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Assessing the impact of the introduction of the EEAS on Trade Agreements with Ukraine and Moldova

Master's Thesis

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Introduction

Amidst a myriad of critical geopolitical pressures, ranging from civilian unrest to the economic crisis and border wars, the European Union and, previously, the European Community were compelled to respond decisively. Some instances were the Oil Crisis during the 1970s or the American decision to switch the pillar of the international economy, which had severe repercussions for the European states. At that time, the member states could agree on new strategies to revert each adversity in both scenarios. However, nothing in the 20th century got the European continent so unequipped as the collapse of the Soviet Union and the creation of newly independent states in the East. Before that, the Community had already engaged in economic and trade dialogues with outsider countries in Latin America; still, the delicate geopolitical perspective in the east-European map left no room for talks due to the ideology division of the western and eastern blocks. Nonetheless, the dissolution of the URSS and the request of new free states to join, to a certain degree, the European dimension during one of the most delicate times in the Community, "the shift in a unified market" got everyone off-guard. Hence, the member states had little voice in undertaking new economic agreements and settling a temporary order with countries like Ukraine, Moldova, and Georgia, offering at first a future perspective to join the Community within the talks under the condition to pursue political and economic benchmarks stated in treaties. Thereby, the main bulwark of these negotiations was left in the hands of strong institutions like the Council (to a small degree) and the Commission, letting the latter enjoy most of the prestige through the conclusion of these economic agreements.

However, it also highlighted a huge problem within the European foreign policy setting. First and foremost, it was evident the lack of coherence and the necessity to foster a more unified European response across different frameworks, as Christiansen aptly put it:

We can conceive of 'coherence' in terms of the systemic outputs, i.e. the way in which the substance of different policies generated by the EU forms part of a coherent whole. Alternatively, we can regard 'coherence' in terms of the institutional process by which policies are made, i.e. in terms of the degree to which institution(s) operate a coherent and well-coordinated process of deliberation and decision-making [...] which in the following is termed 'institutional coherence'.¹

In this sense, a change was required in the outside European voice in international matters. Therefore, the Lisbon Treaty represented an innovation by filling the gap of democratization within the European bureaucracy, as stated by the Belgian MEP Jean-Luc Dehaen; "This means more power to the people because the members of the European Parliament represent the people. That's good for democracy and for all Europeans."² Moreover, the Treaty could initially represent the attempt of member states to regain a certain degree of maneuverability in foreign policy matters by re-taking new talks with the ex-Soviet satellite states and undermining, at the same time, the authority of the Commission. Although this explanation is solid, we should not forget that, in addition to incrementing the influence of member states, the Treaty also sought an equilibrium between the former and the legitimacy of the European institutions at the expense of the autonomy of some powerful nations that compose the Union that were sabotaging the transnational structure. To sum up:

This approach depends primarily on the assumption that events in international politics consist of the more or less purposive acts of unified national governments and that governmental behaviour can be understood by analogy with the intelligent, coordinated acts of individual human beings. Following this approach, analysts focus on a nation's interests and goals, the alternative courses of action available, and the costs and benefits of each alternative.³

For this reason, it was imperative to find a solution to this need for balance between the institutional framework and membership's accountability. Hence, the answer came with

¹ Christiansen T. "Intra-Institutional Politics and Inter-Institutional Relations in the EU: Towards Coherent Governance?" quoted in Schade 17

² Epp Group, "The Lisbon Treaty explained"

³ Allison GT and Halperin MH. "Bureaucratic Politics: A Paradigm and Some Policy Implications," 41.

the creation of the "European External Action Service" (EEAS) in 2009 (not an institution but rather an organization), which was responsible to some extent for bringing back the position of member states in a coherent voice in the context of negotiating an economic agreement in a very delicate geographic context that caught the interest of the Union.

Purpose of the research and literature review

Some experts have argued that the creation and introduction of the EEAS significantly affected the fragile institutional balance of power, more precisely, during the negotiation phase of association agreements, which, before 2009, had been handled almost exclusively by the Commission and Council. In this sense, the introduction of the EEAS represents a "Critical Juncture" justified by the will to renew and optimize the European institutional composition and completion of its agenda outside the Union in the framework of trade agreements. As such, previous works (Christophe Hillon, 1998; Olga Alexandrova, 1996; Steve Peers, 1995; Marc Maresceau, 2014; Guillaume Van der Loo, 2014) provided us with a detailed analysis of how the negotiations with countries in the East or Europe went During the 90'. On the opposite side, subsequent research (Guillaume Van der Loo, 2014; Hrant Kostanyan, 2014; Niklas Helwing, Paul Ivan; Hrant Kostanyan, 2013; Simon Duke, 2016) assess how the newly created EEAS was capable of undertaking its duty in the new post-Lisbon interinstitutional context. In the latter, more precisely, some theories were applied to justify specific behavior patterns and explain further interactions between European institutions. Thus, numerous studies have thoroughly examined these separate historical events throughout the literature.

Nonetheless, it is crucial to note that each of these studies focused on different historical moments and did not highlight the entire process behind the evolution and adaptation of the negotiation phase in association agreements. In a nutshell, it lacks a

complete description of a comprehensive process that took over almost three decades. In this period, the Lisbon Treaty represented a pivotal moment in expressing the necessity of change and applying it to enhance future economic dialogue with a geographic region, which is extremely important for European foreign policy. Hence, what we are trying to inquire about in this paper is to unveil one answer to a specific question: "How has the implementation of EEAS, after its creation through the Lisbon Treaty, changed the negotiations of association agreements with Eastern-EU countries?". In light of this, the reason why it is so important to ask this specific research question is to evaluate in great detail the evolution of the negotiation of association agreements —reckoning what changed between the first phase of Ukraine's Partnership and Collaboration Agreement (PCA) dialogue, considered by many experts the main template to uphold with East-European Countries negotiations, compared to the latest positive consultation taken with Moldova in 2014, supported by the newly institutionalized EEAS, as a novelty brought by the Lisbon treaty — within the EU continent. To better understand whether the changes made in the decision-making process of the Association Agreement (AA) were a result of a necessity for reforms during the period between 1994 (when negotiations for the Ukrainian PCA began) and 2009 (when the Lisbon Treaty came into force), an assessment is needed. Alternatively, if it was the outcome of some schemes made by other EU institutions of stakeholders to uphold more influence within the delicate balance of power of the EU institutions, which was also reflected during the trade negotiations talks. Nevertheless, evaluating the application of AAs in Eastern European countries, which differ in structure from Latin American AAs and contain great potential, justifies the importance of this question. This is partly due to the geopolitical significance of countries like Ukraine and Moldova, which have always been of primary interest to EU foreign policy. Furthermore, upon initial analysis, it may seem that the Treaty of Lisbon came

into existence partly due to its importance in renewing the engagement with this critical geographic area.

Therefore, analyzing these topics would enrich the academic literature by illustrating how the European AA dialogues matured over time compared to others that had been fulfilled previously in other parts of the world. In addition, it will demonstrate that the negotiation phase has been standardized and now follows a process that involves the collaboration of both the Commission and the EEAS. This comprehensive analysis, based on a wide range of sources and perspectives, will provide a robust understanding of the transformation of European foreign policy and the negotiation of trade agreements.

Methodology and theories

Although our research shares many features of previous studies, it reassesses the substantial junction claim by employing qualitative historical analysis to identify specific pertinent historical-legal changes before and after the creation of EEAS and applying notions developed from two currents of new institutionalism. However, in the context of secondary sources, and more precisely "theory testing"⁴, we will state the theories and their testable hypotheses in plain terms, evaluate the evidence in the secondary record to see if it supports or contradicts those prepositions, and weigh the evidence honestly and transparently. It is common sense to make all the information available to the reader before forming an opinion about how the data supports the theoretical claims. Nevertheless, we should also be humble enough to acknowledge the possibility that our opinion might be incorrect. Thus, it is better to broaden the choice of our secondary sources, which justify the application of two theories within the research. In the event that one may result inaccurately with the selection of our case studies, the other may compensate for it or rather work complementarily to provide a better

⁴ Cameron G. Thies. "A Pragmatic guide to qualitative historical analysis in the study of international relations", 362

analysis. At the same time\ Consequently, the choice to apply both Historical institutionalism (HI) and Sociological institutionalism (SI) is well thought out for a number of reasons:

1. The decision to apply HI is tempting, in part because it strengthens the arguments made by inter-governmentalisms and neo-functionalists in their conflicting grand theories of European integration by creating a "golden mean"⁵ amongst their various explanations. HI, in general, has the ability to break through the deadlock created by the conflicting arguments between these two major schools of thought. Plus, HI reflects one of the three schools of new institutionalism. The other two— rational choice and sociological institutionalism—may be seen as the polarized ends of a spectrum, whereas HI is located in the middle. In this position, HI benefits from insights offered by both other schools of thought and, therefore, incorporates either rational choice and sociological elements in its theorizing.
2. On the contrary, SI considers power, agency, and social relationships while keeping an eye on formal institutional developments. However, rather than being created solely by mechanical replication or deliberate design, the institutions must also be seen as products of social processes. Hence, SI does not view them as reward matrices or restrictions alone; rather, as the results of actions across time. An institution is always a pattern of social connections that can be adversarial, competitive, and defined by uneven power relations. It can also be a combination of formal regulations and unwritten conventions that endure throughout time, "Conceiving of institutions in this way, sociologists provide a useful way to reanimate the structure-agency debate in neo-institutionalism that is convergent with efforts on the part of some historical institutionalists"⁶.

⁵ Wen Pan, Madeleine O. Hosli, Michael Lantmeeters. "Historical institutionalism and policy coordinator: origins of the European semester", 143

⁶ Jane Jenson and Frederic Merand. "Sociology, Institutionalism and the European Union", 82

3. Last, historical institutionalism is in a good position to interact more closely with sociological perspectives on institutions, "there is a sizable area of overlap between historical and sociological institutionalism, a multi-disciplinary connection that began with efforts to "bring the state back in" and continues with the ongoing work in comparative historical analysis"⁷. Beyond national boundaries, the exploration of regions of overlap between historical and sociological forms of institutionalism has great potential. Farrell and Finnemore contend that because the international system is not as heavily institutionalized as domestic polities and there are frequently insufficient effective ways of enforcing rules, a deeper examination of concepts and norms is especially crucial for historical institutionalism within IR. Understanding the origins of state preferences and the reasons why cooperation takes different forms in the current international system may be improved by paying more attention to how ideas and norms are incorporated inside international institutions. Historical institutionalists may be able to understand better the circumstances under which international policy priorities and institutions change by studying work that demonstrates how the communication of ideas furthers actors' strategic goals by limiting alternatives, focusing attention, and persuading others. Therefore, areas of overlap are calls to keep investigating when it is necessary to take into account both ideational and material understandings of institutions in order to comprehend better the intricate realities that shape politics both domestically and globally.

By placing the EEAS in its historical perspective, we want to determine if its adoption signified a significant or minor shift from the then-current norms of EU trade policy and EU foreign policy. In order to accomplish this objective, our analysis will inquire over two case

⁷ Kathleen Thelen, James Conran. "the Oxford handbook of Historical Institutionalism: Chapter-1 Historical Institutionalism in political science", 17

studies, respectfully the first phase of the Ukrainian-AA negotiations (pre-Lisbon) and the negotiations of Moldova's AA (post-Lisbon). Thereby, we will be capable of framing the "big picture, that it is difficult to understand when we are stuck in the middle of history"⁸, and as Bayilin stated, "The integration of manifest and latent events is the source of most historiographical disputes as the origins, causes, and consequences of manifest events - the "facts" - take on different interpretations in light of revisions in the understanding of concurrent latent events"⁹. Moreover, the selection of primary sources will be conducted by triangulating information from several sources to increase our archive coverage; we should be able to identify biases or flaws in the individual sources and, in the end, create a more accurate picture of history. Thus, information from the Union's perspective, which means researching information from texts that come from EU's declarations or regulations (in general documentation), as well as from outside the Brussels's bubble alike will be taken into consideration.

⁸ Cameron G. Thies. "A Pragmatic guide to qualitative historical analysis in the study of international relations", 354

⁹ Cameron G. Thies. "A Pragmatic guide to qualitative historical analysis in the study of international relations", 354

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Chapter 1

Theoretical Framework: Sociological and Historical Institutionalism

1.1 Institutional analysis and introduction of “punctuated equilibrium”

The founding works of the old institutionalist tradition often assumed that institutions are stable and use the cross-sectional diversity of institutional arrangements to show how institutions may explain a wide range of consequences. One of these cases is the examination of "comparative statics"¹⁰, which views institutions like means to extrapolate a specific outcome. For instance, "common internal shocks"¹¹ are managed differently in different institutions. The shared idea was:

to think of institutions as exercising causal force by refracting common problems in different ways. Institutions, then, stand between macro-structural forces—such as class, industrialization, globalization, geography, mass opinion, or the international system—emphasized by a range of more "structural-functionalist" theories, and the relevant outcomes of interest.¹²

Institutionalists have traditionally contended that institutions supplied the smaller missing component of the explanatory jigsaw and that such systemic influences somewhat eroded these results. Thus, it was essential to assume or show that institutions are not malleable in order to prove the causative force of institutions, fearing that they would be dismissed as unremarkable phenomena that are influenced by outside forces. Although, through time and more precisely with the change of the status of the institutions as a dependent variable, the standardized approach was to explain how institutional agreements

¹⁰ Kathleen Thelen, James Conran. “The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change”, 52

¹¹ Kathleen Thelen, James Conran. “The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change”, 52

¹² Kathleen Thelen, James Conran. “The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change”, 52

derived now from external forces. In brief, this process describes the "punctuated equilibrium model"¹³ as a time period characterized in a first moment by overall institutional stability followed by the influence of exogenous pressures from outside from time to time. Hence, we can state firmly that this thought reflects the event of the Lisbon Treaty, as the consequence of outside forces that, following a period of stability, prompted a change.

The sociological ramification of institutionalism assesses institutions as unwritten customs or shared cognitive templates highlights how these norms or codes are repeated via socialization and performed in such a normal way and "taken for granted that they are in some sense beyond conscious scrutiny"¹⁴. This justification relies upon the conception of institutions as: "embody shared cultural understandings ("interpretive frames") political actors extract causal designations from the world around them and these cause and effect understandings inform their approaches to new problems"¹⁵. Indeed, a specific institutional design is destined to change, but a new institutional structure will tend to resemble the one already established prior because these internalized cultural limits limit what politicians may imagine, even when they set out to restructure institutions. As also specified by Di Maggio and Powell: "[i]nstitutionalized arrangements are reproduced because individuals often cannot even conceive of appropriate alternatives (or because they regard as unrealistic the alternatives they can imagine as unrealistic)"¹⁶. Here, deception is the typical mechanism of change, which can be either simply formal or, at most, lead to convergence on a prevailing practice. This somewhat constrained method of alteration, as Scott stated, "excludes crucial phases in the institutionalization process which has, necessarily, a beginning and an end as

¹³ Kathleen Thelen, James Conran. "The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change", 55

¹⁴ Kathleen Thelen, James Conran. "The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change", 55

¹⁵ Kathleen Thelen, James Conran. "The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change", 55

¹⁶ DiMaggio, Paul J. and Walter W. Powell. "The New Institutionalism in Organizational Analysis", quoted in Kathleen Thelen - James Conran, 55

well as a middle”¹⁷. Put another way, diffusion is a process of change that ignores both the collapse of once-dominant institutional forms and more radical forms of institutional outcomes, even while it seldom includes flawless replication. However, In sociological institutionalist work, the implicit model for more significant shifts again entails the dissolution of a particular group of concepts or conventions in favor of fresh perspectives as a result of an organizational field disruption or the entry of new actors who operate according to a different logic and can upend customs and enforce their favorite option. Simply put, “[w]hen organizational change does happen, it is likely to be episodic and dramatic, responding to institutional change at the macro level”¹⁸, ergo, Critical Junctions. A notion also shared by another branch of new institutionalism.

Historical institutionalism has also placed great emphasis on the concept of punctuated equilibrium. It examines how important institutions are established following significant historical events, which then shape a more sustainable development path. These Critical Junctions are explained as “decisive moments that occur in the (sometimes distant) past from which alternative possible paths “branch” in divergent and irreversible directions”¹⁹. Hence, institutional evolution appears as protracted periods of institutional steadiness that are sporadically broken up by spurts of comparatively quick innovation. The latter is usually in concomitance with exogenous pressures that initiate an innovation within the institutional structure. Once more, this model of change was characterized by abrupt discontinuities and boldly distinguished among the logic of institutional change and that of institutional replication. Although research along these lines has provided valuable insights

¹⁷ Scott, W. Richard. ““Institutional Theory: Contributing to a Theoretical Research Program”, quoted in Kathleen Thelen – James Conran, 55

¹⁸ DiMaggio, Paul J. and Walter W. Powell. “The New Institutionalism in Organizational Analysis”, quoted in Kathleen Thelen - James Conran, 56

¹⁹ Kathleen Thelen, James Conran. “The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change”, 56

into the beginnings of various organizations, at least two cautions should be noted. As Pierson explains:

“Post-juncture "path dependence" (or institutional equilibrium) needs to be demonstrated rather than assumed. Only effective "mechanisms of reproduction" make the initial choice point a uniquely "critical" one; accordingly, the relevant conceptual tools ("sunk costs," "increasing returns," etc.) must be "applied, not just invoked.”²⁰

It asks many questions to assume that institutions are still and not malleable simply. It also rests on a comprehension of institutional dynamics that is questioned by recent advances in institutional theory, which are discussed below. Though critical junctures can happen, their culminations very often do not influence the institutional dimension:

"Institutions appear to emerge from a largely non- or pre-institutional landscape—precisely the image of political life the various "new institutionalism" sought to combat. Notably, the concept has often been linked to questions about the relative weight of "agency" and "structure" in different historical phases"²¹.

The philosophical concept of critical junctures and Leninist notion of a revolution, in which significant historical shift is momentarily feasible, do, in fact, share certain similarities. Historical institutionalists temper their perspective when they offer crucial juncture-based explanations of institutional creation, much as the Bolsheviks did when they proposed suspending the "laws of motion"²². Nonetheless, as outscored by Ostrom, a social response is initiated against an already fixed scheme of regulations, thus highlighting the vast difference between the creation of indeed an institution and the basic concept of an institutional shift. Because they specify reasons for institutional change that are at least partially institutional,

²⁰ Pierson, Paul. "Politics in Time: History, Institutions, and Social Analysis", quoted in Kathleen Thelen - James Conran, 56

²¹ Kathleen Thelen, James Conran. "The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change", 56

²² Kathleen Thelen, James Conran. "The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change", 56

the “new theories of change”²³, HI and SI, are, therefore, more accurately institutionalist theories of institutional change.

1.2 Institutional change

Recently, considerable effort has been put into conceptualizing a literature basis for all the different outcomes of institutional modification, at the same time enriching the old, outdated notion of institutions themselves. In the case of HI, the research on the contextually organized and historically developing nature of all political activity naturally brings attention to what Pierson refers to as “gaps”²⁴ between an institution's original structure and its actual implementation and results. These gaps might exist from the beginning or develop over time. These gaps might exist from the beginning or develop over time, plus they come from different origins, which all enrich the basic knowledge of institutional change:

- Limits of institutional design: Due to cognitive and informational constraints, institutional planners and politicians can never fully predict or oversee the various applications to which their products are applied.
- In the event politicians were reasonable, the gaps would have inevitably arisen due to the difficulty of mitigating the idea of how an institution should be constructed and how the reality defies it, it is always a “matter of political compromise”²⁵. Due to the rise of different institutional objectives that can be mitigated in different approaches.
- Institutions are challenged because they embody power. Those who lose in a single round don't always vanish; instead, they tend to persevere and figure out methods to not just go

²³ Kathleen Thelen, James Conran. “The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change”, 56

²⁴ Kathleen Thelen, James Conran. “The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change”, 57

²⁵ Kathleen Thelen, James Conran. “The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change”, 57

around and abuse the system, but also take over and utilize institutions that weren't created by them.

- Time. The institutions that capture our attention have often existed for a long time—longer than most individual political careers. The meaning of a rule is always determined within a specific temporal context and in relation to the unique conditions in which it is intended to be used. A rule gets "clarified"²⁶ over time but is also, in practice, transformed by changes in that context, which can create plenty of room for reinterpretations that stray far from the original meaning of the makers, who are frequently long-dead or greatly diminished.

These are the instances where historical institutionalists look after to identify a possible institutional shift. While other institutionalist traditions haven't completely ignored these issues, they do have a tendency to minimize their significance or even rule them out in order to provide their own explanation.

1.3 Sociological Institutionalism

History is seen as more spontaneous, less efficient, and less determined in sociological institutionalist views. "There is no guarantee that the development of identities and institutions will instantaneously or uniquely reflect functional imperatives or demands for change"²⁷. This is in consideration of the fact that institutions could be affected by different track-dependent equilibriums with different outcomes. Besides this makes it difficult to foresee future institutional change, "time interventions" in "historical junctures"²⁸ are a source for change. Nevertheless, this kind of shift can be described as:

²⁶ Kathleen Thelen, James Conran. "The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change", 57

²⁷ March, J.G. and Olsen, J.P. "Institutional Perspectives on Political Institutions. Governance: An International Journal of Policy and Administration", quoted in Cristina Bacalso 20

²⁸ Cristina Bacalso. "Engaging with Sociological Institutionalism: Addressing the Gaps and Silences", 20

discontinuous, contested, and problematic [...] represent[ing] 'punctuated equilibrium' and 'critical junctions', and be linked to 'performance crises' which stimulate departures from established routines and practices. Such 'critical junctions' can include new experiences, or dramatic events such as disasters, crises and system breakdowns, that may challenge an existing order and institutions²⁹.

Those interaction could be "difficult to account for in terms of existing conceptions. Entrenched accounts and narratives then do not make sense. They no longer provide adequate answers to what is true or false, right or wrong, good or bad, and what is appropriate behavior"³⁰. As suggested by some sociological institutionalists, change is difficult to assess for many theories because most of the time "change is "imperfect" and "not likely to be governed by a single coherent and dominant process"³¹.

Nonetheless, some attempts were made. For example, the rational choice view has tried to apply the "logic of consequences"³²in the past, arguing that equilibrium exists as a first stage. In this sense, when actors enter a scenario in which they will analyze their interests in correlation to the context they entered in, they initially assume equilibrium. To achieve this, they require resilience, a fixed preference set, and a wealth of knowledge. On the same page, a part of the sociological institutionalists confirm equilibrium by "for the 'logics of appropriateness' that constitute its principle analytical focus and that it discerns and associated with successful institutionalization are themselves seen as equilibrating"³³. Put another way, It is illogical to apply the appropriateness rationale to circumstances where an actor disobeys the rules because they are, by definition, the motivation behind why an actor does so. Hence, due to the similarities of both "(calculus- and norm-driven) logics are context-dependent and

²⁹ Cristina Balcaso. "Engaging with Sociological Institutionalism: Addressing the Gaps and Silences", 20

³⁰ March, J.G. and Olsen, J.P. "Institutional Perspectives on Political Institutions. Governance: An International Journal of Policy and Administration", quoted in Cristina Bacalso 20

³¹ March, J.G. and Olsen, J.P. "Institutional Perspectives on Political Institutions. Governance: An International Journal of Policy and Administration", quoted in Cristina Bacalso 21

³² Cristina Balcaso. "Engaging with Sociological Institutionalism: Addressing the Gaps and Silences", 24

³³ Hay, P.A. and Taylor, R.C. "Political Science and the three New Institutionalism", quoted in Cristina Balcaso 24

evident to the analyst, the actor's behavior is rendered predictable to the analyst by virtue of the context in which it occurs"³⁴. Therefore, only by acknowledging the institutional surroundings, enriched with regulations, individualities and habits of conduct, it is possible to understand change. Moreover, we can deem SI as a "theoretical non-astartes"³⁵ because it inquiries dynamics of transition. This institutionalism is better suited for "the *path-dependent* institutional change they tend to assume" rather than the "periodic, if infrequent, bouts of *path shaping* institutional change they concede."³⁶ In order to better understand the concept of path dependency, we should follow through on our previous discussion. According to sociological institutionalism, the historical effectiveness of other institutional approaches is not assumed; instead, institutional change is interpreted internally. The history of politics is seen to be less specific and compelling, and institutions are thought to reach equilibria in different ways. Thus, even if it is acknowledged that there may be a vast number of choices, sociological institutionalism implies that some equilibria will be established and that institutional change happens only to a certain degree of options. In addition, SI states that the origins of this change could be linked to Critical Junctures, disruptions wherein the norms and institutions that now exist will be questioned or rejected. Still, it noted that this episode of punctuated equilibrium can be induced by external influence. Despite accounting for historical deficiencies, these explanations are similar to rational choice techniques. The concept of "critical junctures" and the reasons that lead actors to reassess their ingrained norms, regulations, and behaviors will be analyzed below.

³⁴ Hay, P.A. and Taylor, R.C. "Political Science and the three New Institutionalism", quoted in Cristina Balcaso 24

³⁵ Cristina Balcaso. "Engaging with Sociological Institutionalism: Addressing the Gaps and Silences", 24

³⁶ Hay, P.A. and Taylor, R.C. "Political Science and the three New Institutionalism", quoted in Cristina Balcaso 24

1.3.1 Isomorphism, legitimacy and power

In the event a shift of a specific institutional design occurs, a particular procedure is initiated. Usually, whenever a new norm, a treaty or even the creation of an institution is delivered, entities (states, organizations, Ngo, and institutions) will start to support it, urged by external international pressure. This procedure featured an "internal socialization"³⁷ in which actor breakers are influenced to turn in actor supporters by diplomatic acclaim or criticism, backed by financial rewards or penalties. Hence, "This socialization can go beyond states and involved networks of organizations that pressure organizations to adopt the norms, as well as monitor compliance"³⁸. Though the application of instruments of censorship or reward remains an option, institutions will, most of the time, adhere to the new institutional change. The justification of such action is justified because these entities want to maintain their individuality on an international dimension. The ultimate outcome of institutions within a specific sort of competency acknowledging a shift is comparable to "peer pressure at the international level"³⁹. Thereby, actors yield to this demand out of respect, legitimacy, and compliance. They are upholding legitimacy, hoping that it will result in keeping the same level of trust, prestige and reliability within international relations at the same time while defending internal legitimacy. The latter can also be described as "the belief that existing political institutions are better than other alternatives and therefore deserve obedience"⁴⁰. With reference to the delicate institutional power equilibrium in Brussels, institutions have a "psychological need to be part of a group" and also "seek to raise their

³⁷ Cristina Balcaso. "Engaging with Sociological Institutionalism: Addressing the Gaps and Silences", 14

³⁸ Cristina Balcaso. "Engaging with Sociological Institutionalism: Addressing the Gaps and Silences", 14

³⁹ Finnemore, M. and Sikkink, K. "international Norms Dynamics and Political Change", quoted in Cristina Balcaso 15

⁴⁰ Finnemore, M. and Sikkink, K. "international Norms Dynamics and Political Change", quoted in Cristina Balcaso 15

esteem by having others think well of them, in turn, allowing them to think well of themselves"⁴¹.

Such a socialization process is also labelled as Isomorphism, "a constraining process that forces one unit in a population to resemble other units that face the same set of environmental conditions"⁴², which occurs in three different forms:

- Coercive Isomorphism; is defined as the direct and indirect demands that one organization places on or is subjected to by other entities on which it (trade relations, policy-making, etc.). Besides, it is also described as "cultural expectations in the society within which [these] organizations function"⁴³. In these situations, powerful bodies impose guidelines and norms on weaker groups, creating organizations that are "increasingly homogenous within given domains and increasingly organized around rituals of conformity to wider institutions."⁴⁴
- Mimetic Isomorphism takes place in situations with unclear aims or in unpredictable circumstances. In these situations, organizations imitate those they perceive to be more successful or reputable.
- Normative Isomorphism originates from "professionalization"⁴⁵, also described as the "collective struggle of members of an occupation to define the conditions and methods of their work, to control 'the production of producers', and to establish a cognitive base and legitimation for their occupational autonomy."⁴⁶

⁴¹ Finnemore, M. and Sikkink, K. "International Norms Dynamics and Political Change", quoted in Cristina Balcazo 15

⁴² DiMaggio, P.J. and Power, W.W. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields", quoted in Cristina Balcazo 15

⁴³ DiMaggio, P.J. and Power, W.W. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields", quoted in Cristina Balcazo 15

⁴⁴ DiMaggio, P.J. and Power, W.W. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields", quoted in Cristina Balcazo 15

⁴⁵ Cristina Balcazo. "Engaging with Sociological Institutionalism: Addressing the Gaps and Silences", 15

⁴⁶ DiMaggio, P.J. and Power, W.W. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields", quoted in Cristina Balcazo 15

Still, as emphasized by the sociological institutionalists DiMaggio and Powell, the occurrence of these processes does not guarantee any enhancement. However, in the case of organizations:

To the extent that organizational effectiveness is enhanced, the reason will often be that organizations are rewarded for being similar to other organizations in their fields. This similarity can make it easier for organizations to transact with other organizations, attract career-minded staff, be acknowledged as legitimate and reputable, and fit into administrative categories that define eligibility for public and private grants and contracts. None of this, however, ensures that conformist organizations do what they do more efficiently than their more deviant peers⁴⁷.

Hence, rather than being a practical or utilitarian method to increase productivity, Isomorphism is more of a social procedure to increase authority. As a matter of fact, "organizational legitimacy is a status conferred by other actors."⁴⁸ and as DiMaggio and Power assess, "organizational practices become infused with value beyond the technical requirements of the task at hand"⁴⁹. Therefore, the application of these rules is aimed at exacerbating more the legitimacy rather than the performance. Howard Aldrich further remarks, "The major factors that organizations must take into account are other organizations"⁵⁰. This sentence perfectly underscores the main objective of Isomorphism, which in the case of associations, is to be acknowledged by its outside setting, which consists of other actors or institutions. In the meanwhile, for norms, the conformity process is not linked to any enhancement but rather to gaining legitimacy.

Furthermore, through the lens of sociological institutionalism, entities do not account for their utilities. Instead, they follow the guidelines and personalities that are dictated. Performers depend on their narratives and conceptions of political history, as well as their

⁴⁷ DiMaggio, P.J. and Power, W.W: "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields", quoted in Cristina Balcaso 15

⁴⁸ Deephouse, D.L. "Does Isomorphism Legitimate?", quoted in Cristina Balcaso 15

⁴⁹ DiMaggio, P.J. and Power, W.W: "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields", quoted in Cristina Balcaso 16

⁵⁰ DiMaggio, P.J. and Power, W.W: "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields", quoted in Cristina Balcaso 16

place within it, in order to fulfil their identities and adhere to the laws that apply to them. Players can use these codes to understand a scenario better and determine the appropriate identity and behavior rules. Individuality and its associated set of rules of conduct are specified at the same time. To clarify, institutions see rules as something that helps them to identify themselves, and at this moment "commitment to fulfil an identity without regard to its consequences for personal or group preferences or interests"⁵¹. Still, institutions are built by people: "Rules of action are derived from reasoning about the nature of the self. People act from understanding the nature of things, from self-conceptions and conceptions of society, and from images of proper behavior. Identities define the nature of things and are implemented by a cognitive process of interpretation"⁵². Such a statement emphasizes the "recognition process"⁵³, which matches "problem-solving action correctly to a problem situation"⁵⁴. Agents create their personalities and their understandings of scenarios based on a variety of elements, including: experience, expert knowledge, or intuition. Norms and institutions are ingrained in society and are inherent behaviors.

At the same time, norms and institutions in general, serve as "cognitive filters through which actors come to interpret environmental signals and, in so doing, to conceive of their own interests"⁵⁵. The analysis of the external environment in relation to organizational interests can be labelled as an "exercise of power"⁵⁶. Robert A. Dahl provided us with a definition of power: "A has power over B to the extent that he or she can get B to do something that B would not do otherwise"⁵⁷. Steven Lukes subsequently introduced a new

⁵¹ Hay, C. 2006b. "Constructivism institutionalism...Or, why ideas into interests don't go", quoted in Cristina Balcaso 30

⁵² March, J.G. and Olsen, J.P. "Institutional Perspectives on Political Institutions. Governance: An International Journal of Policy and Administration", quoted in Cristina Bacalso 17

⁵³ Cristina Balcaso. "Engaging with Sociological Institutionalism: Addressing the Gaps and Silences",17

⁵⁴ March, J.G. and Olsen, J.P. "Institutional Perspectives on Political Institutions. Governance: An International Journal of Policy and Administration", quoted in Cristina Bacalso 17

⁵⁵ Cristina Balcaso. "Engaging with Sociological Institutionalism: Addressing the Gaps and Silences",30

⁵⁶ Cristina Balcaso. "Engaging with Sociological Institutionalism: Addressing the Gaps and Silences",30

⁵⁷ Hay, C. "Constructivism institutionalism...Or, why ideas into interests don't go", quoted in Cristina Balcaso 30

aspect, stating that one-person (A) influences not only the preferences but also the fundamental goals of another individual (B):

is it, not the most insidious exercise of power to prevent people, to whatever degree, from having grievances by shaping their perceptions, cognitions, and preferences in such a way that they accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they see it as natural or unchangeable, or because they value it as divinely ordained and beneficial? ⁵⁸

In this sense, Isomorphism is the process by which an institution harmonizes its relations with another institution with which it was previously in conflict, according to the former's interests. In such cases, the organizations that gain the most from Isomorphism are thought to be those with more legitimacy and, hence, more influential. For this reason, the contest of isomorphism could reflect a future scenario in which the Commission, a major European institution that enjoyed a high level of authority in the pre-Lisbon time, may be forced to adhere to opposite views in order to preserve its status. Hence, we are explaining this topic in detail.

However, sociological institutionalism says nothing about how metrics like resources and legitimacy translated into more vital positions, or what concepts gave rise to these preferences for "resources or legitimacy"⁵⁹. As was previously said, a conceptual understanding of political history is the foundation of sociological institutionalism. As a result, agents act by priority collections, which are assumed to be true. It is widely accepted knowledge that these dominating identities emerged and how they superseded other standards is not really a concern. Ideas are the source and the end of the behavior. Instead of being the source of power struggles itself, institutions start to function as the setting for power

⁵⁸ Hay, C. "Divided by a Common Language: Political Theory and the Concept of Power", quoted in Cristina Balcastro 30

⁵⁹ Cristina Balcastro. "Engaging with Sociological Institutionalism: Addressing the Gaps and Silences",30

struggles. Consequently, a study of power in SI is limited to environments where an actor's conduct shapes the situation.

1.4 Historical institutionalism

HI, interpretation of institutional change contains a wide cluster of theories, all based on the central understanding of institutions "as (a) the legacy of concrete historical processes and (b) the object of ongoing contestation"⁶⁰. With this definition, we identify institutions as autonomous; even though actors frequently evaluate institutions based on their (expected) implications, particularly when those effects relate to their believed personal gain, all the well-known explanations for institutional "stickiness"⁶¹ do, in fact, frequently hold true, meaning that institutions will always be insufficient in some way. Conversely, institutions may also be considered "optimal"⁶² only when they form coalitions to pursue a shared objective within a specific time window. Nonetheless, both connotations fulfil Pierson's requirement of HI as a "go back and look study"⁶³, whether someone wants to inquire about the features of a specific institution, indeed the main qualitative of HI. However, the standardized approach always remained the same in unveiling the context of what was precursor. Hence, historians have underscored the origins of specific institutional conflicts "as crucial to securing coordination equilibria"⁶⁴. This perspective further exposes the main difference between HI and other institutional theories, such as rational school. While the latter uses the coordinated roles of institutions as their logical base for analyzing enormously

⁶⁰ Kathleen Thelen, James Conran. "The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change", 61

⁶¹ Kathleen Thelen, James Conran. "The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change", 61

⁶² Kathleen Thelen, James Conran. "The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change", 61

⁶³ Kathleen Thelen, James Conran. "The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change", 61

⁶⁴ Hall Pter A. and David Soskice. "Varieties of Capitalism: The Institutional Foundations of Comparative Advantage", quoted in Kathleen Thelen, James Conran 61

consequential occurrences, the former has a consideration of institutions like "distributional instruments fraught with implications for the allocation and exercise of political power."⁶⁵

Academics have evolved several methodologies to theorize institutional change after a crucial juncture based on this underlying essence.

1.4.1 Intercurrence, the origin of institutional change

The causal significance of time and arranging within the political framework was emphasized by classical HI precursors, who also highlighted the extremely important principles of communication between various but "contemporaneous political and economic processes in shaping macro-institutional structures like political regime-type"⁶⁶. Their unique perspective on institutional change results from their model of institutions that prioritizes "historical process" over "equilibrium order."⁶⁷

Institutions contrast different political order logics, each with its own chronological basis, having arisen from a series of specific past disputes and configurations. In light of this, the many parts may not always fit together to form a cohesive, self-reinforcing, much-functioning whole; as a result, the relationships of numerous institutional systems within a community are what cause change, with instability in one institutional layer upsetting the order in others. Hence, "intercurrence"⁶⁸ guides the evolution of a community by merging different institutional tensions, independent of the control of historical actors. Before Lisbon, various distinct institutions' responsibilities and protocols for external contacts had been developed and outlined for a considerable time, occasionally as a consequence of discussions

⁶⁵ Kathleen Thelen, James Conran. "The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change", 61

⁶⁶ Moore, Barrington. "Social origins of Democracies and Dictatorships", quoted in Kathleen Thelen, James Conran 62

⁶⁷ Kathleen Thelen, James Conran. "The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change", 62

⁶⁸ Kathleen Thelen, James Conran. "The Oxford Handbook of Historical Institutionalism: Chapter 3, institutional change", 61

and disputes among the different entities. Following Lisbon's circumstances, these roles and institutional procedures were not set up right away. Therefore, the rise of the parliament's power could cause some intercurrency with the Commission's leading work in trade agreements. This could be a possible outcome after the institutionalization of the Lisbon Treaty.

1.4.2 Agent-Centric Historical Institutionalism and concepts of power

In the past, historical institutionalist researchers have placed a strong emphasis on the institutional context's shift components and processes of positive feedback, which leads to “path-dependent institutional evolution”⁶⁹. However, it is not easy to use positive input to explain various forms of institutional growth. In order to overcome this drawback, recent research has looked at endogenous mechanisms like negative criticism, which gradually erodes adherence to the institutional standard organization and so promotes institutional change. Scholars studying the history of the European Union should find resonance in the transition processes (Critical juncture) identified by their classification, as there are several examples of "conversion, defined as reinterpreting nominally unchanged rules, altering their meaning and effect by "redirect[ing them] to new goals, functions, or purposes"⁷⁰. The concept can be associated with an institution's origin, reflecting the power equilibrium at the time, but it no longer strongly influences power allocation afterwards. Hence, institutional equilibria are constantly affected by institutions which "often have unintended and indeed unanticipated feedback effects"⁷¹. Because of these results, "institutions have an independent causal effect— empowering and constraining political actors and thus shaping policy and

⁶⁹ Tim Büthe, “The Oxford Handbook of Historical Institutionalism: Chapter 9, supranationalism”, 489

⁷⁰ Streeck, Wolfgang and Kathleen Thelen. “Introduction.” In *Beyond Continuity: Institutional Change in Advanced Political Economies*, quoted in Tim Büthe, 489

⁷¹ Tim Büthe, “The Oxford Handbook of Historical Institutionalism: Chapter 9, supranationalism”, 488

outcomes"⁷². Previous institutional decisions alter the interests of political players or even create new ones, in addition to altering how they pursue their objectives. Historical institutionalist researchers can offer endogenous theories of institutional evolution across time thanks to these responses. Although, through the analysis of these cases, it is shown how institutional change requires "agency"⁷³; an element not present within Pierson's historical studies. In response, Tim Büthe proposes "agent-centric historical institutionalism" as a historical institutionalism theory of institutional development in order to solve this problem, expanding on the work of Mayntz and Scharpf. It calls for the analyst to initially determine the critical players and ascertain the goals that these entities want to achieve. Then, the analyst must theorize how these actors' interests and the means by which they go after them will be influenced by institutional feedback as well as the opportunities and limitations of the more extensive institutional configuration (Historical juncture). . Organizations are also expected to pursue their goals at any given time carefully. The fundamental finding of historical institutionalism, which qualifies this common wisdom regarding paramount choices, is that institutions "can reshape interests or even create new actors"⁷⁴, as previously stated, being autonomous. More precisely, there are three different kinds of "change agents" that may seek change within an institutional framework:

- According to the studies of Michaels and Carpenters, the EU's bubble -composed of the Commission, Council, the Court of Justice, and recently, the European Parliament - can convert their basic desires for dominance and preservation into a desire to engage in more fascinating and critically significant activity, which in turn brings change. The European supranational organizations have both official and informal opportunities to pursue their desire for supranational institutional growth within the larger institutional framework of

⁷² Tim Büthe, "The Oxford Handbook of Historical Institutionalism: Chapter 9, supranationalism", 488

⁷³ Tim Büthe, "The Oxford Handbook of Historical Institutionalism: Chapter 9, supranationalism", 489

⁷⁴ Tim Büthe, "The Oxford Handbook of Historical Institutionalism: Chapter 9, supranationalism", 490

the EU, in which they are deeply rooted. At the same time, the Union structure establishes burdens for these entities. For instance, the Commission can set the agenda only with the consent of the Council, which is made up of the political administrations of the member states operating in concert. However, the member states must provide their consent so the Commission can proceed with its recommendations for institutional changes. Moreover, the institutions are provided with a wide range of "informal or covert means of seeking institutional change"⁷⁵, which go from urging ideas that, in time, influence the European bureaucratic decisional process or through the creation of "pro-integration actors"⁷⁶. Yet, as Posner warns, "these informal methods may be well suited to "trigger[ing] change" but not to control the outcome "once an issue migrates to the public arena and draws additional powerful actors into the fray."⁷⁷ Thus, even in situations where transnational players are the primary forces behind change, we still need to examine other actors closely.

- Since the European member states are the original signatories to the EU's founding treaties, they have significant authority to act as change agents inside the EU's institutional framework. Nonetheless, National layer democratic politics is expected to continue to be the most significant institutional framework for member state governments, influencing how their primary objectives of power, abundance, and survival translate into second-order choices about supranationalism.
- Despite being primarily disregarded in the literature, sub- and transnational private entities are powerful change agents when placed in an institutional framework that supports them. Furthermore, placing these actors within EU methods of growing mutual dependence produces theoretical projections about the circumstances in which private

⁷⁵ Hétier, Adreienne. "Overt and Covert Institutionalization in Europe, in *The Institutionalization of Europe*", quoted in Tim Büthe 490

⁷⁶ Tim Büthe, "The Oxford Handbook of Historical Institutionalism: Chapter 9, supranationalism", 490

⁷⁷ Tim Büthe, "The Oxford Handbook of Historical Institutionalism: Chapter 9, supranationalism", 490

parties are most likely to act as catalysts for institutional change. For example, the EU common market project's institutionalization of economic interdependence made companies operating in a single member state participants in the rules and regulations of other EU MS.

In the context of the Lisbon Treaty, the member states could have been the main factor that induced the Critical Juncture (Lisbon) as a way to regain more influence within European foreign policy matters. Thus, the "agent Centric theory" may reflect a possible outcome of Lisbon, which we need to highlight. Finally, the actor-centric historical institutionalist argumentation of institutional growth suggests that political conflict is the source of multinational jurisdiction formation, even though proponents of international government may try to downplay criticism by characterizing it "apolitical, presenting supranationalism as the most efficient solution to an economic or technical, administrative problem rather than a change in political institutions and the distribution of power"⁷⁸. It is implied by these disagreements that there will be supporters and detractors of any institutional reform. The latter is unlikely to build enduring alliances. Even though the particular group supporting such a request at a given moment fails, adversary also lack the momentum mechanisms in the larger organizational structure of the EU to transform calls for reduced supranational authority into genuine changes in institutions. Opponents of supranational control, on the other hand, have a better chance of forming enduring alliances, but this is never a given. Nevertheless, the most important lesson of the actor-centric theory, is that:

once a supranationalist institutional change has occurred, institutional retrenchment to the *status quo ante* via intergovernmental bargaining would require a supermajority or even unanimity. A blocking minority of member governments can therefore ensure the persistence of the new status quo even if they could not have brought it about through an intergovernmental bargain. As a consequence, change toward more supranationalism

⁷⁸ Tim Büthe, "The Oxford Handbook of Historical Institutionalism: Chapter 9, supranationalism", 493

should be more likely than the opposite, and an increase in supranational authority should be the trend, even though there might be periods of stalemate and conceivably even reversals.⁷⁹

⁷⁹ Scharpf, Fritz W. "Die Politikverflechtungs-Falle", quoted in Tim Bütke 493

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Chapter 2

Lisbon Treaty and further developments

2.1 Legal Framework

The primary laws of Europe, both in the past and present, are well-organized in codification despite facing some unique issues. European courts have regarded the Treaties, which consist of written legal texts, as the constitution of the Union. For instance, the "Treaty Establishing the European Community" (TEC) and "Treaty on the European Union" (TEU) are intricate and lengthy, "lacking in the clarity they would need in order for them to be understood by some and accepted by all"⁸⁰. The Treaties fail to provide a clear and understandable summary of the polity's fundamental rights and obligations. This issue could be clarified by the understanding that "'over-codified: they contain 'more in some ways and less in others than national constitutions"⁸¹, and the ambiguity in their wording indicates that they have been worked out rather than "intentionally designed"⁸². Though the Lisbon Treaty stated, "[t]he Union shall replace and succeed the European Community,"⁸³ the risk of more equivocation and intricacy is exacerbated in the future. However, the 2007 Intergovernmental Conference firmly remarked that the "constitutional concept, which repealed all existing Treaties, was to be abandoned"⁸⁴. Thereby, the Lisbon Treaty's primary goal is to qualify instead of abolishing, and by introducing more protocols, alternatives, and assertions, it increases rather than decreases complexity. In light of this, we can deem the Treaty as an Historical Juncture. Although, it appears that in some exceptions, this process did not go smoothly in some sections like Title 1 TEU(L) because the comprehensive TFEU includes the

⁸⁰ Pirris, J.-C. "Does the European union have a Constitution? Does it need one?", quoted in Christine Reh, 632

⁸¹ Grimm, D. "Does the European Union need a Constitution?", quoted in Christine Reh, 633

⁸² Menéndez, A.J. "Three conception of the European Constitution", quoted in Christin Reg, 633

⁸³ Treaty of Lisbon, "Amending the Treaty of the European Union and the Treaty establishing the European Community", 11

⁸⁴ European Council (a). "Presidency Conclusions: Brussels European Council 21/22 July", 2

vertical division of competencies or financial rules. Still, many protocols that supervise European competencies are in the TFEU's comprehensive guidelines. On the other hand, the updated TEU or TEU(L), focuses on the power of status of the institutions endowing:

- the European Council institutional status;
- Bolstering the role of the parliament in electing the President of the Commission.
- Lessening the College of Commissioners.
- Creating a permanent President of the European Council.
- Merging the functions of the High Representative and the Commissioner for External Relations.

Regarding the vertical division of power, the "Title 1 General Provisions" add a new perspective to the already established subsidiarity and proportionality with the new "principle of conferral, designed to limit the Union's competences"⁸⁵. This is in line with the approach of joint accountabilities at the Union supranational level: "When the Union has taken action in a certain area, the scope of this exercise of competence only covers those elements governed by the Union act in question and therefore does not cover the whole area"⁸⁶. In a nutshell, the Lisbon changes to support the Treaties' fundamental role in establishing and limiting political and legal authority, albeit less methodically than a Constitutional Treaty would have accomplished. The new Treaty provides significant clarity at the vertical level, aiming to limit the supranational level while further defining the powers of the government's organs at the horizontal level.

Furthermore, compared with the previous treaties, the Lisbon Treaty can be deemed less ingrained. On this line, Art. 48 TEU and TEU(L), respectively, stated that changes must be approved by the EU heads of State and Governments (HSG) in an IGC by a unanimous vote,

⁸⁵ Treaty of Lisbon, "Amending the Treaty of the European Union and the Treaty establishing the European Community", 14

⁸⁶ Pirris, J.-C. "Does the European union have a Constitution? Does it need one?", quoted in Christine Reh, 635

and each Member State must ratify the new provisions in accordance with its own legal processes. Though the LT "shall not increase the competences conferred on the Union,"⁸⁷ it does not substantially alter the current situation. The "simplified revision procedure,"⁸⁸ which is intended to be used alongside IGCs to update Part III TFEU on internal policy, still needs unanimity within the European Council. The transnational scenario becomes much more complicated if one characterizes a constitutional problem as rooted because it has been removed from the mainstream political discourse. As a matter of fact, "proper division of power and allocation of functions between the institutions is itself normatively contestable, which has implications for the stability of any European Constitution"⁸⁹. This is so as the most contentious problems have been those that lie at the foundation of Europe's legal and governmental system: the vertical division of choice-making authority and competencies, the distribution of authority between EU members, and the division of powers among European institutions. From solidification to security, the Treaties have been secure insofar as they were concluded for an indefinite period of time and initially without the power to secede. This was in line to the goal to achieve effective economic unification "stepping stone [. . .] [and a] means to reach wider and explicitly political end"⁹⁰. From the seventies, the Court's interpretation of the notion of "implied powers"⁹¹ and the liberal application of Article 308 TEC—which permits the enlargement of competencies without the need for legislative reform—have all contributed to the progressive expansion of Community capabilities. However, the Union's transnational organization has, in fact, been continuously changing, as seen by the six main IGCs, which were held from 1990 to 2007. Yet, long-term stability is not expected to be brought about after the application of the Lisbon Treaty, even though reform

⁸⁷ Treaty of Lisbon, "Amending the Treaty of the European Union and the Treaty establishing the European Community", 58

⁸⁸ Christine Reh, "The Lisbon Treaty: De-Constituzionalizing the European Union", 636

⁸⁹ Craig, P. "Constitutions, Constitutionalism, and the European Union", quoted in Christine Reh, 636

⁹⁰ Menéndez, A.J. "Three conception of the European Constitution", quoted in Christin Reg, 636

⁹¹ Christine Reh, "The Lisbon Treaty: De-Constituzionalizing the European Union", 636

weariness could make it unlikely that a new IGC would be called very soon, in consideration that the HSG "expect no change in the foreseeable future"⁹². In addition, "the LT not only preserves Art. 308 TEC but, by merging the three pillars, theoretically allows its use beyond former Community issues"⁹³.

2.2 The EEAS introduction

The EU's pre-Lisbon external relations framework, a complex web of foreign policies, was a subject of primary critique. The EU, a global actor with a federal features system, operates through multiple centers of power, each contributing to its external voice. This intricate and disjointed constitutional arrangement has been for a while a reflection of the EU's internal and external challenges. The coordination issues, a result of this complexity, are not limited within EU institutions but also between EU member states and these institutions. The EU's external actions on the global stage have undeniably expanded together with the creation of the Common Foreign and Security Policy (CFSP) and, more recently, the European Security and Defense Policy (ESDP). However, while enhancing the EU's global presence, these policies have also complicated collaboration by sparking intricate disputes over authority among all three components of the EU's external relations. Hence, developing an institutional framework that maintains a balance between the necessity for the EU to have a pragmatic plan and communicate with a single viewpoint within the international global affairs and permits the Member States, who are still independent actors in foreign policy, to participate thoroughly has been one of the biggest challenges for EU external relations.

The Lisbon Treaty is not an instant fix for every one of the alleged flaws in the EU's existing foreign relations since member states and institutional desire to reform will ultimately

⁹² European Council (b). "Presidency Conclusions: Brussels European Council 14 December 2007", 3

⁹³ Kurpas, S. "The Treaty of Lisbon: How Much "Constitution" is Left?", 21

determine a lot of these issues. Nonetheless, it is thought that the institutional changes recommended by the Lisbon Treaty—prominently, the inauguration of the European External Action Service (EEAS)—allow the foundations required for change to be achieved. In fact, predictions made during the Irish no-referendum said that even in the lack of the ratification of the Lisbon Treaty (worst-case scenario), the deficiencies in the previous management of EU external relations would unavoidably lead to the EEAS's establishment, "with or without the treaty". This does not always mean that new systems of decision-making result in increased clarity or effectiveness, as was previously suggested. Rather, the Lisbon Treaty suggests the possibility of this because a large number of the suggested changes were made with coherence and efficiency as objectives to be achieved. Subsequent to the plan that EU High Representative for the CFSP Javier Solana submitted to the European Council on December 11–12, 2008, it was once more highlighted how the EU has achieved improvement, but only because of:

[. . .] ensure our security and meet the expectations of our citizens, we must be ready to shape events. That means becoming more strategic in our thinking, and more effective and visible around the world. We are most successful when we operate in a timely and coherent manner, backed by the right capabilities and sustained public support⁹⁴.

In a similar fashion, following the unsuccessful 2005 referendums on the Constitutional Treaty in the Netherlands and France, the European Commission put up a series of proposals with a particular emphasis on coherence and efficacy. According to the Commission's 2006 report,

Unsatisfactory coordination between different actions and policies means that the EU loses potential leverage internationally, both politically and economically. Despite progress with improving coordination, there is considerable scope to bring together different instruments and assets, whether within the Commission, between the Council and Commission, or between the EU institutions and the Member States. Furthermore, the impact of the EU's policy is weakened by a lack of focus and continuity in external representation. Within the framework of the existing treaties, the Community and

⁹⁴ European Council, "Report on the Implementation of the European Security Strategy: Providing Security in a Changing World", 2

intergovernmental methods need to be combined on the basis of what achieves the desired outcome, rather than institutional theory or dogma⁹⁵.

After the Constitutional Treaty's signature in October 2004 and the late May/early June 2005 French and Dutch referenda, the preparatory work for the EEAS came to an abrupt halt. Up to this moment, the parties' negotiations on the budget, personnel matters, legal status of the EEAS, and the administration of EU delegations had progressed. Several external comments to the discussion that followed have sparked consideration of the function and design of the service. In its plenary session on March 15, the European Parliament also discussed the EEAS, and on May 26, it approved a motion to the agency. The resolute wish to see the service was included in the resolution:

[. . .] incorporated, in organizational and budgetary terms, in the Commission's staff structure, while the directorial powers of the Foreign Minister, who will also be a Commission Vice-President, should ensure that the Service is bound in the 'traditional' foreign policy sphere (the CFSP and the CSDP) by the decisions of the Council — as provided for by the Constitution — and subject in the Community external relations sphere to the decisions of the college of Commissioners⁹⁶.

This statement mirrored a previous belief shared by the Commission, stating that "the essential point is that the European External Action Service should not be separate from the other institutions of the Union and should be able to carry out its work in close conjunction with all the Commission departments"⁹⁷. Furthermore, it should be specified that the European Parliament wants to see the Commission have an important position in the EEAS. Their position and power in EU foreign relations would increase as a result (especially due to the provisions in the Lisbon Treaty to change bureaucracy and subcommittee). Moreover, the

⁹⁵ Commission of the European Communities, "Communication from the Commission to the European Council on Europe in the World—Some Practical Proposals for Greater Coherence, Effectiveness and Visibility", 6

⁹⁶ Simon Duke, "Providing for European-Level Diplomacy after Lisbon: The Case of the European External Action Service", 217

⁹⁷ Commission of the European Communities (2003). "A Constitution for the Union: Opinion of the Commission, Pursuant to Article 48 of the Treaty on European Union, on the Conference of Representatives of the Member States' Governments Convened to Revise the Treaties", 11

idea that the European Parliament would oversee the Community's budget, which would primarily finance the EEAS, would further strengthen the former's presence over the Lisbon architecture and in foreign policy matters as well. On the other hand, in the 2005 Joint Progress Report, EU High Representative for CFSP Javier Solana and President of the European Commission José Manuel Barroso expressed fewer favors in comparison to the European Parliament regarding the agency's institutional location. They chose to characterize the EEAS as "sui generis in nature"⁹⁸ instead of placing it directly in the Commission, sharing the same thought of the Parliament. Thus, the EEAS service "would not be a new "institution", but a service under the authority of the Foreign Minister, with close links to both the Council and the Commission"⁹⁹. The justification for the sui generis structure included economic and duplication-saving measures as well as supporting the Minister by giving the EEAS a structure within which it could make use of the Council's and the Commission's support services. The member states were divided during the report over whether they wanted the EEAS to be limited to CFSP concerns or to have a much wider mandate that covered things like development, enlargement, and neighborhood planning (ENP). The sui generis appellation was preferred as a consequence of such varied thoughts, but it only partially resolved the deeper conflicts. However, as was said subsequently, a first guideline was given according to the Lisbon Treaty, the EEAS will "[...] work in cooperation with the diplomatic services of the Member States and shall comprise officials from the relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States"¹⁰⁰ additionally The Service will collaborate with the General Secretariat of the Council, the Commission, and the Democratic

⁹⁸ Simon Duke, "Providing for European-Level Diplomacy after Lisbon: The Case of the European External Action Service", 217

⁹⁹ Council of the European Union. "European External Action Service, Joint Progress Report to the European Council by the Secretary-General/High Representative and the Commission", 4

¹⁰⁰ Official Journal of the European Union. "Consolidated Version of the Treaty of the European Union", 20

Services of the Member States, "in order to ensure consistency between the different areas of the Union's external action and between those areas and its other policies"¹⁰¹. As a result, in the endeavor to guarantee a pragmatic and comprehensive EU foreign policy, the EEAS plays a crucial role as a liaison between all parties involved. But still, "as was already pointed out just days after the coming into force of the Lisbon Treaty, the successful work of the EEAS is ultimately predicated on the trust of both the Council and the Commission"¹⁰².

2.3 Lisbon in practice, coordination between EEAS and Commission.

The implementation of the Lisbon Treaty marked the start of an entirely new phase for the EU's foreign relations architecture. Though there was optimism about a more potent EU presence globally, the practical interpretation and application of the new treaty provisions remained unclear. Prior to Lisbon, a number of individual institutions' duties and procedures in the area of external relations had been established and defined for an extended amount of time, sometimes as an outcome of negotiations and conflicts admits the various institutions and the MS. These responsibilities and institutional processes had not yet been established immediately after the Lisbon context; of the primary objectives of the Lisbon Treaty amendments was to empower the EU to portray itself as a competent foreign policy actor, a prospect that instils hope for the EU's future in international relations. However, the amendments also made it possible for these conflicts to be fought inside the EU or for new structural balances and agreements to be reached once again.

Coordination is a crucial component of decision-making, and it continues to present the Commission with a variety of difficulties. Coordination procedures that are highly

¹⁰¹ Astrid Boening - Jan-Frederik Kremer - Aukje van Loon. "Global Power Europe - Vol. 1: Theoretical and Institutional Approaches to the EU's External Relations", 24

¹⁰² Duff, A, "All eyes on 'triple-hatted' Ashton", quoted in Astrid Boening - Jan-Frederik Kremer-Aukje van Loon, 24

decentralized and overseen by the Commission's Secretariat General involve several players at different levels. Goal-oriented organizational tools and the legal structure seek to guarantee significantly consistent policies systematically. Despite being an overarching subject for the Commission's work, coordination is nevertheless tricky, and concerns about institutional and horizontal coherence are frequently raised. Notwithstanding the unique political attention given to this policy sector, external policies are not atypical of the issue. Synchronization takes into account inter-institutional dynamics in addition to intra-institutional ones. The establishment of the EEAS coincided with the Lisbon Treaty's entry into effect, adding another player to the procedure for making decisions. Despite not being a Commission supporter, this actor complies with Commission protocol and actively participates in regular decision-making. To some extent, the new institutional arrangement has upset the established patterns of harmonization and generated new demands for coordination. Lisbon Treaty's main priorities are uniformity and collaboration. Because of the positive connotation that comes with consistency and coordination, these features of legislative results and decision-making are essential to improving the EU's standing as a global player. Despite its attempts to address persistent objections, the new Treaty does not offer a prefabricated solution to the problem. Nonetheless, it creates new institutional opportunities, which resurrects the organization difficulty. Here, we address the degree to which the EU administration has adopted the bold legal reforms of Lisbon, in order to foster the collaboration among the Commission and the EEAS in the area of European foreign policy:

- In terms of structure, the Commission per se is scrutinized by a "shadow Commission"¹⁰³ that creates connections of DGs engaged with similar issues or the same subject from several angles, significantly influencing the formulation of policy as soon as intersecting

¹⁰³ Astrid Boening - Jan-Frederik Kremer - Aukje van Loon." Global Power Europe - Vol. 1: Theoretical and Institutional Approaches to the EU's External Relations", 42

interests were at risk. "The decision to create the EEAS demonstrates the institutional set-up gearing up towards the goal of consistent EU's external action"¹⁰⁴. Another example is the newly institutionalized "global issue units"¹⁰⁵, which adhere to both external and internal policies with a (vital) external aspect. To improve uniformity, the division organizes numerous initiatives and ensures that every policy's external aspects are appropriately considered. At the same time, the Development Cooperation Unit, established inside the EEAS to expressly implement EU development policy, collaborates closely with the Global Issues Unit. More importantly, European staff tends to specify how the accountabilities of these teams (another example is the F3 group "External Institutional Relations") did not conflict but instead complimented one another, with the chiefs of the departments having a robust professional connection.

- Due to the absence of the "overall picture"¹⁰⁶ within the Commission initiatives, the Secretariate General (SG) pursued "a crucial coordinating role in a fragmented institutional environment"¹⁰⁷. Plus, "it offers a channel for two-way communication between Commissioners and the services, and oversees inter-departmental coordination"¹⁰⁸. Also, it backs both the Commission College and the President of the Commission both substantively in the subject matter of the chosen regulations and technically in the working approaches. In a nutshell, the SG is described as a manager of relationships with other EU institutions and an advocate for bureaucratic effectiveness.

Not to mention administrative steadiness—by planning the cooperation amongst

¹⁰⁴ Astrid Boening - Jan-Frederik Kremer - Aukje van Loon." Global Power Europe - Vol. 1: Theoretical and Institutional Approaches to the EU's External Relations", 42

¹⁰⁵ Astrid Boening - Jan-Frederik Kremer - Aukje van Loon." Global Power Europe - Vol. 1: Theoretical and Institutional Approaches to the EU's External Relations", 42

¹⁰⁶ Astrid Boening - Jan-Frederik Kremer - Aukje van Loon." Global Power Europe - Vol. 1: Theoretical and Institutional Approaches to the EU's External Relations", 44

¹⁰⁷ Astrid Boening - Jan-Frederik Kremer - Aukje van Loon." Global Power Europe - Vol. 1: Theoretical and Institutional Approaches to the EU's External Relations", 44

¹⁰⁸ Astrid Boening - Jan-Frederik Kremer - Aukje van Loon." Global Power Europe - Vol. 1: Theoretical and Institutional Approaches to the EU's External Relations", 44

organizations and keeping an eye on the many stages of the decision-making process. The SG promotes horizontal methods at the service and ministerial divisions and concentrates on cooperation within and across institutions, working beyond the Commission's borders. "Upstream coordination"¹⁰⁹, which is its primary coordinating role, is related to "early steering and screening of internal processes to prevent conflicts appearing at later stages of decision making"¹¹⁰. Furthermore, The SG's organizational design underscores the political value placed on overall organization and uniformity. Specifically, external policy harmonization has become more prominent recently. Unit D3, "Justice and Security," which dealt with the safety aspect, was in charge of it from May 2005 until July 2010. Subsequently, Unit F3 "External Institutional Relations", took its place, which conforms to DEVCO, ECHO, and the EEAS. The institutionalization of such a unit is in response to the uniqueness of external policy following Lisbon, which justified the establishment of unit F3. Initially, the Commission's stance on foreign policy was no longer coordinated after DG Relex had vanished from the organization. Secondly, new coordination requirements were produced by the elevated position of external affairs in an increasingly complicated institutional framework, which is typified by the presence of new entities like the EEAS and the HRVP. These demands need the assets of an entire subdivision. "It is in this context that the contribution of the Secretariat to coordination and consistency is emphasized."¹¹¹

- "Procedural instruments ensure that coordination happens systematically during decision-making to avoid one-sided decisions in a fragmented institutional environment."¹¹² An

¹⁰⁹ Astrid Boening - Jan-Frederik Kremer - Aukje van Loon." Global Power Europe - Vol. 1: Theoretical and Institutional Approaches to the EU's External Relations", 45

¹¹⁰ Hartlapp, M., Metz, J., & Rauh, C, "The agenda set by the EU Commission: The result of balanced or biased aggregation of positions?", quoted in Astrid Boening - Jan-Frederik Kremer - Aukje van Loon, 45

¹¹¹ Kassim, H. "The secretariat general of the European commission, 1958–2003: A singular institution", quoted in Astrid Boening - Jan-Frederik Kremer - Aukje van Loon Kassim, H. 46

¹¹² Spence, D. "The directorates-general and the services: Structures, functions and procedures", quoted in Astrid Boening - Jan-Frederik Kremer - Aukje van Loon Kassim, H. 46

example of this is "Strategic Planning and Programming" (SPP), which "is the first step of coordination and a requirement to address internal fragmentation"¹¹³. To provide general consistency, SPP organizes the objectives of many Departments and establishes defined institutional goals. SPP is

organized around an annual policy cycle, with an early identification of priorities, the aim of which is to strengthen the SG's coordinating role, enabling it to intervene at an earlier stage, encouraging DGs to cooperate even before proposals have been drafted, convening meetings of officials and cabinet members, and arbitrating in inter-departmental disputes.¹¹⁴

However, since September 2010, SPP has engaged a new path that includes the participation of all the DGs and the newly established EEAS during the composition of every Commission Work Programme under the supervision of "The Commission Work Programme and political programming team" of the Secretariate General. The SG analyzes individual portfolios based on their timeliness or responsibility. This position guarantees that all pertinent parties are gathered from the beginning and that intra-department concerns are handled promptly. The following phase entails bilateral discussions between the SG and the President's cabinet, as well as between cabinets and DGs, to explore potential initiatives to be included in the Commission Work Programme, potential packages to be formed, and potential collaboration between DGs. Nevertheless, Documents related to the need for the exacerbation of pragmatism within external policies in order for the EU to become a recognized player indicate that strategic planning in external policies is a political endeavor. "Europe as a World partner"¹¹⁵ is one of the four main goals of the 2005–2009 strategy policy, respectively

¹¹³ Kassim, H. "The secretariat general of the European commission", quoted in Astrid Boening - Jan-Frederik Kremer - Aukje van Loon Kassim, H. 46

¹¹⁴ Kassim, H. "The secretariat general of the European commission", quoted in Astrid Boening - Jan-Frederik Kremer - Aukje van Loon Kassim, H. 46

¹¹⁵ Kassim, H. "The secretariat general of the European commission, 1958–2003: A singular institution", quoted in Astrid Boening - Jan-Frederik Kremer - Aukje van Loon Kassim, H. 46

focusing on the suitability and efficacy of EU foreign activity, as well as the importance of consistency in that regard:

The political clout of the Union should better match its economic weight. To address this goal, the Union must achieve greater political coherence in external action: coherence between different branches of external policy; coherence between internal and external policies; and coherence in action between that of the Union or Member States bilaterally. If it wants to have a stronger presence and influence on the international scene, it needs to speak with a single voice and promote a coherent stand¹¹⁶

The language has been altered in the 2010 State of the Union address. The issue is still apparent even when neither pragmatism nor uniformity are addressed. The EU's challenge in foreign policy is to play a significant role in international affairs. The EU needs to assume an authority in international affairs commensurate with its economic might. The language implicitly alludes to coordinating foreign policies. The Lisbon Treaty's creation of the HRVP post and the EEAS has generated new opportunities, which the President of the Commission has described. Coherence is an issue, which is why the EU needs to encourage a "comprehensive and cohesive policy on the external challenges we face today"¹¹⁷. The novelties allocated by the Lisbon Treaty were outlined in the State of the Union: "making the most of policies for which the Commission is responsible such as development, trade, enlargement, humanitarian aid and the external aspects of internal policies, and coordinating them with the work of the EEAS to deliver a strategic overview of the EU's bilateral relations".¹¹⁸ Notably, coordination is seen as a technique to align the disparate outside initiatives that are tugging in separate directions.

¹¹⁶ Commission of the European Communities, "Strategic Objectives 2005 – 2009 - Europe 2010: A Partnership for European Renewal Prosperity, Solidarity and Security", paragraph 4

¹¹⁷ European Commission, "COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS", 8

¹¹⁸ European Commission, "COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS", 8

In conclusion, the EEAS presents new coordinating requirements and challenges to established coordinating norms. Although the HRVP commends the enhanced coherence and coordination of foreign strategies, exact operational coordination still needs to be improved. The EEAS and Commission departments now have new, integrated operating ties. Whenever the EEAS drafts recommendations for approval by the College or simultaneously by the College and the HRVP, and when the HRVP's duties inside the Commission are taken into consideration, standard Commission processes follow (Article 18.4 TEU). The EEAS is now an entity within CIS's network, as well as in other IT services linked to decision-making; official collaboration agreements with Commission services have been set. The EEAS is fully incorporated into the Commission's ISC process. The EEAS have to be informed when Commission departments are initiating an ISC on matters related to the EEAS's activity, and it should utilize the CIS network to interact with Commission facilities when formulating a suggestion for the Commission to approve.

2.4 Allegedly connections between the EEAS and other actors

Aside from what we mentioned above, the establishment of the EEAS also catered to the specific interests of particular stakeholders. More precisely, "the decision to create the EEAS revealed the reluctance of EU Member States to empower the Commission as their representative in international affairs"¹¹⁹ rather than enhancing the Commission's diplomatic capabilities, "Member States' desire to maintain intergovernmental decision-making on the CFSP"¹²⁰, which required establishing a new Service. This was true even though DG Relex had already shaped an external policy bureaucracy. Nevertheless, the Commission was a well-renowned, powerful entity within the European institutional framework that enjoyed

¹¹⁹ Mark Furness, "Who controls the European External Action Service? Agent Autonomy in Eu External Policy", 112

¹²⁰ Mark Furness, "Who controls the European External Action Service? Agent Autonomy in Eu External Policy", 112

considerable resources and influence, besides its custom of going above its agenda. Hence, controlling the Commission would be significantly more challenging than establishing a new agency whose duties were restricted to foreign policy. This thought was further exacerbated by French, German, and English delegations during the EEAS implementation talks. In the latter, they expressed the necessity of striking a compromise between preserving their bilateral networks and ties and the MS's interests in a robust foreign function for the EU during the EEAS discussions. The outcome of these negotiations was "an arrangement that would empower the High Representative and the EEAS at the expense of the Commission, while at the same time limiting their independence by keeping them closely tied to the European Council"¹²¹. Moreover, if we take into consideration the "Berlin's dismay at British domination of the EEAS's set up",¹²² it is clear to us how the member states were capable of gaining a significant stronghold within EU external matters.

¹²¹ Mark Furness, "Who controls the European External Action Service? Agent Autonomy in Eu External Policy", 112

¹²² Mark Furness, "Who controls the European External Action Service? Agent Autonomy in Eu External Policy", 113

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Chapter 3

The Ukrainian “Partnership and Cooperation Agreement” (PCA)

3.1 Historical context

Cooperation with the European Economic Community (EEC) was impractical prior to Ukraine's independence on December 1, 1991, when the USSR remained a member of the Council for Mutual Economic Assistance (COMECON). This was due to the USSR's refusal to acknowledge the EEC's international legal personality, though the situation would have changed during the first phase of Gorbachev's *perestroika* and *glasnost*. More precisely, in June 1988, a Joint Declaration was signed between the EEC and Comecon, establishing official connections between the two parties and officially recognizing the EEC by all the states that compose the Comecon. Hence, a first step was made to reconcile the European continent. Moreover, the Community started a first dialogue with east soviet countries to establish "Trade and Economic Cooperation" (TCA) to strengthen the ties even further. Despite the importance of TCA, an important historical event would have changed the entire international landscape forever. Following the USSR's collapse in 1991, the new formed Soviet Republics formed a new dimension for collaboration in the shape of the Commonwealth of Independent States (CIS) in Minsk on December 8, 1991. This happened because the USSR had not experienced the anticipated economic changes brought about by *glasnost* and *perestroika*. The former USSR countries became separate nations, each choosing their own path as "newly independent states" (NIS). As a matter of fact, they were eager to create independent webs of international connections, particularly with the European Community, as newly independent nations. On the other hand, the EEC was forced to rearrange its relations with the numerous Eastern nations, both in shape and content. On

December 16, 1991, the twelve members of the European Community convened an emergency ministerial conference within the authority of the “European Political Cooperation” (EPC). The Ministers decided on rules for the new republics within the precious territories of the URSS and Eastern Europe to be recognized. There had to be an additional aggressive strategy to follow this initial broad political step. Specifically, the Community was confronted with the “return to Europe”¹²³ asserted by a number of Central and Eastern European nations (CEECs) during a time window in which the member states were working on laying out the specific legislative measures to create an “economic and monetary union”¹²⁴. In fact, the 12 were in the process of giving the building a political aspect, “turning the Community into the European Union”¹²⁵, in order to reaffirm its political identity globally. The unexpected historical event of the final defeat of communism in Europe exacerbated a process of European change that “catapulted (the EU) into leadership”¹²⁶ for ensuring an environment of safety and security in the area as a whole and for comprehensively responding to the aspirations of the NIS and CEECs for Europe, even if the Treaty had not yet been signed. The Community gradually developed a distinction among European nations between those who would have “a right to participate in the legal system of the EC”¹²⁷ contrary to the rest of those that were supposed to stay outside the latter's integration process in response to this enormous and unanticipated issue.

Given as an example, even though the absence of legal identity granted to the CIS precluded the possibility of an interregional model accord between the EEC and the CIS,

¹²³ Christophe Hillion, “Partnership and Cooperation Agreements between the European Union and the New Independent States of the Ex- Soviet Union”, 403

¹²⁴ Christophe Hillion, “Partnership and Cooperation Agreements between the European Union and the New Independent States of the Ex- Soviet Union”, 403

¹²⁵ Christophe Hillion, “Partnership and Cooperation Agreements between the European Union and the New Independent States of the Ex- Soviet Union”, 403

¹²⁶ J. Pelkmans and A. Murphy, “Catapulted into leadership: the Community's trade and aid policies vis-a-vis Eastern Europe”, quoted in Christophe Hillion, 403

¹²⁷ Christophe Hillion, “Partnership and Cooperation Agreements between the European Union and the New Independent States of the Ex- Soviet Union”, 403

previously, ECC-URSS TCAs evolved and were changed through unilateral correspondence exchanges into a collection of mutually beneficial agreements. Those accords served as the foundation for the EEC-NIS relationship. One of the most critical components of the Community's foreign dimension afterwards the implosion of the USSR was that, right from the start, the Community made a distinction between the area addressed by the new independent Ex-COMECON countries (henceforth known as Central and East European Countries (CEECs)) and the former USSR (excluding the Baltic States). Different forms of accords and various community initiatives were used to fortify this difference. The Community signed more modest PCAs with the previous Soviet Republics (NIS) but reached "Europe Agreements" (EAs) with the CEECs. Based on this divergence, each cluster of nations received a separate type of Community aid, such as TACIS, which was associated with NIS and, on the contrary, PHARE for the CEECs. The EEC's decision to pursue two different paths with various Central-Eastern European countries was a topic of controversy, which will be analyzed in more detail below.

3.2 Difference between the PCA in comparison of the EC External Agreements.

The Partnership Agreements were more than just TCAs that had already been applied. In legal terms, they are hybrid commitments founded on Articles 113 and 235 of the EC Treaty since they address areas in which the Community is not solely accountable. Each Member State must ratify the PCAs before they can come into force, in order to set up "By way of derogation (...) other agreements establishing a specific institutional framework by institutionalizing cooperative procedures"¹²⁸ on the same line as European Agreements (EA). Nonetheless, the nature of the PCA and EA diverges based on Art.238 EC, which does not

¹²⁸ Official Journal of the European Communities, "Treaty of the European Union, together with the complete text of the Treaty establishing the European Community", 79

establish a special connection among the stakeholders. As a matter of fact, associated countries ought "to participate, at least to a certain extent, in the EC legal system,"¹²⁹ which is the most attainable interpretation the European Court of Justices had provided us. Thus, the differences in the two legal bases imply dissimilarities in content, especially regarding goals.

This is especially true in the aftermath of the Copenhagen European Council in 1993; it was stated that the EAs are meant to create a Conglomeration whose ultimate goal is for the member nations to join the Union. At the same time, Art. 238 does not imply any criteria that may narrow the requirements for a country to be deemed associated. Stated differently, its provisions alone are not responsible for the NIS's lack of affiliation with the Community.

Historically, associated nations have been divided into two groups. First, those nations that have maintained close ties with European Community members, especially former colonies. A second group of states consists of those whose ultimate goal is EU integration but who are now unable to adhere to the entire *acquis Communautaire*. Therefore, the Association Agreements became a tool used by the EU as a "pre-accession instrument, as is now the case with European Agreements."¹³⁰

One may initially conclude that the NIS and any of the Member States had no unique relationships because they were not deemed associated nations. On the other hand, it might be said that the NISs do not appear to be viable contenders for EU membership. Even though the first hypothesis was strengthened, considering how the EEC and the URSS did not initiate any relation before establishing the TAC agreements in 1989, the second seems less realistic. Still, it is worth to highlight why there had been such a distinction between the NIS and other East-European countries. The Treaty on European Union (TEU) contains the general membership

¹²⁹ Christophe Hillion, "Partnership and Cooperation Agreements between the European Union and the New Independent States of the Ex- Soviet Union", 406

¹³⁰ Christophe Hillion, "Partnership and Cooperation Agreements between the European Union and the New Independent States of the Ex- Soviet Union: Art 228", 406

conditions. According to Article 0, the nation must be economically independent in order to meet the basic need for membership, which is to secure an Association Agreement, also known as "de facto or de jure pre-accession instruments"¹³¹. Hence, the NIS could have all the credentials, but it is still important to remember the historical context. The Western European states were utterly unprepared for the consequences of the URSS's dissolution. Therefore, based on political considerations, the Union appeared to have chosen an incremental reconciliation method with nations formerly part of the Eastern Bloc. Moreover, it can be inferred that the Community had an ethical responsibility to refrain from concurrently extending the European Agreements that were first signed with Poland and Hungary to nations such as Ukraine or Moldova. This could have caused disarray, which could have hurt the original recipients of the Agreement. It may have been interpreted as a devaluation of their attempts to "return to Europe," with the latter term referring to the course of Western European integration as opposed to Eastern European integration. Put otherwise, the Association Agreements might be rightfully expanded to the NIS, preferably with a few of them and on a case-by-case basis, once some of the CEECs have become members. Reciprocal acknowledgement that the Partnership's objective is Association, for instance, with Ukraine, maybe a pertinent signal to support the change process. It might promote peace and safety across Europe more persuasively and further solidify the cooperation atmosphere.

3.3 Ukrainian PCA negotiations

Throughout the eclipse of the communist era in Europe, the relationship between the newly founded Ukraine and Brussels had been defined particularly cold, describing those

¹³¹ Christophe Hillion, "Partnership and Cooperation Agreements between the European Union and the New Independent States of the Ex- Soviet Union", 407

years as "the period of neglect"¹³². This thought got even more exacerbated by the words of Alexander Motyl, who provided us a general picture of the historical scenario

(...)Their unrealistically optimistic assessment of the Common Independent States and its chances of survival, their continued pre-dealing almost exclusively with or through Moscow on important willingness to tolerate Russia's expropriation of Soviet overseas property suggested that the non-Russian successor still did not matter¹³³.

However, the reality was quite different, particularly if we examine the actions made by the Commission and the Council, which suggest how the institutions pursued a prior screening before actually intervening directly. During 1990, both the Council and Commission delivered straightforward statements about the future of many eastern European populations in the context of possible agreements to be established in the future, more precisely the former, "The European Council stressed the importance attaching to the success of the reforms undertaken by the government of the Soviet Union. The European Council expressed the will that the Community should make a substantial. Concrete contribution to the success of these efforts by means of co-operation in various areas"¹³⁴. While the latter, "the USSR raise[d] specific questions in the context of internal reform, relations with the Community and integration into the international economic system"¹³⁵.

Later on, during the Lisbon European Summit in 1992, the Commission presented its opinion to the Council on a possible enlargement issue. By considering the true features that make up the European essence, the document recognized how

shared experience of proximity, ideas, values and historical interaction (that) cannot be condensed into a simple formula and is subject to review by each generation (...) it is

¹³² Olga Alexandrova, "UKRAINE IN THE WORLD: Studies in the International Relations and Security Structure of a Newly Independent State", 147

¹³³ Olga Alexandrova, "UKRAINE IN THE WORLD: Studies in the International Relations and Security Structure of a Newly Independent State", 147

¹³⁴ European Parliament Activities, "Conclusion of the Presidency of the European Council", 10

¹³⁵ European Commission, "Association Agreements with countries of central and eastern Europe: a general outline", 3

neither possible nor opportune to establish now the frontiers of the EU whose contours will be shaped over many years to come¹³⁶.

With this statement, the Commission not only drastically changed the European map, but it also implied that the region encompassed by the cluster of the Europe Agreements could not establish the eastern boundaries of the European integration process, and as a result, it could not rule out the possibility of some NIS participating. Nevertheless, in consideration of what we said previously, it was impossible to include Ukraine in an AA. Therefore, it is evident that the sneaky Commission strategy pushed the Council to initiate a negotiation phase for a Ukrainian PCA in the same year, that "would occupy a position between the trade and cooperation agreements and the Europe Agreements, and would involve a wide-ranging opening-up of markets, financial and economic cooperation, a framework for technical assistance and provisions concerning political dialogue."¹³⁷ This is in line with the pre-Lisbon process for starting the negotiation phase of the trade agreements. In which the Commission suggested to the Council to begin discussions, and the Council granted the Commission a "negotiation mandate". Granted with the latter, the Commission, under the direction of its Directorate-General for Trade (DG Trade), was given the authority to engage in negotiations representing the Union with the third party in question while ongoing Council supervision is maintained.

Relatively speaking, the negotiation phase of the Ukrainian PCA was not a smooth process. The EU institutions worked in coordination for over two years due to the intricate talks that they were facing with Russia's PCA, with the latter refusing to stand on the same level as the new eastern states in terms of negotiations. This significantly weakened the negotiating power of the Commission, as countries like Ukraine, Moldova, and Belarus began

¹³⁶ Christophe Hillion, "Partnership and Cooperation Agreements between the European Union and the New Independent States of the Ex- Soviet Union: Art 228", 407

¹³⁷ Guillaume Van Der Loo. (2012) "The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: *A New Legal Instrument for EU Integration without Membership*", 66

demanding to be regarded the same way as Russia. Consequently, the Council comprised the first set of instructions provided to the Commission in order to re-negotiate the PCAs. According to the new direction, an "evolutionary provision was to be included in the PCA with Russia and Ukraine (along with the other countries). In light of this clause, the PCA members agreed to review the feasibility of revising their shared commitments to create a free trade area (FTA) among themselves. Despite the Commission's request to refrain from drawing any distinctions between newly created states classified as "European" or "non-European," the PCAs' deliberate incorporation of this clause still created a distinction between the NIS. Since the other NIS in Central Asia and Transcaucasia signed PCAs, as originally envisioned by the Council, countries on the western frontier of the CIS were allowed, albeit very cautiously, to have deeper connections with the EU (something that will have significant consequences in the future). Nonetheless, there was another problem to solve.

At that time, Ukraine's foreign policy was aiming at a "two-track formula"¹³⁸, for which the Ukrainian delegation tried to achieve "cooperation with the CIS and integration into Europe"¹³⁹ simultaneously. Thus, during the negotiations, Ukraine stated that it hoped the agreement would mention, in one form or another, that Ukraine's membership in the Community should be a future goal. However, for the reasons we already mentioned, the Commission could not allow that to happen and instead pushed the Ukrainian delegation to accept what would have become Art. 1 of the Ukrainian Cap. That is to say, to establish an association between the two parties that would "(i) provide an appropriate framework for political dialogue allowing the development of "close political relations", (ii) promotes trade and investment and "harmonious economic relations" between the parties, (iii) provides a basis for "mutually advantageous economic, social, financial, civil scientific-technological

¹³⁸ Olga Alexandrova, "UKRAINE IN THE WORLD: Studies in the International Relations and Security Structure of a Newly Independent State", 150

¹³⁹ Olga Alexandrova, "UKRAINE IN THE WORLD: Studies in the International Relations and Security Structure of a Newly Independent State", 150

and cultural cooperation" and (iv) supports Ukrainian efforts to consolidate its democracy and to "complete the transition into a market economy"¹⁴⁰.

This outright how, in the view of both the Commission and Council, the PCA should have guaranteed an "entry-level agreement" which would have guaranteed stronger connection with the Community as well as integration within the international market. In addition, if Ukraine violated one of the "essential elements" of the agreement, the consequence would be an immediate cessation of the deal in accordance to the future Article 102 of the PCA. In this way, the Commission wanted first to set some parameters that Ukraine could have achieved in the near future for two purposes. Firstly, the Western European states held negative prejudices over the economic and political conditions of Ukraine aftermath of its secession from the URSS. Thus, it was paramount to urge a Ukrainian development process to some extent. Secondly, this entry-level agreement would have assured steady control over the Ukrainian progress on specific matters within the PCA, which, if they were fulfilled, their completion would have granted a future reformulation of the PCA into a possible AA, thereby, with the inclusion of the Ukrainian membership as the ultimate objective.

In conclusion, despite the odds, the Commission and Council showed a pragmatic and efficient response to a series of issues that were solved thanks to the solid chain of command between the former and the latter. This cooperation resulted in the signature of the Ukrainian PCA in May 1994, while it entered into force only in March 1998 after a long ratification process among the member states.

¹⁴⁰ PARTNERSHIP AND CO-OPERATION AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES, AND UKRAINE", 7

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Chapter 4

Moldova “Association Agreement” (AA).

4.1 Historical context

In order to understand the extensive relationship between the European Union and this eastern country, it is essential to outline the historical background of the development of Moldovan-EU ties from the 1990s until the present day.

The first dialogues between the EU and Moldova started in 1994 with the signature of the "Partnership and Cooperation Agreement" (PCA), around the same period the Ukrainian PCA was signed, as analyzed in the previous chapter. This showcases how European foreign policy aimed from the beginning to initiate a slow process of dialogue and inclusion with these outside countries, leaving the possibility for further development in the future as a part of a much more significant ongoing plan. In 2003, Moldova also got included in the broad "European Neighbourhood Policy" (ENP), resulting in the formulation of an EU-Moldova action plan. Furthermore, in 2009, with the establishment of the "Eastern Partnership" (EP) within the comprehensive framework of the ENP, Moldova became the center of a much more invigorated focus.

Even though Chisinau showed a positive perspective on the newly launched EP and, subsequently, the participation of Moldova in it back in 2008, the Moldavian communists showed little enthusiasm for this European endeavor. As stated by the communist politician Vladimir Voronin, "The Republic of Moldova was placed in the same basket as countries like Georgia, Armenia, and Azerbaijan, which are behind the Republic of Moldova in terms of European integration."¹⁴¹ Nevertheless, following the 2009 leadership transition, the new

¹⁴¹ Diana Costas, "The Association Agreement between EU - Moldova and its place in parliamentary debates in the period 2009-2014", 4

government displayed a reinvigorated enthusiasm for participating in the Eastern Partnership's programs and multinational forums, which led to the first talk for visa liberalization for the Republic of Moldova that entered vigor the following year. Besides this new optimism, it is fair to expose the solemnity of the EU perspective on the matter. For instance, Minister of Foreign Affairs and European Integration Iurie Leanca made the following declaration prior to the team from the European Commission arriving: "The delegation coming has a mandate from both the European Commission and all member states, which speaks to the seriousness with which the EU treats the subject."¹⁴²

As a result, the Republic of Moldova and the European Union had their first informal round of discussions on the Association Agreement in October 2009, "discussing the document's structure, negotiation procedures, and the composition of the negotiating teams [...] agreeing that the first official round would be organized in January 2010."¹⁴³

Therefore, the first stage of the negotiation process for the Association Agreement took place in January 2012, followed in February by talks about enacting a future Deep and Comprehensive Trade Area (DCFTA) within the context of the overall AA plan. The Agreement was formally approved and signed by the EU Parliament and the legislative bodies of the 28 EU member states in June 2014, roughly seven months after it was first proposed at the Vilnius Summit in November 2013 and after 15 rounds of negotiations for the Association Agreement and seven rounds of consultations for the DCFTA, which took place over three years. The EU-Moldova Association Agreement was initially ratified by Romania, then by Estonia, Lithuania, and Latvia. It was scheduled to come into effect in October 2014.

Naturally, the politicians in Chisinau had differing viewpoints on this Agreement. The pro-European parties were ardent proponents of the Agreement, whereas the Communist Party

¹⁴² Diana Costas, "The Association Agreement between EU - Moldova and its place in parliamentary debates in the period 2009-2014", 4

¹⁴³ Diana Costas, "The Association Agreement between EU - Moldova and its place in parliamentary debates in the period 2009-2014", 4

alternated between favoring European integration and joining the Customs Union at various points in time. The Socialist Party was and is adamant that the Customs Union, located in the East, holds the key to the long-term success of the Republic of Moldova.

It is necessary to highlight that during the negotiation process, the Communist Party and the Socialist Party of the Republic of Moldova spread several falsehoods about the Association Agreement and the Deep and Comprehensive Free Trade Area Agreement (DCFTA) in an effort to sway the opinions of the people living in the republic. For example, one of these compliments relied on the belief that “straining relations between Russia and Moldova, which will lead to the loss of the Transnistrian region”¹⁴⁴. The latter proved to be a totally untrue fiction, given that neither the country's geographical fragmentation nor its ties with Russia are intended to worsen due to the Agreement.

In addition to that, the politician Dondon warned that the signing and "future ratification will have negative socio-economic effects and territorial risks [...] a mistake that will go down in the country's history along with the start of the Dniester conflict"¹⁴⁵. On the opposite side, we can find Nicolae Timofti, the president of the nation at the time, was one of the ardent proponents of the Association Agreement and has consistently asserted that "the signing and ratification of the Association Agreement and the Free Trade Agreement with the European Union [...] lay a foundation for our country's European future."¹⁴⁶ Perhaps, the only predictions that got it right in consideration that a couple of years later, more precisely in 2022, Moldova received the official was granted the candidate status from the EU.

¹⁴⁴ Diana Costas, “The Association Agreement between EU - Moldova and its place in parliamentary debates in the period 2009-2014”, 9

¹⁴⁵ Diana Costas, “The Association Agreement between EU - Moldova and its place in parliamentary debates in the period 2009-2014”, 8

¹⁴⁶ Diana Costas, “The Association Agreement between EU - Moldova and its place in parliamentary debates in the period 2009-2014”, 8

4.2 Moldova AA negotiations phase: preliminary checks

Following the narrative of our research, the first step was to obtain consent to initiate the negotiation phase of the AA within the EP framework, which is linked to the Prague Declaration from 2009. The primary objective of the partnership is outlined in the communication as the creation of favourable circumstances for further political cooperation and economic convergence, as stated:

The Eastern Partnership is the reply of the EU to the challenges and aspirations of the partner countries as the EU has a vital interest in seeing further economic development, greater democratic governance and increased stability in the Eastern neighborhood (...) the Eastern Partnership offers both bilateral and multilateral measures for enhanced cooperation ¹⁴⁷

However, the EU-Moldova Association Agreement discussions did not begin until the Council gave its express approval in 2009:

The parties agreed to continue their efforts to bring the Republic of Moldova closer to the EU, acknowledging Moldova's European aspirations (...) negotiations on an EU-Moldova Association Agreement will be launched in Chisinau on 12 January 2010. They reiterated their vision of the new agreement as an innovative and ambitious document going beyond the established framework of cooperation and opening a new stage in their relations, notably by enhancing political dialogue and deepening sectoral cooperation.¹⁴⁸

At the same time, the Council designated the recently formed EEAS as the chief negotiator for the accord on behalf of MS. The EEAS was a natural option because it was created to oversee the EU's international operations with foreign nations, especially as the AAs are mixed accords that involve political discourse. However, the MS authorized the authorization Agreement and the DCFTA with the Prague Declaration. The MS reaffirmed the objectives set forth in Prague only through the Warsaw Declaration and reiterated the

¹⁴⁷ European Commission. (2009) "MEMO/09/217", 1

¹⁴⁸ Council of the European Union, "EU – Republic of Moldova Cooperation Council Brussels , 21 December 2009", 1

intention to begin the DCFTA negotiations as a fundamental component of the Association Agreement. As it was highlighted:

There is more trade and economic interaction between the EU and its Eastern European partners than ever before. In order to consolidate this trend, the EU and most of its partners are engaged in negotiations on Association Agreements which will also lead to Deep and Comprehensive Free Trade Areas as soon as the conditions are met.¹⁴⁹

Nevertheless, the post-Lisbon institutional framework caused some difficulties in the negotiations. Even though, unlike development and enlargement, which were primarily passed to the EEAS, and DG Relex, which was nearly entirely moved to the EEAS, trading policy stayed the same and remained a Commission responsibility.

Consequently, even if the Association Agreement's DCFTA with Moldova was a crucial component of the AA, the DG Trade of the Commission took the lead in this regard, with the EEAS just serving as a coordinator. Furthermore, the second permission was necessary for the DCFTA discussions by the Commission's DG Trade guidelines. As a result, the EEAS was excluded from officially launching the trade chapters of the agreement. Apart from the obligatory limitations, the EEAS's autonomy was also curtailed by disagreements with the Commission's DG Trade about the initiation of the DCFTA negotiations. Regarding commerce, DG Commerce saw Moldova as unimportant, in contrast to the EEAS, which saw it as politically significant. DGTrade was first reluctant to allocate its restricted time to the trade negotiations between the EU and Moldova. The reason of this detachment can be linked to the fact that "The Directorate-General (DG) Trade, responsible for DCFTA talks with Moldova, was initially reluctant to allocate human resources for negotiations, not least because of economically more important ongoing trade talks with international partners (e.g.

¹⁴⁹ Council of the European Union, "Joint Declaration of the Eastern Partnership Summit, Warsaw, 29-30 December 2011", 2

the free trade agreement with Canada).”¹⁵⁰This resulted in a conflict of interest between the MS and the EU organizations. Conversely, the EEAS's desire to move more quickly into more profound political and economic ties with Moldova was in line with the desires by the majority of the MS. The latter, showed their support even later on during the Vilnius Summit stating “Summit participants stress that effective future implementation of Association Agreements and, where relevant, DCFTAs”¹⁵¹.

Conversely, the Commission's DG Trade hesitated to start the talks because it was considering how to design a strategy for implementing a DCFTA, which would inevitably involve the Transnistria region in which the EU has expanded its power through trade during the past ten years. In addition, The European Parliament publicly stated the necessity of starting the procedure. The Parliament's Committee on Foreign Affairs (AFET) report urged an immediate start to the DCFTA conversations' “in order to promote full political and economic integration of the Republic of Moldova with the EU”¹⁵². Soon after the formation of the pro-European alliance government in Moldova, the majority of MS joined those urging the start of the DCFTA negotiations, referring to Moldova as the main possible achievement of the Eastern Partnership. An instance is an EU politician's report, "Moldova became a sort of darling of everybody at once. When you hand this sort of "love fest" to Moldova, even that MS that did not really want to engage, go for it.”¹⁵³ Eventually, the situation was sorted out, considering that “these issues have been partially addressed by the European External Action Service and DG Trade. Ultimately, DG Trade provided more human resources for DCFTA talks with Moldova”¹⁵⁴.

¹⁵⁰ Stanislav Secieru, “Moldova on the path to Europe: not yet irreversible”, 4

¹⁵¹ Council of the European Union, “Joint Declaration of the Eastern Partnership Summit, Vilnius, 28-29 November 2013 Eastern Partnership: the way ahead”, 5

¹⁵² Hrant Kostanyan. “Examining the Discretion of the EEAS: What Power to Act in the EU-Moldova Association Agreement?”, 380

¹⁵³ Hrant Kostanyan. “Examining the Discretion of the EEAS: What Power to Act in the EU-Moldova Association Agreement?”, 380

¹⁵⁴ Stanislav Secieru, “Moldova on the path to Europe: Not yet irreversible”, 4

On the other hand, the EEAS faced significant limitations in its role as a mediator in the EU-Moldova Association Agreement due to Moldova's delicate desire for potential membership in the Union. The delicate situation arose from two factors: First, the "Ukrainian text. "Since the EU-Ukraine agreement preceded the EU-Moldova negotiations, the former is treated as a precedent for the latter."¹⁵⁵ It is also crucial to remember that the EEAS had not yet been constituted. Thus, in the case of Moldova AA, the EEAS could not express its priorities. The deal made in Ukraine shows the extent to which the EEAS may exercise its discretion in matters deemed politically sensitive. For instance, it was almost impossible in the discussion on awarding Moldova for its desire to be integrated into the Union, considering the failure to fulfil the Ukrainian desire in the previous Ukrainian PCA.

The second factor was the opposition among the member states to Moldova's membership perspective, which brought unrest within the Council. It should also be noted that this matter did not concern only Moldova but also countries like Ukraine and Georgia, which shared the same objective in the Eastern Partnership. In consideration of the Council, the latter was divided into three significant factions through the negotiation phase. The different group displayed their stances outside the Council playground with declarations even during plenary sessions within the parliament. For example, countries like Romania, Poland, the Czech Republic, and Hungary favoured improving ties with Moldova and consented to transferring Moldova out of the ENP to the expansion domain. The Hungarian Mep Kingal Gal said how "The association agreement between the EU and Moldova is of particular importance, as it strengthens Moldova's European perspective. However, this is conditional on Moldova respecting the values of democracy, fundamental rights and the rule of law"¹⁵⁶. Followed by the polish Mep Krzysztof Hetman:

¹⁵⁵ Hrant Kostanyan. "Examining the Discretion of the EEAS: What Power to Act in the EU-Moldova Association Agreement?", 382

¹⁵⁶ Kangal Gál (PPE), "Conclusion of an Association Agreement between the European Union and the Republic of Moldova"

Moldova is currently the most pro-European of the Eastern Partnership countries and I am glad that there is agreement in the Parliament that ratifying the Association Agreement as soon as possible is crucial to strengthening our mutual relations. (...) The political meaning of the agreement is equally important. This is a clear signal that the EU supports the European choice of the Moldavian authorities – this is especially important before the upcoming parliamentary elections in this country. However, if we want to strive for real, lasting integration of Moldova within the EU, we must promise something more than just economic benefits not only to its authorities, but above all to its citizens. The European Union is a democratic community based on common values and actions at many levels, and this is where our greatest strength lies¹⁵⁷.

Last of this faction is the comment of the Romanian Mep Sorin Mōisā “The historic Agreement endorsed today is enshrining politically Moldova’s belonging to the Western world (...). I was most happy to support this historic watershed”¹⁵⁸. On the opposite side, a faction composed of France, Italy, and Spain opposed this idea. Some instances are: the ex-Spanish EMP Martina ALbiol “It is not the first time that I have taken a position against it (...) it clearly seems to me to be an act of interference by the EU in Moldova, especially when 2/3 of its population have demonstrated against this association agreement. For all these reasons, I have voted against this approval”¹⁵⁹. Another example is the French MEP Nicolas Bay who stated “I voted against because I consider that this desire of the European Union to get closer to Moldova does not correspond to our interests. This choice seems more dictated by geopolitical objectives: the rapporteur is also known for his very hostile positions towards Russia”¹⁶⁰. Last but not least is the statement of the Italian Mep Mara Bizzotto:

I voted against this report which, devoid of any objectivity in the evaluation (...) also takes up some dangerous cornerstones of the European Commission’s do-good propaganda (...) but also welcomes a visa exemption regime for Moldova citizens and

¹⁵⁷ Krzysztof Hetman (PPE), “Conclusion of an Association Agreement between the European Union and the Republic of Moldova”

¹⁵⁸ Sorin Mōisā (SeD), “Conclusion of an Association Agreement between the European Union and the Republic of Moldova”

¹⁵⁹ Martina Albiol (GUE/NGL), “Conclusion of an Association Agreement between the European Union and the Republic of Moldova”

¹⁶⁰ Nicolas Bay (NI), “Conclusion of an Association Agreement between the European Union and the Republic of Moldova”

welcomes the declarations by the Prime Minister of Moldova on his country's intention to apply for membership of the European Union in 2015¹⁶¹.

Followed by a third group that was neutral on the matter. Those in favor pushed the idea to include within the AA Art. 49 (TEU), which recites,

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union (...) The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State¹⁶².

They note that even the most politically orthodox MS have acknowledged Moldova's advancements and named it the top participant in the Eastern Part of the country. As described by the lituanian Mep Petras Auštrevičius:

I am particularly proud to be able to say that now Moldova stands as a front runner among our European partners and as an example of very well drafted and implemented political and socio-economic reforms. This is even more impressive when we know that this has been accomplished in only the last few years, thanks to the political determination of the Moldovan Government¹⁶³.

Furthermore, "Moldova has been one of the fastest growing economies in Europe over the last six years. Given that the country has suffered from near-constant Russian embargoes, economic downturns in the EU, and the conflict in Ukraine, Moldova's growth has indeed been impressive"¹⁶⁴. The EEAS was strongly in favor of facilitating a tight link between Moldova and the EU. However, regarding Article 49's incorporation into the agreement, there was still disagreement admits the MS. In all responses, "the EEAS tried to push for a mention of the membership perspective, without reference to the actual Article 49

¹⁶¹ Mara Bizzotto (NI), "Conclusion of an Association Agreement between the European Union and the Republic of Moldova"

¹⁶² Official Journal of the European Union, "Consolidated version of the Treaty on European Union TITLE VI - FINAL PROVISIONS, Article 49"

¹⁶³ Petras Auštrevičius (rapporteur), "Association Agreement Between the European Union and the Republic of Moldova" (debate)

¹⁶⁴ Nicu Popescou, "Moldova's star: shining or falling?", 2

but by transporting the content of the Article 49 and the Article 2 into the text of the agreement”¹⁶⁵. Nonetheless, the MS did not provide enough backing for this idea either. The Commission was split on the membership viewpoint issue, just like the MS were. The initiative to bring Moldova into the expansion area was initiated by Commissioner Štefan Füle, who oversees neighborhood policy and enlargement, “The EU will be alongside partners every step of the way. The more ambitious and willing partners are, the more concrete results can be achieved¹⁶⁶. As a result, part of the Commission became an ideal partner of the MS that shared the same preferences. Nonetheless, while the Commissioner's endorsement of Moldova's expansion may have swayed a few hesitant MS, it did not change the stance of many significantly opposed MS. Considering this, the MS deemed the implementation of a DCFTA within the AA an alternative to the membership perspective, as was stated during the Vilnius Summit

The participants of the Vilnius Summit reaffirm their acknowledgement of the European aspirations and the European choice of some partners and their commitment to build deep and sustainable democracy (...) The participants reaffirm the Association Agreements, including DCFTAs, are a substantial step in this direction. Respect for the common values and implementation of Association Agreements will contribute to the future progressive developments in our relationship¹⁶⁷.

4.3 Further insights and Ratification

In addition to overseeing and managing the MS, the Commission's involvement during the consultation phase of the EU-Moldova Association Agreement also reduced the EEAS's autonomy. Typically, the EEAS consulted with the Commission internally before submitting ideas to the others. However, the DGs of the Commission were less informed about

¹⁶⁵ Hrant Kostanyan. “Examining the Discretion of the EEAS: What Power to Act in the EU-Moldova Association Agreement?”, 387

¹⁶⁶ European Commission, Štefan Füle, “Opening remarks by the commissioner Füle at the plenary session of the Foreign Affairs Council on Eastern Partnership”, 1

¹⁶⁷ Council of the European Union, “Joint Declaration of the Eastern Partnership Summit, Vilnius, 28-29 November 2013 Eastern Partnership: the way ahead”, 3

Moldova's political landscape and capacities than the EEAS, as we saw previously. Therefore, “in order to negotiate the title on justice and freedom, or chapters related to sectoral cooperation, the EEAS seeks the help of the relevant Commission DGs”¹⁶⁸. Consequently, the DGs had more influence than the EEAS in the discussions, even if the Commission did not supervise them. According to an EEAS representative: “The EEAS does not have a policy on sport. There may be an EU policy on sports or culture, but we do not have a specific policy. We are helping to externalize EU policies.”¹⁶⁹The connection pyramid, which includes the EEAS, MS, and Commission, is best illustrated by examining the drafting of the EU-Moldova Association Agreement's migration provisions and the visa discussion. Even if the MS operated in accordance with the Council's guidelines: “underscored the need for full and effective implementation of the visa facilitation and readmission agreements by the authorities of EU Member States and Moldova (...) welcomed the implementation of the Mobility Partnership”¹⁷⁰. The Council shouldn't be viewed as unrelated. As a result, “the EEAS might need to consult the MS several times, during which period some MS representatives might need to consult their capitals. This process continues until a consensus is found”¹⁷¹ as it was achieved later on with the declaration from the MS that “Members fully supported the visa-free regime for Moldovan citizens”¹⁷². Broadly speaking, DG Home lead on the technical side of the migration issue, whereas the EEAS leads from a political one. The EEAS-DG base of collaboration was not always flawless, though. DG Home frequently criticized the EEAS for supporting the MS rather than the Commission, so weakening the EU's supranational nature. A representative of the Commission said that:

¹⁶⁸ Hrant Kostanyan. “Examining the Discretion of the EEAS: What Power to Act in the EU-Moldova Association Agreement?”, 384

¹⁶⁹ Hrant Kostanyan. “Examining the Discretion of the EEAS: What Power to Act in the EU-Moldova Association Agreement?”, 384

¹⁷⁰ Council of the European Union, “EU – Republic of Moldova Cooperation Council Brussels , 21 December 2009”, 2

¹⁷¹ Hrant Kostanyan. “Examining the Discretion of the EEAS: What Power to Act in the EU-Moldova Association Agreement?”, 385

¹⁷² European Parliament, “Conclusion of an EU/Moldova association agreement”, 3

the EEAS cannot be seen as a real partner of the Commission when it comes to the external action. They have a different nature, purpose and culture. On the inter-institutional issues, they might often side with the Council and on the substance, they might be more willing to accommodate the amendments of the MS than ours¹⁷³.

Furthermore, the European Parliament is another party that the EEAS, as a negotiator, must cooperate with in addition to the MS and the Commission. Regardless, in the talks of the EU-Moldova AA, the Parliament's participation was more constrained than that of the MS or the Commission. According to the Lisbon Treaty, "Without prejudice to the specific provisions laid down in Article 207, agreements between the Union and third countries or international organizations shall be negotiated (...) The European Parliament shall be immediately and fully informed at all stages of the procedure"¹⁷⁴. This is also supported by a declaration from within the parliament that "Members believe that parliamentary scrutiny is a fundamental condition for democratic support for EU policies."¹⁷⁵ In other words, the EEAS was compelled to regular meetings with the Parliament to inform the latter of updates in the negotiations. In addition to the informal interactions involving MEPs and the EEAS, the EU legislative body also impacted these matters by compiling a report on the Association Agreement's progress and other related issues. In this instance, the Parliament played a crucial role by supporting the EEAS's agenda over the application of DCFTA within Moldova's AA, declaring that "the creation of DCFTA between the EU and the Republic of Moldova represents one of the most significant mutual benefits of the agreement (...) which will provide for the modernization of the country's economy and an improved and more predictable business environment."¹⁷⁶ Moreover, it also "urges the Member States, in this

¹⁷³ Hrant Kostanyan. "Examining the Discretion of the EEAS: What Power to Act in the EU-Moldova Association Agreement?", 385

¹⁷⁴ Official Journal 115, "Consolidated version of the Treaty of the Functioning of the European Union- Part five: external action by the Union-title IV:restrictive measures- Art 2018"

¹⁷⁵ European Parliament, "Conclusion of an EU/Moldova association agreement", 3

¹⁷⁶ European Parliament, „report containing a motion for a non-legislative resolution on the draft Council decision on the conclusion, on behalf of the European Union, of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part“, 5

context, to proceed as swiftly as possible with the ratification of the Association Agreement"¹⁷⁷. The proposals represent the official stance of the European Parliament and provide the EEAS with a political veneer. The EEAS may occasionally use a parliamentary resolution in its discussions with the MS within the Council to find a common stance. When MEPs believe there has been a significant shift in the negotiations, the European Parliament adopts resolutions to favor the creation of a common ground among the MS. As a result, the discussions held in Parliament go beyond empty words, and the agreement on points of view conveyed influences the EEAS's operations. All things considered, the European Parliament shared the EEAS's mostly aligned desires, and MEPs back the EEAS's work on the DCFTA and the EU-Moldova Association Agreement.

In conclusion, the EEAS made every effort to reach a comprehensive and progressive accord. Not only was the EEAS designated as the Association Agreement's negotiator, but it also managed to find an equilibrium between its objectives and the Commission's opinion. Further limiting its discretion was the precedent set by the Ukrainian case, which loomed large over any novelties the EEAS attempted to push. The MS vigorously defended its defense interests throughout talks, while the EEAS was tasked with reaching a consensus when the MS's desires varied. Nevertheless, a final agreement was reached, which was sent to the Council to obtain the final approval, and it was indeed received on the 16th of June 2014. In light of this, the same president of the Council remarked on this historical event:

This morning's historic signing of the Association Agreements with Georgia, Republic of Moldova and Ukraine is a milestone. Stronger political and economic ties will bring greater stability and prosperity to the entire European continent. The three countries have chosen an ambitious path. In the economic and social challenges, as well as the geopolitical ones, the European Union stands by them. These are the most far-reaching

¹⁷⁷ European Parliament "report containing a motion for a non-legislative resolution on the draft Council decision on the conclusion, on behalf of the European Union, of the Association Agreement between the European Union and the European Atomic Energy Community and their Member states, of the one part, and the Republic of Moldova, of the other part", 6

bilateral agreements the Union ever entered into – the result of a truly collective effort”¹⁷⁸.

¹⁷⁸ European Council the President, “Remarks by the President Herman Van Rompuy following the the European Council”, 2

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Conclusion

Our research has unveiled two critical aspects that have erupted since the newly created EEAS participated in the negotiation phase of Association agreements (trade agreements). First, through this study, we displayed how the member states have gained substantial influence since the Lisbon Treaty's implementation. As such, we proved the "Agent-Centric Institutionalism theory" to be compatible with our case study in Moldova's AA talks contest. Since the European member states are the original signatories to the EU's founding treaties, they have significant authority to act as change agents inside the EU's institutional framework. They had the ability to shape the structure of the EEAS and exert formal control over it according to their interests. This change was possible only with the occurrence of a Critical Juncture, as discussed in the first chapter, which we later linked to the Lisbon Treaty (second chapter). Compared to the previous Ukraine PCA talks, this showed us that a democratization process, even in the context of foreign affairs, indeed happened. Moreover, they gained a considerable amount of prestige by undertaking a new kind of AA, given that this new document is unique in its structure, as we assessed previously, besides the geopolitical importance of Moldova within the European foreign affairs agenda and the Eastern Partnership.

Furthermore, we also confirmed that to a certain extent, during the cooperation of MS and the Commission within the negotiation phase, some levels of Isomorphism happened at the latter's expense. For instance, in the case of applying a DCFTA in Moldova's AA, the EEAS, backed by a great majority of MS, was capable of defending its instances and pushing them against the opinion of the Commission's Gt Trade. This move made the Commission rethink its thoughts on the matter after seeing itself pushed back by all the front, even from the Parliament that took the EEAS's position. In this delicate situation, the Commission saw

its reputation at stake. Hence, it decided to follow the majority's belief rather than face future setbacks and undermine its long-built prominence. However, it is essential to note that the power of the EEAS is directly proportional to its capacity to form a comprehensive and shared opinion among the MS. For instance, regarding the membership perspective in Moldova, many MS had different opinions on the matter. Therefore, this behaviour jeopardizes the capacity of the EEAS to display a unified MS view at the negotiation table with the Commission. Thus, the EEAS's voice can prevail over the Commission's stances only thanks to the capacity of the former to gather common beliefs among the MS, even by using Parliament plenary interventions. This is relatable to what we analyzed in Chapter 4 when the Parliament's motion was capable of strengthening the EEAS's discretion about the application of a DCFTA in Moldova's AA.

In conclusion, this thesis aims to address the literature gap regarding the evolution of the performance of the negotiation phase in trade agreements. We achieved this objective by analyzing throughout history the first trade agreement made on European soil, followed by the first significant institutional setting change and, in the end, the outcome of the latter, which allowed specific stakeholders to preside a vital role.

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