

# The EU's Invisible Diplomacy: The European Parliament's External Action in the Lead-Up to the Ukraine Crisis

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## **Abstract:**

*Considering the role of the European Union (EU) in stabilizing Ukraine, current events tend to point to two types of EU actions: military and economic. On the military side, the EU has been labeled an albatross: it has been criticized for failing to do enough to deter Russian aggression in Crimea and Eastern Ukraine—critiques that echo views about past EU weakness in the Balkans, in Libya, or even in Syria. On the economic side, the EU is seen at least as a potential phoenix. It was clearly at the heart of the Ukraine crisis—after all, the violence in the country began with Ukrainian President Viktor Yanukovich's about-face on an Association Agreement (AA) with the EU. And its subsequent efforts, including sanctions on Russia and signing a trade deal with the new government in Kyiv, have been judged more successful. Yet the EU's influence in its neighborhood has always depended heavily on a third type of influence, variously called soft power, power of attraction, or normative power.*

*This paper explores an aspect of the EU's external action that has received little academic attention: the intense parliamentary diplomacy conducted by the European Parliament (EP) in the year and a half directly preceding the decision by Yanukovich to suspend the signature of the AA. The research explores how many political obstacles to the AA were resolved by an intense effort of parliamentary shuttle diplomacy, involving 27 visits to Ukraine, and the participation of two envoys who held no official EU positions (former EP President Pat Cox and former Polish President Aleksander Kwasniewski). Through these efforts, the EU was able to obtain the release of three political prisoners in Ukraine, ease the prison conditions of opposition leader Yulia Tymoshenko, and push the Ukrainian government to adopt a series of electoral and criminal laws that were a precondition for signing an AA.*

*This paper contains an empirical, a theoretical and a prescriptive element. Empirically, it explores a case of parliamentary diplomacy that has received very little attention in either academic or media circles, and evaluates what made it successful. Theoretically, the research points to the wide array of external action that is pursued in the EU's name without reference to the Union's official Common Foreign and Security Policy. Prescriptively, if the Union's influence is often best exerted in an informal mediation setting, this suggests that special representatives, parliamentary links and other informal means of interaction may be crucial foreign policy tools. Thus, whether the EU's Ukraine policy, or its foreign policy conduct more broadly, will be a phoenix or an albatross may depend on the less visible birds in the flock: such as the sparrows of parliamentary diplomacy.*

## Introduction

With the current crisis in Ukraine, much scholarly attention is being focused on the European Union (EU) and its response through its external instruments. Beyond the debate about whether the EU should be using its economic power more aggressively, or whether it should consider military steps lies a question about a third type of power. Whether we label this soft power<sup>1</sup> or civilian power<sup>2</sup> or normative power<sup>3</sup> is unimportant. The real question is whether and how the EU can use persuasion, argumentation and norms to achieve its foreign policy aims.

Such activity is quite difficult to detect or to trace empirically. Yet this is what this paper aims to do. It examines the role of the European Parliament (EP) in the EU's external action toward Ukraine, in the year and a half just before the Maidan protests broke out. In particular, it concentrates on the activities of an ad-hoc mission that was set up by the Parliament in May of 2012, the ways in which it succeeded in changing Ukrainian policies on various issues, and what this experience can tell us about the way the EP conducts parliamentary diplomacy.

This paper begins by briefly laying out the situation in Ukraine from 2010 to 2012, explaining what type of policy problem it posed for the EU, before describing in some detail the actions undertaken by the EP's ad-hoc mission. It then turns to three ways in which this episode illustrates how the Parliament participates in EU external action. First, that the EP is a policy entrepreneur, constantly expanding its role and influence. Second, that the EP is a foreign policy actor, not aiming simply to exert parliamentary control over other EU institutional actors, but also acting in the name of the EU through its parliamentary diplomacy. Third, that the EP at times sees itself as a technocratic actor, willing to operate away from the public eye, which seems to contradict its self-proclaimed image as the transparent, democratic conscience of the EU.

## Political Developments in Ukraine: What Kind of Policy Problem for the EU?

Without retelling the entire backstory to the current Ukraine crisis, we need to establish what type of foreign policy dilemma Ukraine presented to the EU in the 2010-2012 period. A brief overview of events in Kyiv is therefore in order. In 2010, the presidential elections in Ukraine returned Viktor Yanukovich to power. After defeating his long-term rival Yulia Tymoshenko and securing a ruling majority in the parliament, the newly elected president opted for a series of drastic policy changes, breaking away from the legacy of his predecessors. In geopolitical terms, Ukraine gave up its Euro-Atlantic aspirations and announced its non-aligned status, while simultaneously extending the presence of the Russian navy in Crimea for the next 25 years, beyond its original exit date of 2017. Internally, Yanukovich and his team tightened their

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<sup>1</sup> Joseph S. Nye, "Soft Power," *Foreign Policy*, No. 80, 1990.

<sup>2</sup> François Duchêne: "Europe's role in World Peace," in Richard J. Mayne (Ed.): *Europe Tomorrow: Sixteen Europeans Look Ahead*, Fontana, 1972.

<sup>3</sup> Ian Manners: "Normative Power Europe: A Contradiction in Terms?" *Journal of Common Market Studies*, Vol. 40, No. 2, 2002.

grip on power by dismantling institutional checks and balances, increasing pressure on the media, and adopting constitutional changes that effectively established a semi-presidential system, significantly expanding the President's powers and competences.

Perhaps the most obvious sign of this anti-democratic turn was the crackdown on Yanukovich's political opponents. In 2011, the Ukrainian government launched a criminal investigation against former Prime Minister Tymoshenko—a popular figure in Western capitals. In October of 2011, her conviction to seven years' imprisonment for abusing her office made waves throughout the EU. Similar cases were also launched against members of her cabinet—former Interior Minister Yuri Lutsenko, former Environment Minister Heorhiy Filipchuk and former Defense Minister Valery Ivashchenko—all of which resulted in prison sentences.

While these political developments were unfolding, the EU was also involved in a much longer-term negotiation with Ukraine on an Association Agreement (AA). These had begun in 2007, under former President Viktor Yushchenko, and were meant to cement Ukraine's European and Western orientation. By December of 2011, the negotiations had been concluded, and both sides were ready to initial the deal—which they did in March of 2012. Yet the Tymoshenko trial and various anti-democratic measures by the Yanukovich government made EU leaders unwilling to take the subsequent ratification steps. So the EU found itself in a difficult predicament.

On the one hand, the EU could not compromise its values and principles on democracy and the rule of law by continuing the ratification process for an AA with an increasingly repressive Ukrainian government. This would have undermined its standing in the eyes of a large segment of the Ukrainian population, and the pro-Western opposition parties. On the other hand, turning its back on Kyiv risked pushing Yanukovich into withdrawing support for the AA and seeking a more favorable arrangement with the Moscow-led Customs Union. Furthermore, a breakdown of the AA process would have impacted other Eastern partners waiting in the wings (Moldova and Georgia). The success of the upcoming Eastern Partnership summit in Vilnius in November 2013 seemed directly dependent on the ability of the EU to deliver the signature of the AA with Ukraine, the biggest and most important country of the EU's six Eastern partners.

The choice was not a straightforward one, and to make matters worse, the member states of the EU were divided among themselves. Germany took a hard line, even suggesting that EU countries boycott the European football championship that was to be held in Ukraine in June 2012—the European Commission, Italy, Austria and Belgium supported this position. Several Eastern European countries were vehemently opposed to such measures, and advocated for continued engagement with Yanukovich. This lack of consensus made itself felt in many ways, including the failure to agree on a common policy toward Ukraine at the May 2012 Foreign Affairs Council and the fact that, while most EU countries refused to attend the summit of

Central and Eastern European countries in Kyiv that month, Poland, Slovakia and Romania did send delegates.

The EU was thus faced with a double dilemma: first, it was caught between upholding its founding principles and the normative underpinnings of its foreign policy or following its geopolitical interests. Second, its main foreign policy-making body, the Council, was paralyzed, unable to come to a consensus agreement on which direction to take. It was in this state of affairs that EU diplomacy looked to a seemingly unlikely actor to square the circle: the European Parliament.

### **The EP Monitoring Mission: Expanding Remit and Tangible Successes**

Against the background of a stalemate within the EU and the rising stakes around the EU-Ukraine association deal, the EP put forward a proposal for an unconventional diplomatic instrument: to appoint a high-level monitoring mission to observe the next round of appeals in the disputed Tymoshenko criminal trial. The trial was seen by many as a bellwether of the Ukrainian legal system—its independence (from pressure by Yanukovich to find Tymoshenko guilty), its professionalism (in the way the evidence was heard and the trial conducted), and even its humanity (since Tymoshenko had fallen ill in prison and the adequacy of the treatment she was allowed to receive was under constant media attention).

The mission consisted of two envoys: former EP President Pat Cox and former President of Poland Alexander Kwasniewski. They were assisted by a member of the current EP President's cabinet, along with two policy advisers and one legal expert from the EP's Secretariat. The envoys reported directly to the Parliament's Conference of Presidents—the body that comprises the leaders of each political group in the EP. The start of the mission was officially announced in Brussels on 16 May 2012 after a meeting between EP President Martin Schulz and then Prime Minister of Ukraine Mykola Azarov.

The reasons for other EU institutional actors to accept such a unique arrangement were twofold. First, the Parliament, unlike the Commission, had not been intimately involved in the negotiation of the AA—nor was it directly linked to any EU member state. It could therefore offer a more neutral and legitimate interlocutor for the Ukrainian government. Second, the mission was run *by* the Parliament, but was not really *of* the Parliament. Neither of the envoys was a sitting Member of the European Parliament (MEP), and no political bodies of the EP, such as the Foreign Affairs Committee, were involved in the mission. So the mission was not seen as an institutional power-grab by the EP. Personalities also played a role. While Kwasniewski—from the East—ensured deep knowledge of the political intricacies of Ukraine as well as essential language skills, Cox—from Western Europe—was a highly respected figure in the EU institutional landscape.

On the other side of the coin, the Ukrainian government also had reasons to go along with the plan. Faced with growing international isolation and domestic opposition pressure at home, Kyiv was eager not to further alienate its European partners and had to show willingness to work jointly on the problem of Tymoshenko's trial. At the same time, a two-person observation mission with no formal powers and with only minimal or weak links to any of the major players in the AA ratification process would not have seemed very threatening. Thus, the mission was launched with the blessing of all affected parties.

Cox and Kwasniewski first visited Ukraine on 11-12 June 2012, meeting with Ukraine's President and Prime Minister as well as Tymoshenko's lawyers. Initially, the mission was planned to last about two weeks, until the time of the cassation trial of Tymoshenko at the end of June. Yet the successive postponements of the trial prompted repeated extensions of the mission. In the end, the Cox-Kwasniewski mission lasted 18 months, visiting Ukraine 27 times, and its activities evolved well beyond its original remit.

At the outset, the mission was tasked with monitoring the criminal trial of Yulia Tymoshenko only. However, given the similarities to other instances of selective justice in Ukraine, Cox and Kwasniewski quickly began to oversee the ongoing trials of former ministers Lutsenko and Ivashchenko as well. The mission's representatives attended the court hearings, analyzed trial documents, and met on a regular basis with Tymoshenko and her lawyers. As indicated in its first report, the mission "raised serious doubts as to whether the cases were dealt with in full compliance with international law."<sup>4</sup>

In a further broadening of its scope of operations, it also started to criticize the Ukrainian penitentiary system for failing to provide adequate medical care to Tymoshenko. This line of demands became another recurring theme in the mission's regular reports. In fact, Cox and Kwasniewski's attempts to improve the humanitarian situation in Tymoshenko's prison even led them to a public row with Ukraine's State Penitentiary Service over the prison's concealment of Tymoshenko's critical situation.<sup>5</sup>

After October's parliamentary elections in 2012 failed to live up to international standards—the EP had sent an election observation mission to evaluate Ukraine's democratic credentials<sup>6</sup>—the Cox-Kwasniewski mission also began to engage with Ukraine's leadership on the issue of electoral reform. By the time the envoys delivered their first report to the EP's Conference of Presidents, their mandate had transformed from a two-week monitoring mission over a single criminal trial to "include the cases of the former Minister for Internal Affairs Yuriy

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<sup>4</sup> European Parliament Monitoring Mission to Ukraine: "Interim Summary Conclusions to the President of the European Parliament," 4 October 2012, p. 2.

<sup>5</sup> See "Statement by President Pat Cox and President Aleksander Kwasniewski, Special Envoys of the European Parliament Monitoring Mission to Ukraine," 8 February 2013.

<sup>6</sup> See: European Parliament Election Observation Delegation to the Parliamentary Elections in Ukraine: "Report," 28 October 2012.

Lutsenko and former Acting Minister of Defence Valeriy Ivashchenko, the humanitarian condition of their detention, and the consideration of the ongoing judicial reforms in Ukraine.”<sup>7</sup>

Lest we think this was a case in which the mission’s self-importance led it to overstate the breadth of its own prerogatives, the role of Cox and Kwasniewski was affirmed by the Council as well. In December of 2012, the EU Foreign Affairs Council explicitly praised Cox’s and Kwasniewski’s work, acknowledging the mission’s added value for the EU’s external action.<sup>8</sup> The Council outlined the three areas where the member states expected Ukraine to achieve progress before the AA could be signed at the Vilnius Summit: reforming the electoral system, addressing the issue of selective justice, and pursuing the Association Agenda reforms.<sup>9</sup> Thus member states linked the future of the AA to the resolution of the political justice problem in Ukraine—the core task of the EP monitoring mission. The Cox-Kwasniewski mission appeared to have become an official instrument in the EU’s overall foreign policy strategy towards Ukraine.

The mission also achieved some tangible successes. In August 2012, Ivashchenko was conditionally released. In the spring of 2013, his conviction was formally overturned. Lutsenko, whose health had been deteriorating dramatically in prison, was released in April 2013, after the Cox-Kwasniewski mission had interceded on his behalf a few months before. He was freed by a Presidential pardon that also included Filipchuk and four other prisoners. The EU’s High Representative (HR) for the Common Foreign and Security Policy, Cathy Ashton, and the Commissioner for Enlargement, Stefan Füle both pointed to the EP’s mission as the main reason for this success.<sup>10</sup> In terms of legal reforms, the Ukrainian government adopted a new law on the bar and legal practice (August 2012), a new criminal code (November 2012), some constitutional amendments (October 2013), and a new electoral law (November 2013).

Tymoshenko’s case was a much harder sell. The Cox-Kwasniewski mission requested a pardon for Tymoshenko on health grounds, similar to what had been done for Lutsenko. Yanukovich, while generally signaling his willingness to solve the Tymoshenko problem and proceed to the signature of the AA, preferred the Ukrainian parliament to formulate a special law on medical treatment abroad for convicted persons. The opposition, in turn, insisted on the release and rehabilitation of Tymoshenko, including the annulment of her conviction. Several legislative proposals were tabled in the Ukrainian parliament but none were passed as the deadline for signing the AA at the Vilnius summit approached.

Cox and Kwasniewski delivered what was supposed to be their last report a few days before the EU Foreign Affairs Council’s meeting on 18 November 2013, where the decision on the signature of the AA with Ukraine was expected to be taken. Although the mission welcomed

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<sup>7</sup> EP Monitoring Mission Report, 4 October 2012, p. 1.

<sup>8</sup> Council of the European Union: “Conclusions,” 10 December 2012, p. 14.

<sup>9</sup> *Ibid.*, p. 13.

<sup>10</sup> European Union High Representative for the Common Foreign and Security Policy, Catherine Ashton and Commissioner Stefan Füle: “Joint Statement on the pardoning of Yuriy Lutsenko,” 7 April 2013.

the adopted legislative changes, it noted that the main condition of solving the issue of selective justice remained unfulfilled.<sup>11</sup> The Council seems to have followed the EP mission's suggestion. In its conclusions, it noted that "the main outstanding case of selective justice needed to be addressed and that the Council continued to support the efforts of the European Parliament monitoring mission to this end."<sup>12</sup> This shows the high level of authority and legitimacy that the mission commanded among EU actors.

Of course, all of this careful diplomacy was undone when, under increasing Russian pressure, Yanukovych suddenly decided to walk away from the AA a few days before the Vilnius summit. Protests erupted in Kyiv, the Maidan movement was born, which eventually led to violence in the streets, and Yanukovych fled the country in February of 2014. But this outcome was far from pre-ordained. In the weeks leading up to the Vilnius summit, the Cox-Kwasniewski mission was making progress, and EU leaders had reason to be hopeful that this long diplomatic initiative had succeeded in resolving ostensibly intractable political and legal obstacles to signing an agreement with Ukraine. So what does this unique mission tell us about the way in which the European Parliament participates in EU external action?

### **The EP as a Policy Entrepreneur: Expanding its Remit through Independent Initiative**

The evolution of the Cox-Kwasniewski mission's mandate over its 18-month lifespan highlights the ability of the EP to extend its reach into areas in which it has no formal authority. The mission itself was suggested by the Parliament, without any reference to the institution's treaty powers or official role in EU foreign policy. Throughout its activities, the mission consistently managed to expand the scope of its responsibilities. The Cox-Kwasniewski mission is therefore a good case of Parliament's willingness to invent roles and functions for itself—playing the part of a policy entrepreneur.

This aspect of the Parliament has been analyzed in other fields of external policy. Simon Hix has shown that the EP routinely interprets ambiguous rules to its advantage, and then forces its interpretations on other EU institutional actors.<sup>13</sup> He argues that once these changes are seen to provide efficiency gains, they can become formalized because granting power to the EP allows governments to claim that they are reducing the EU's democratic deficit.<sup>14</sup> Andreas Maurer, Daniela Kietz and Christian Völkel demonstrate how the EP has "slowly, and outside the formal treaty revision procedure at IGCs [Intergovernmental Conferences], managed to increase its

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<sup>11</sup> European Parliament Monitoring Mission to Ukraine: "Mission Statement," 13 November 2013.

<sup>12</sup> Council of the European Union: "Conclusions," 18 November 2013, p. 7.

<sup>13</sup> Simon Hix: "Constitutional Agenda-Setting Through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam," *British Journal of Political Science*, Vol. 32, No. 2, 2002.

<sup>14</sup> Hix, 2002, pp. 271-272.

information and consultation rights.”<sup>15</sup> They focus on the ways the Parliament was able to use its budgetary powers to increase its political role in the policy-making process.<sup>16</sup>

Perhaps the most prominent recent case of such policy entrepreneurship concerned the nomination process for the President of the European Commission around the 2014 EP elections. The Parliament, interpreting the wording of the Lisbon Treaty in the most expansive way possible, claimed for itself the power to nominate the candidate for this post, linking the choice of the Commission President to the electoral outcome of the European elections. The Council was reluctant to cede this power to the EP, which had previously only been asked to approve the entire college of Commissioners after these had been nominated by member state governments. Yet the Parliament won out, and its interpretation of the process by which the Commission President is chosen now seems cemented in institutional practice.

The Cox-Kwasniewski team’s “mission creep” suggests a similar dynamic. At first, the envoys were tasked with a very limited mission: to monitor a specific criminal trial of Tymoshenko. Quite soon, they broadened their scope to cover other opposition politicians’ trials, thereby increasing their remit from reporting on a single case to working on the institutional problem of “selective justice”: a term that the mission continued to use in all of its reports. Once some of the defendants in these trials experienced serious health problems, the mission also expanded into the humanitarian sphere: advocating for better medical treatment for the prisoners, and even asking for pardons on health grounds.

In addition, the mission also took on the much larger legal and political challenge of promoting overall judicial reform in Ukraine. There were indications of this drift quite early on: the very first report of the mission begins not with any updates on Tymoshenko’s trial (the ostensible reason for sending the envoys to Ukraine). Rather, it lays out structural problems in the judicial, education and governance systems, and suggests that external support for a true post-communist transition be provided for reforming Ukraine’s political culture. A good indication of the envoys’ perception of the breadth of their role is provided by a sentence from the end of the report: “While staying focused on the original purpose of our mission, we believe it is also worth the effort to search for mutually acceptable solutions, whether in the area of ongoing judicial reforms or in the context of bilateral EU-Ukraine agenda.”<sup>17</sup> This suggests that the EP mission had transitioned from a monitoring or observing role to that of a mediator in the EU-Ukraine negotiations, and even within Ukrainian domestic politics.

In fact, this latter mediation role became the focus of the bulk of the mission’s activities in 2013. Cox and Kwasniewski worked with both the government and the opposition to find

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<sup>15</sup> Andreas Maurer, Daniela Kietz & Christian Völkel: “Interinstitutional Agreements in the CFSP: Parliamentarization through the Back Door?” *European Foreign Affairs Review*, Vol. 10, 2005.

<sup>16</sup> Maurer, Kietz & Völkel, p. 194.

<sup>17</sup> EP Monitoring Mission Report, 4 October 2012, p. 2.

compromises that could lead to the adoption of those judicial reforms which the EU had made a precondition for signing the AA. This was clear to the participants of the mission—as Cox himself recalled, “the mission [...] morphed into something much larger as we became a key point of exchange between not only Brussels and Kiev, but also between the Ukrainian government and the opposition, who basically were not speaking to each other at the time but would each speak to us.”<sup>18</sup> More importantly, however, it was also the way the mission’s Ukrainian interlocutors interpreted the task of the envoys. As the then Foreign Minister, Leonid Kozhara, put it, “today it is the only unbiased mission from the EU—impartial and non-related to any party.”<sup>19</sup>

The Cox-Kwasniewski mission thus exhibited a remarkable amount of policy entrepreneurship: it morphed from a two-week monitoring mission of a single trial to a year-and-a-half long effort to fight selective justice, advocate for prisoners’ health, and mediate between government and opposition forces to enact constitutional, judicial, and electoral reforms.

### **The EP as an Independent Foreign Policy Actor: The Uses of Parliamentary Diplomacy**

Another lesson the Cox-Kwasniewski mission holds for scholars of EU external action concerns the way in which the EP plays a role in EU foreign policy-making. Traditionally, most studies of the EP’s role concentrate on the means available to the Parliament for exerting parliamentary control or parliamentary scrutiny over other EU institutional actors. And not surprisingly, they find that the EP does not have much power in this realm.<sup>20</sup> The EU’s Common Foreign and Security Policy confers rather little formal authority on the Parliament, keeping it firmly in the hands of member state governments. But the Cox-Kwasniewski mission puts the spotlight on EP activities that occur in parallel to this type of parliamentary control (and without any reference to the Parliament’s treaty powers): its direct engagement with foreign actors through parliamentary diplomacy.

This aspect of the Parliament’s role in EU external action has recently started to get more attention in the scholarly literature,<sup>21</sup> but this research is still in its infancy. What the Cox-

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<sup>18</sup> Pat Cox, speaking in an interview: Jacek Ciesnowski: “The EU is Going through a Big Test: Interview with Pat Cox,” *Warsaw Business Journal Observer*, 2 October 2014.

<sup>19</sup> Leonid Kozhara, quoted in “Kozhara: Kyiv Interested in Work of Cox-Kwasniewski Mission until Vilnius Summit,” *Kyiv Post*, 14 November 2013.

<sup>20</sup> See: Stephan Stetter: “Cross-pillar politics: functional unity and institutional fragmentation of EU foreign policies,” *Journal of European Public Policy*, Vol. 11, No. 4, 2004; Ben Crum: “Parliamentarization of the CFSP through informal institution-making? The fifth European Parliament and the EU High Representative,” *Journal of European Public Policy*, Vol. 13, No. 3, 2006; Udo Diedrichs: “The European Parliament in CFSP: More than a Marginal Player?” *The International Spectator*, Vol. 39, Issue 2, 2004. **UPDATE WITH POST-LISBON ARTICLES.**

<sup>21</sup> See: Stelios Stavridis & Daniela Irrera (Eds.): *The European Parliament and its International Relations*, [Routledge](#), 2015 (to be published 1 April); the new Jean Monnet Network [PACO](#), which will begin publishing papers soon; Lorinc Redei: *Normative Parliamentarians: The European Parliament’s Role in the EU’s Foreign Policy Process*, Ph.D. Dissertation, Central European University, 2013.

Kwasniewski mission illustrates is that the most important way for the EP to influence EU external action towards Ukraine may not lie in its parliamentary control powers or its advising function to other EU institutional actors. It would be difficult to argue that the series of resolutions<sup>22</sup> that the Parliament passed in the two years preceding the Maidan revolution had a big influence on the EU's foreign policy in the region. Nor is it likely that plenary debates with the High Representative, or the lone hearing by the Foreign Affairs Committee in May of 2013 had a significant impact on developments in Kyiv.

By contrast, the EP's parliamentary diplomacy was arguably much more central to the EU's overall external action in Ukraine. The previous sections have already described how the Cox-Kwasniewski mission was intensely involved with the judicial reform process, balancing the role of representing the EU in foreign affairs, while also mediating between the EU and the Ukrainian authorities. But the EP's parliamentary diplomacy did not stop there. The EP sent electoral observation missions to Ukraine for the presidential elections in 2010 and 2014, and the parliamentary polls in 2012. It was the only EU actor present to make a judgment about their fairness, since the long-term missions were led by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), not the European Commission.<sup>23</sup> The EP also sent an ad-hoc delegation to observe local and regional elections in the fall of 2010—bending the Parliament's own internal rules that restrict electoral observation missions to national polls.<sup>24</sup>

In addition, the EP's standing Delegation to the EU-Ukraine Parliamentary Cooperation Committee (PCC) continued its biannual meetings with its counterparts from the Ukrainian legislature. Even though the joint statements that conclude these meetings must be approved by both sides, they are remarkably frank in their descriptions of Ukraine's turn away from democratic principles. To take one example, the joint statement in June of 2012

“calls on the Ukrainian authorities to resolve in a civilized manner the problem that arose with the sentencing of the leaders of Ukraine's opposition on politically motivated grounds, by immediately and unconditionally releasing them from jail and allowing them to participate in the upcoming parliamentary elections; reiterates in this respect its call to Verkhovna Rada to demonstrate political will and remove from Ukrainian criminal legislation all such provisions under which a politician may bear criminal responsibility for his/her political decisions, inasmuch as such legal remnants from the Soviet past do not correspond with European standards; [p]articularly stresses, therefore, that any action aimed at eliminating one's political opponents by means of their imprisonment is simply unacceptable for any European country, which declares its commitment to the basic principles of democracy.”<sup>25</sup>

The EP also sent two ad-hoc delegations to Ukraine during the Maidan protests (in late January and late February of 2014); these were still present on the ground when Yanukovich fled

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<sup>22</sup> For a list of all relevant EP Resolutions on Ukraine during this time period, see the Bibliography.

<sup>23</sup> By long-standing agreement, the Commission monitors elections outside of Europe while ODIHR concentrates on the OSCE countries.

<sup>24</sup> See: “European Parliament EU-Ukraine PCC Members' Delegation to Ukraine Observing Local and Regional Elections of 31 October 2010: Report,” 10 November 2010.

<sup>25</sup> European Parliament-Ukraine Parliamentary Cooperation Committee: “Final Statement and Recommendations: Nineteenth Meeting,” 14 June 2012, p. 2.

the country.<sup>26</sup> The one arm of parliamentary diplomacy that remained essentially unused was the EP's Delegation to the more multilateral EURONEST Parliamentary Assembly (PA): the parliamentary forum that brings together legislators from the Eastern neighbors of the EU with MEPs. Throughout 2012 and early 2013, no statement by the EURONEST PA addressed the Tymoshenko case, or the deterioration of democracy in Ukraine. The resolutions passed during its third plenary session in May 2013 did not mention these topics, either. Even the joint declaration it adopted at the Vilnius summit seems to gloss over the major blow that Yanukovich's about-face on the AA had delivered to the summit and its goals.<sup>27</sup> This likely has to do with the high level of consensus that needed to be reached among the various Eastern partner countries.

### **The EP as a Technocratic Actor: The Democratic Deficit Conundrum**

The last, and potentially most intriguing point about the Cox-Kwasniewski mission has to do with the tension between the way the mission was set up, managed, and overseen, and the legitimacy it enjoyed. The most often cited reasons for the legitimacy of Parliament's actions (whether in the internal or external realm) are its democratic credentials—as the only popularly elected EU institution—and its commitment to transparency—especially compared to more diplomatic/technocratic institutions such as the Council or the Commission. For this reason, it has often figured in scholarly research that seeks to investigate the democratic nature (or the democratic deficit) of EU foreign policy.<sup>28</sup> The EP itself often claims that it is the voice of the people of Europe, or the conscience of the continent. And it even suggests that EU foreign policy can only be legitimate if the EP is granted a say in its elaboration—by noting that “the European Union can make an impact and conduct a genuine, effective and credible CFSP only if it [...] enjoys the strong democratic legitimacy afforded by Parliament's scrutiny.”<sup>29</sup>

Yet the most remarkable feature of the Cox-Kwasniewski mission was its patently undemocratic, unaccountable and un-transparent nature. The envoys were approached by the EP President's cabinet—not through some majoritarian decision by MEPs. The mission reported only to the EP's Conference of Presidents—not to the Foreign Affairs Committee, not to the EU-Ukraine PCC, or even to the plenary session of the Parliament. Decisions about what trips to take, whom to talk to, what strategies to employ, and even how to expand the mission's remit

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<sup>26</sup> See: European Parliament Committee on Foreign Affairs: *Activity Report of the 7<sup>th</sup> Legislature (2009-2014)*, p. 19.

<sup>27</sup> See: “Joint Declaration of the Eastern Partnership Summit, Vilnius,” 29 November 2013, p. 3.

<sup>28</sup> See, for instance: Helene Sjursen (Ed.): *The EU's Common Foreign and Security Policy: The Quest for Democracy*, Special issue of the *Journal of European Public Policy*, Vol. 18, No. 8, December, 2011.

<sup>29</sup> European Parliament: “Resolution on the Annual Report from the Council to the European Parliament on the Main Aspects and Basic Choices of the Common Foreign and Security Policy (CFSP),” 5 June 2008, Par. 5. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2008-254>

were made by the envoys themselves and their small staffs who held positions in the EP's Secretariat.

Indeed, the Cox-Kwasniewski mission was an EP initiative that bypassed MEPs altogether. The envoys leading the mission were chosen to radiate impartiality and gravitas. The staff was picked from the Secretariat to organize the complex daily business of the mission. But MEPs were left in the role of spectators. This situation is not as unheard of as it may seem at first blush—the EP's parliamentary diplomacy shows similar tendencies elsewhere. For instance, the EP's Office for the Promotion of Parliamentary Democracy, which trains foreign parliamentarians and parliament staffers on how to construct legislative rules and institutions, often operates on its own, bringing in MEPs only for small sections of its training programs. Yet there is still something paradoxical about the EP's use of such technocratic means.

The Cox-Kwasniewski mission is an example of the EP using its democratic credentials to launch parliamentary diplomacy initiatives that appear legitimate to all sides. Yet these diplomatic efforts, in order to be successful, require backroom deals, shuttle diplomacy that takes place away from the public eye, and an independence from any direct political accountability to EU institutions. This type of activity is most often associated with foreign ministries, diplomats, or even crisis-management or mediation NGOs, all of which have one thing in common: they are considered democratically unaccountable.

The EP's peculiar mission to Ukraine, although arguably successful until Yanukovich's sudden change of heart, was therefore a departure from what scholars would expect the Parliament's role to be in EU foreign policy. Its parliamentary diplomacy took on a more technocratic character, far from its self-image as a normative actor that relies on its internal democratic legitimacy to convince others to follow its lead.

### **Future Implications: The EP as a Mediator**

This paper argues that the Cox-Kwasniewski mission was a successful example of parliamentary diplomacy. It showed off the power of the EP as a policy entrepreneur, managing to considerably expand its initial remit. It also illustrated the relative importance of the Parliament's direct engagement with outside actors, over its formal parliamentary scrutiny powers. Finally, the mission also presented a paradox: it could only be established thanks to the democratic legitimacy that the EP enjoyed, but its success depended on its more technocratic character, which made it lack any sense of accountability, transparency or democracy.

If this case were a unique phenomenon that was unlikely to be repeated, then its impact on EU foreign policy in a larger sense would likely be minimal. It would serve as an interesting anecdote, but nothing more. But what makes the Cox-Kwasniewski mission worth exploring is

that it is on the verge of becoming a model for future EP actions in the field of parliamentary diplomacy.

As a direct result of the Cox-Kwasniewski mission<sup>30</sup> the Parliament has recently set up a new unit within the Secretariat's Directorate for Democracy Support to institutionalize the EP's newfound interest in acting as a political mediator. The EP Mediation and Support Service is small, for now (it is literally a one-man show)—but it is already at work trying to negotiate for the release of political prisoners in Azerbaijan. Therefore, the lessons from the EP's parliamentary diplomacy in Ukraine are likely to be applicable to several similar initiatives in the near future. For if one thing is for certain, it is that the EP, once it has encroached on a policy area, is unlikely to let go.

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<sup>30</sup> Author's interview with European Parliament Official, 8 January 2015, Brussels.

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