) political bodies dealing with various aspects of parliamentary foreign policy, covering relations with about 190 countries in the world. They include inter alia some 3 standing committees, 2 subcommittees, 41 standing inter-parliamentary delegations, including 4 multilateral assemblies, and a high number of working groups, steering committees etc. (DG EXPO Handbook 2012: 6). The coordination and cooperation of these various bodies and how to ensure coherence of action are a challenging task. The main bodies and their duties are described below.

### *2.4.1. The President*

Under Rule 22 of Parliament's Rules of Procedure, the President's formal duty is to represent the European Parliament in international relations. Parliament's main office-holder, elected for a term of two and a half years, pursues and defends Parliament's relevant positions within the EU and on the international scene. A number of the fourteen elected vice-presidents are dealing with particular aspects of parliamentary foreign policy and assist the President in the conduct of his/her duties.

### *2.4.2. The Conference of Presidents (CoP)*

Composed of the heads of political groups, the CoP is responsible for the broad political direction of Parliament, both internally and vis-à-vis external partners. It regularly discusses and takes decisions of a strategic nature, holds exchanges with high-ranking representatives of EU Institutions, Member States and third countries, and decides among others on the sending of planned and ad hoc missions abroad. Its decisions are implemented by the Bureau, which consist of the President and the 14 Vice-Presidents.

### *2.4.3. Political groups*

Political parties on the national and European level play an increasingly influential role in the European Parliament's involvement in EU policies including foreign policy – they have become a factor of European integration (Calossi and Cotichia 2013: 4). While the EU voters' will is directly legitimised through the election of MEPs normally on the various national party lists, the party groups in the EP, loose conglomerates of national sister parties, constitute a common institutional denominator of voters' interests and priorities including in the area of external policies. Based on this legitimacy and accountability, not only do they simply provide a

forum for deliberations but shape policies aimed at wide cross-party consensus both on the plenary and committee levels as well as in the Conference of Presidents.

#### *2.4.4. Standing committees and sub-committees*

Out of Parliament's 20 standing committees, some 3 (Committee on Foreign Affairs, Committee on Development, Committee on International Trade) are directly dealing with the parliamentary dimension of particular areas of European external action. Committees are composed of full and (equal number of) substitute Members. A very significant role in the Committee is played by the group coordinators. At the beginning of the legislative term, each political group designates a coordinator as its spokesperson for a particular committee. The coordinators meet in the Committee's Enlarged Bureau to discuss the Committee's agenda and outstanding political issues before full discussion in the Committee. Coordinators also share out the workload among the members of their own group and help to establish the voting position of their group. Another significant role is played by the rapporteurs, who are appointed by the Committee to be in charge of a particular dossier or report and who represent the Committee on those matters. Their work is complemented and assisted by shadow rapporteurs, who are appointed by the other political groups.

Parliament's largest committee (76 full members) is the Committee on Foreign Affairs (AFET). It is assisted by two subcommittees: one on security and defence (SEDE) and the other on human rights (DROI). In addition, a number of working groups help the full Committee to establish positions on particular areas of EU foreign policy i.e. the working groups on EU-UN relations, on the Western Balkans, on the Eastern Partnership, on Conflict, Security and Development and on the various External Financing Instruments. Unlike other parliamentary committees, AFET rarely deals with legislation with the exception of the preparation of consent to accession treaties, international agreements as well as involvement in the ordinary legislative procedures on the external financing instruments once every seven years. Its positions and views are mainly formulated in so-called own-initiative reports (INIs), which are non-legislative reports on strategically important geographical or thematic priority subjects. This Committee also regularly discusses and adopts recommendations and interim reports<sup>8</sup>, and sends pre-planned and ad hoc missions abroad of particular significance for EU foreign policy. A substantial amount of AFET's work consists of controlling or monitoring the activities of the Commission, the Council, the HR/VP and the EEAS.

#### *2.4.5. Standing inter-parliamentary delegations*

In the course of over forty years, the Parliament has established a wide range of bilateral, regional and multilateral inter-parliamentary delegations. Today, there exist some 41 such permanent delegations covering relations to some 160 countries, with some 944 seats available

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<sup>8</sup> In the course of the 7<sup>th</sup> legislative term (2009-2014), AFET adopted some 104 reports, 46 INIs and 99 opinions.

for MEPs (Corbett and Jacobs and Shackleton 2011: 178). Depending on the legal nature of the EU's agreement with a third country or group of countries, inter-parliamentary cooperation is conducted via Joint Parliamentary Committees (JPCs) with enlargement countries, Parliamentary Cooperation Committees (PCCs) with countries having partnership and cooperation agreements with the EU, through Interparliamentary Meetings (IPMs) and five Multilateral Assemblies (ACP-EU JPA, EUROLAT, PA-UfM, EURONEST, NATO PA<sup>9</sup>). In reflecting EP political priorities, the number of delegations have increased in the 8<sup>th</sup> term to include for instance a delegation with relations to Brazil and individual delegations with each country of the Western Balkans.

Interparliamentary delegations are important instruments of EP parliamentary diplomacy. Through their regular exchanges with third country parliamentarians, they promote EP/EU positions and views and, by doing so, may shape policies by influencing third country MPs and, indirectly through them, third country governments. They also provide useful insights into developments within a country which may prove instrumental for the EP's/the EU's assessment of that particular partner leading to policy actions and decisions. Recognising the importance of the permanent delegations in the parliamentary dimension of EU foreign policy, efforts are pursued in the Parliament to rationalise their functioning by better forward planning, more streamlined organisation and, foremost, by better channelling their work into the mainstream activities of standing committees through mandates issued by committees prior to travelling and through better mechanisms of reporting back to committees afterwards.

#### 2.4.6. “Control vacuum” – EP cooperation with EU MS national parliaments

The Lisbon Treaty is widely praised as the “Treaty of Parliaments” because it enhanced the parliamentary involvement of EU Member State national parliaments and the European Parliament in EU governance, including their role in the foreign policy architecture of the EU, in order to improve democratic accountability. The complementary role of Parliaments within the EU system have been recognised by creating treaty provisions allowing strengthened interparliamentary cooperation, particularly in the intergovernmental grey zone of the CFSP and CSDP where Member States remain the key sources of legitimacy (Böcker 2012: 19) and where a “control vacuum” has been evident for a long time.

Indeed, while national parliaments hold their respective governments to account - although to varying degrees and ways - for their actions within the Council, they are not entitled to exercise control over decisions taken collectively in the Council (the final collective decision may not be necessarily identical with the individual position of a Member State in the Council) (Lord 2011: 1142). Since the EP, a supranational EU institution, has not gained control functions over the Council operating on the basis of intergovernmental cooperation, the collective actions and decisions of this organ are not formally subject to parliamentary control. In short, while the EP may have an overall vision, national parliaments only have a partial overview (The democratic control, 2010, p.2.). To reflect this ambiguity in the example of the financing of

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<sup>9</sup> ACP EU JPA = ACP-EU Joint Parliamentary Assembly, EUROLAT = Euro-Latin American Parliamentary Assembly, PA-UfM = Parliamentary Assembly of the Union for the Mediterranean, EURONEST = Euronest Parliamentary Assembly, NATO PA = NATO Parliamentary Assembly

CSDP military missions, while the EP has no formalised influence over EU military operations, national parliaments can only determine national defence budgets<sup>10</sup>.

On the basis of Article 9 of Protocol 1 annexed to the Lisbon Treaty, the Interparliamentary Conference for the Common Foreign and Security Policy was proposed as the solution to fill this control gap. This body, finally agreed by the EU Speakers Conference in April 2011, was to replace the dissolved WEU Parliamentary Assembly, which had previously been a sort of scrutiny organ for the CSDP. It is composed of delegations of EU Member State national parliaments (six MPs each) and the European Parliament (sixteen MEPs), complemented with some 24 MPs from non-EU European countries and EU candidate states, bringing the total number of Conference members to 208 (!). Since 2012, the Conference meets once every six months under the respective EU Presidency and it primarily provides a forum for the European and national parliamentarians to exchange information on CFSP and CSDP. It may adopt non-binding conclusions by consensus on these policy areas.

The Conference functions as an interparliamentary assembly, which, however, falls short of joint control functions since it does not embrace any parliamentary control over the Council including no right to confidential or sensitive information. Some observers even question its real added value to joint parliamentary accountability - where an efficient institutionalised combination of the EP's horizontal checks with the vertical checks exercised by national parliaments would have been expected - and its real impact/efficiency given its huge membership (Wouters and Raube 2012: 162).

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<sup>10</sup> Peters et al. illustrate the ill-defined roles in a case study on the EU's maritime mission Atalanta and concluded that "none of the parliaments was actively involved in the decision-making process" before the launch of the mission. It also found that "competences and activities of national parliaments vary widely resulting in a patchwork of parliamentary control at the national level" (Peters et al. 2011: 1).

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