The European Parliament: From a Human Rights Watchdog to a Responsible Decision Maker?

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1. Introduction

Elspeth was already involved in the European asylum and migration policy before a legal basis was established in the Treaty of Amsterdam. With her commitment to the ILPA proposals,1 she contributed to important principles that still guide European standards. I would like to reflect on twenty years EU asylum and migration policy from a point of view of democratic control. Since the beginning of this century, the European Union has been working towards common rules on legal migration for third country nationals and a European Common Asylum System. Now, two decades later, this process has resulted in an impressive number of first generation directives (and some regulations) and a number of additional or recast-directives in this field. During the negotiations on the Treaty of Amsterdam, where Member States decided to establish a legal basis for legislation on asylum and migration at the European level, they appeared quite hesitant to immediately give up their veto and to share their competences with the European Parliament. As a result, the first generation instruments were to be established by the consultation procedure, where unanimity was required in the Council and the European Parliament was left with a purely advisory role. This exceptional procedure, which also limited the competences of the Court of Justice, would last for a transition period of five years, after which the Council could decide by unanimity to apply the communitarian regime to this policy area.2 The Parliament gained co-decision power in the field of irregular migration and border control in December 2004, one year later extended to the field of asylum. It is only since the entry into force of the Lisbon Treaty in December 2009 that the Parliament has to give its consent to legislation on regular migration.

During my PhD-research on the decision-making process of the first two directives in this field,3 I found that the Parliament’s direct influence on those instruments was very limited. It is to be expected that the impact of this procedural anomaly during the crucial first exercise of standardising, must have remained on the legislation adopted under co-decision, as new proposals built on the legislation it was kept out. In this contribution, I will briefly summarize my findings on the role of Parliament during the adoption of asylum and migration instruments during the consultation procedure. Af-

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1 Immigration Law Practitioners Association (ILPA). For the proposals see: https://www.ilpa.org.uk/pages/publications.html.
2 Title IV of the EC-Treaty, Article 67 and 68.
terwards, I will analyse how the role of Parliament has changed over time, paying attention to its position as well as its strategy, using the Returns Directive as a case-study. While doing so, I will highlight how the shift from the Union towards the external dimension of asylum and migration policies, where intergovernmental cooperation revived, and how these policies impeded effective parliamentary control. This brings me to some final words on the way forward for a strong, transparent and rights-based European Parliament.

2. The Amsterdam Period: The Watchdog

In my dissertation, I analysed the formation process of the Family Reunification Directive and the Asylum Procedures Directive, which laid the foundation for an important part of the current EU migration legislation. Both directives have been negotiated during the first years of this millennium, after the Treaty of Amsterdam had laid down the legal basis for asylum and migration legislation in May 1999. On the Family Reunification Directive, the Council negotiated from the beginning of 2000 to September 2003. After two years the Belgian Presidency concluded that the Council had reached a deadlock and asked the Commission to present a new proposal, including the compromises that had been achieved and solutions for the controversies. The new proposal, which left more room for manoeuvre for the Member States, was accepted as a sound basis by the Member States. Nevertheless it took more than a year to adopt the directive. The process towards the adoption of the Asylum Procedures Directive had a similar pattern. More than a year after presentation of the first proposal in October 2000, the Belgian Presidency submitted a request to the Commission to draft a new proposal, accompanied by a number of principles that the proposal should adhere to. After the Commission had presented its proposal mid-2002, the Council reached a political agreement on 30 April 2004, the day before the accession of ten new EU Member States. As it unsuccessfully tried to reach a common list of safe countries of origin, it took until December 2005 before the Council decided to adopt the directive, which included a procedure for adopting a common list in the future.

7 Presidency Conclusions – Laeken, 14 and 15 December 2001, SN 300/1/01.
10 See the first proposal, COM(2000)278, 24 October 2000 and Presidency Conclusion no. 41, Laeken, SN 300/1/01 REV 1.
11 See the revised proposal COM(2002)326, 18 June 2002; see the agreement 8771/04 ASILE 33, 30 April 2004.
Due to the limitations of the Treaty of Amsterdam, the decision making process concentrated around the Commission and Council. The Commission took the initiative for the draft directives and acted as advisor and mediator during the negotiations at the Council. The principle of unanimity in the Council on Justice and Home Affairs matters and the limited role of the European Parliament paved the way for a dominant role for national interests. As every single Member State needed to give its consent, it had the power to insist on certain amendments, which often contradicted the interests of the Commission. This intergovernmental approach impeded the institutionalisation of an EU migrant inclusion policy. Whereas the Commission mainly defended the aim of harmonisation at a high protection level for migrants, the ministers of Interior or Justice in the Council primarily aimed for maintenance of their national legislation and preferably also their national sovereignty. Harmonisation as such was not recognised as being in their national interest, despite official declarations that claimed the opposite. The negotiation table hence transformed into a ‘market of optional provisions’ for which the delegations’ actions were mutually supportive. This exchange of amendments only functioned well regarding proposals which lowered the level of protection, as they did not imply any additional obligations for the Member States.

The influence of the European Parliament on the decision-making process had been minimal. As the Council had the final say, it drastically changed the proposals of the Commission by lowering the standards and creating more discretion for the Member States. The amendments of the European Parliament, which merely supported the Commission, were practically ignored. The Commission only accepted these amendments insofar as this did not undermine the support for its own proposal by the Member States. It therefore only accepted amendments, which narrowed the personal scope or did not lead to additional obligations for Member States. The Council did not make an effort to involve the Parliament or to take its amendments seriously. The gap in position between the Parliament and the Council was even broader than the one between the Commission and the Council. This made the Parliament use its competence to bring both directives to the Court of Justice, requesting it to annul certain provisions of the directives. In the case of the Family Reunification Directive, the judgment Parliament against Council has impacted the meaning of the directive. In that judgment, the Court showed the difference with Article 8 ECHR, by making clear that the right to family reunification leaves no discretion for the Member States regarding sponsors who

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13 The legal basis for the Asylum Procedures Directive was Article 63 (1) (d) and the basis for the Family Reunification Directive was Article 63 (3) (a) EC-Treaty.
14 Most of the negotiations took place in the Working Group consisting of governmental experts. The next higher level was Scifa, consisting of the managers of the department involved, and the highest level of officials was COREPER, where the heads of the Permanent Representatives (PR) had to reach an agreement before it could be referred to the Council of Ministers. The Council could refer the text back to the JHA-Council, where experts of the PR solved the outstanding questions and problems of a more technical nature. These were the most informal meetings, without translators. See Strik 2011, p. 45-49.
15 Strik 2011, p. 391-393.
17 See for instance the Tampere conclusions of 1999, where the European Council expressed the objective of harmonisation of asylum and migration policy, Council document no. 200/1/99.
fulfill the conditions allowed by the directive. But even if these conditions are not fulfilled, they have to perform an individual assessment in the light of the Charter of Fundamental Rights, taking into account all relevant circumstances and interests.\textsuperscript{18} In the case of the Asylum Procedures Directive, where the exclusive competence of the Council to adopt a common list of safe third countries was challenged, Parliament has made the establishment of common lists of safe third countries more difficult, as the Court decided that such list would need the consent of the Parliament in the framework of co-decision.\textsuperscript{19} This impact is still relevant during the current negotiations on safe third country concepts and common lists in the framework of the Procedures Regulation.\textsuperscript{20}

The limited impact of the Parliament also reduced the opportunities for the NGOs, as they exerted most influence during the preparation stage carried out by the Commission and the consultation stage involving the European Parliament. Certain provisions in the proposals of the Commission and opinions of the Parliament were identical to the proposals of the NGOs and UNHCR. The texts that the NGOs and UNHCR had successfully promoted towards the Commission and Parliament were however deleted or weakened by the Council, or transferred to the preamble of the directives. As the institutional context of that time had made the Council extremely powerful, the final outcome of the NGO lobbying was close to zero.\textsuperscript{21} After adoption of both directives, the NGOs successfully advocated for an action for annulment by the European Parliament before the Court of Justice. Their lobbying activities hence resulted in some influence prior to and after the Council negotiations, but hardly any during the actual decisions taken by the Council.

3. The Lisbon Period

\textit{Fundamentalists versus Pragmatists}

With the adoption of the Lisbon Treaty, co-decision procedures became the rule (with some exceptions) for JHA-legislation.\textsuperscript{22} The switch from consultation to co-decision, combined with the abolishment of the right of veto for the Member States, has significantly changed the position of Parliament. As the Member States could no longer ignore the Parliament, member of Parliament (MEPs) suddenly became an object of lobby for the national representatives. But the new power also changed the approach of political groups. Before, the consultation procedure combined with the simple majority rule within Parliament had enabled the development of confrontational positions towards the Council, as the Parliament could disclaim any responsibility in the policy

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  \item \textsuperscript{18} CJEU 27 June 2006, C-540/03, \textit{Parliament against Council}.
  \item \textsuperscript{19} CJEU 6 May 2008, C-133/06, \textit{Parliament against Council}.
  \item \textsuperscript{21} Strik 2011, p. 402-405.
  \item \textsuperscript{22} See Title V of the TFEU. With the Lisbon Treaty, this procedure is defined as the ‘ordinary legislation procedure’.
\end{itemize}
outcomes. Smaller political groups were more visible and more successful, as they managed to mobilise the entire LIBE committee (European Parliament's Committee on Civil Liberties, Justice and Home Affairs). Rather than a left-right division, Ripoll Servent observed a cleavage between those advocating liberty-oriented policies and those supporting the more security-oriented position of Commission and Council. It resulted in a generally liberal voting record on irregular migration and asylum legislation. The shift towards co-decision worked out well for the moderate big parties: the conservative European People's Party (EPP), which often shared its position with the Council, became a key player in negotiations, necessary for reaching the required majorities. The group formed grand coalitions with the Socialists and Democrats Party (S&D), thus marginalizing smaller party groups. Their changing positions also seem closely linked to the increased authority and responsibility of the Parliament, which made the two groups realize that in order to be effective and not to run the risk that legislation would be dropped, it needed to propose amendments that were acceptable to the Council. The shift towards co-decision thus led to more restrictive positions of the Parliament on asylum and migration legislation. Acosta criticized this 'all-to-eager acceptance of a deficient piece of legislation', referring to Parliament’s position in the Returns Directive. The reasoning that it is better to have something rather than nothing at all, runs the risk that the power remains with the Council. In that light, Acosta but also other authors point at the tendency of MEPs to aim at achieving an agreement with the Council in the first reading, which does not serve the interest of a more democratic and transparent European Union. Yet, the role of the European Parliament is central to the criticism on the lack of democratic legitimacy and accountability of the EU, as Parliament is in the best position to address the democratic deficit through its role in the decision-making process.

Returns Directive: Putting the New Rule to the Test

The first acid test for the meaning of the new position of Parliament was formed by the negotiations on the Returns Directive, which has been comprehensively analysed by Lutz, representing the Commission in that process. According to Lutz, this procedural change prevented the Member States from agreeing relatively easily on a watered down text with very limited added value. The strengthened position of the Parliament made the achievement of an agreement significantly more difficult, but it also

29 F. Lutz 2010.
allowed for qualitative improvements that would not have been made under the consultation procedure. Examples are the exceptions to the obligation to impose a re-entry ban, the obligation to provide for free legal aid, the individualized approach with regard to determining the risk of absconding, explicit references to the *non-refoulement* principle, the priority given to voluntary return, an express set of rights for illegally staying persons facing return, and special safeguards for minors and their families.

During the process of adopting amendments, the rapporteur and his shadow rapporteurs had an intensive debate in order to reach agreement on some principles which were known ‘no-goes’ for the Council, such as an absolute prohibition to remove minors, suspensive effect of appeals in all cases, a prohibition to return persons to countries of transit and an absolute prohibition to remove persons if that would worsen their medical treatment. Meanwhile, during the Council negotiations, the Member States moved towards the enlargement of national discretion and thus minimalizing the level of harmonisation. The complete absence of communication between the Council and the Parliament facilitated these parallel developments. This did not only delay the process but the premature fixing of positions also made it harder to achieve common ground. The European Parliament perceived council as ‘repressive’, whereas the Council criticized the European Parliament for a ‘lack of realism’. In response to the request of Parliament rapporteur Weber to attend some meetings, referring to the presence of the Council and Commission representatives at the LIBE committee meetings, the Council refused access and continued the non-communication with the Parliament that it was used to during the previous consultation procedures.30

Lutz observed that under consultation the European Parliament tended to adopt ambitious and maximalist opinions, but under co-decision there was a division between MEPs who wanted to ‘keep their hands clean’ and those who wanted to accept compromises in order to avoid failure of negotiations, which would backfire to the Parliament as well.31 This illustrates that the Parliament also had an institutional interest in achieving an agreement with the Council. Although these differences between the groups can indeed be observed, it must be noted that for members of the EPP and the Alliance of Liberals and Democrats for Europe (ALDE) it was more easy to accept compromises as these were close to their position anyhow. As for the left-winged politicians the gap between their ambitions and the Council positions was much more difficult to bridge, and the compromises thus had a higher cost.

4. Common European Asylum System

The ordinary legislation procedure also applied to the recast asylum instruments, which the Commission proposed as a step for further harmonisation in the framework of the Common European Asylum System.32 The main function of the recast was diminishing the derogation clauses, which the Member States had managed to negotiate under the unanimity rule. As Parliament had not been able to influence the initial instruments,

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31  Lutz 2010, p. 85.
32  The common European asylum system (CEAS) sets common standards for the treatment of all asylum seekers and applications across the EU.
which still constituted the pillars of the recast ones, the effect of co-decision on the instruments as a whole remained limited. Parliament had to satisfy itself with changes of secondary importance, however those changes implied more protection, procedural safeguards and solidarity, often supported by successful litigation before the European Courts.33

After the recast of most of the asylum instruments, there was a broad consensus that attention for a correct implementation would be the best way forward to reach harmonisation. However, the increasing numbers of asylum seekers in 2015 triggered the Commission and national political leaders to show they were in control. This led to a new wave of legislative proposals, distracting from the implementation process of the newly adopted measures. Ironically enough, the Member States could not agree on the content, which resulted in a deadlock at the end of the Juncker term. Disagreement on reforming the Dublin Regulation (with its relocation mechanism and the strengthened responsibility for the Member State of first entrance) and the proposed Asylum Procedures Regulation (with its concepts and list of safe third countries) are among the main hurdles. The European Parliament on the other hand, managed to adopt a mandate for negotiations with the Council on seven instruments. One of the strong elements of the Parliament’s position, shared by Member States like Italy, Greece, Sweden and Hungary, was its condition that the instruments were negotiated as a package, which prevented the Member States from cherry picking.34 If this requirement would not have been applied by the Parliament, it would have risked that repressive tools would have been adopted, but that the refugee-friendly instruments such as the resettlement Regulation would have been left out. But it would also have meant that the disagreement on the most divisive legislation, namely the Dublin Regulation continues, which would prevent the EU from achieving a genuine harmonisation. Here the Parliament shows that it is able to use its power and leverage in a strategic way, in favour of reaching harmonisation. Political groups in the new Parliament have already expressed their will to continue its ‘package approach’, and to stick to the positions taken by the previous Parliament in order not to create an avenue for re-opening the package. This will force the Member States to reach agreement instead of asking the Commission to present new proposals.

5. The External Dimension

Where Member States are not able to agree on the internal EU asylum policy, they find each other in focussing on externalising asylum policies through cooperation with third countries. In exchange for benefits to those countries, the EU seduces them to strengthen their border controls and visa rules and to readmit migrants and refugees who crossed their territory. The Partnership Framework, presented by the Commission in

2016, aims to adopt tailor made ‘compacts’ with priority partner countries, in which all instruments, tools and leverage are put together, ‘to better manage migration in full respect of our humanitarian and human rights obligations’.35 Here the principle of conditionality has been put to the centre of the policy, implying that the economic support of third countries depends on their performances on readmission and border control. The ‘more for more’ principle would therefore be complemented with the ‘less for less’ principle and strengthened by the use of all EU policy areas, with the exception of humanitarian aid.

The external dimension of EU migration and asylum policies is not only complementary to the Common European Asylum System, but also steers the content of its legislation. Perhaps the most visible example is the safe third country concept in the Asylum Procedures Directive, which is currently discussed in the framework of the draft Procedures Regulation. On 22-23 June 2017, the European Council agreed that:

‘in order to enhance cooperation with third countries and prevent new crises, the “safe third country” concept should be aligned with the effective requirements arising from the Geneva Convention and EU primary law, while respecting the competences of the EU and the Member States under the Treaties. In this context, the European Council calls for work on an EU list of safe third countries to be taken forward (…). The European Council invites the Council to continue negotiations on this basis and amend the legislative proposals as necessary, with the active help of the Commission.’36

The expected watering down of the criteria for the designation of a safe third country, will further pave the way for the adoption of the EU-Turkey model to other countries with even less safeguards for protection, reception and access to society.37 Political leaders have clearly shown an interest in concluding similar agreements with Tunisia, but also other countries of interest have their attention.

Apart from these internal legislative elements of the external dimension, it remains very difficult for the Parliament to get grip on the externalisation process itself. The main cause for that is the weak role of Parliament in foreign policies, where the Council acts on the basis of unanimity and is not bound by any position Parliament takes. The Lisbon Treaty granted European Parliament explicit competence in the field of readmission, as readmission agreements require parliamentary approval. Reslow notes that Parliament already exercised influence before, especially by criticising the lack of references to human rights instruments in the European Readmission Agreements (EURA’s).38 The policy on visa, an important incentive in external cooperation, is also governed by formal agreements subject to Parliament’s consent. More influence on the external cooperation on migration could make a difference, as Parliament’s narrative is

36 European Council, ‘Meeting of 22-23 June’ (Council document EUCO 8/17, 23 June 2017), Conclusion no. 23.
based on human rights, whereas the Council is rather led by security concerns. This is illustrated by Parliament’s 2017 resolution on the role of EU external action in addressing migration, in which Parliament emphasised the need for a human rights approach and stipulated that the external action should be guided by the principles on which the EU is based, such as democracy and human rights. However, I see two reasons why this expectation should be tempered. First, due to the tendency towards more restrictive positions, a dominant human rights approach by Parliament cannot be taken for granted. It approved for instance the EU-Turkey readmission agreement despite pleas from NGOs not to adopt it until the rights of migrants could be guaranteed. Second, most of the instruments concluded with third countries in the framework of migration cooperation lack the formal status of an international agreement, which sidelines the European Parliament. EURAs and Visa Facilitation Agreements are the formal elements of a much broader, more comprehensive set of agreements with a significant impact despite its legally non-binding nature. The consent of Parliament only relates to the more technical outcome of this cooperation, and not to the whole EU approach and the reciprocation by the third countries. Parliament has no voice in Mobility Partnerships with third countries, although the conditionality principle (cooperation on irregular migration in exchange for legal migration) clearly relates to Parliament’s competences on visa and return. It is also not involved in bilateral, regional and multilateral dialogues on migration, such as the African, Caribbean and Pacific (ACP)-EU migration dialogue, the Rabat Process or the Prague Process, in which the Commission and the Member States participate. The European Parliament however decided to take an active role during the negotiations on the Global Compacts on Safe, Orderly and Regular Migration and on Refugees, which may reveal an increasing awareness of the need for parliamentary involvement in international migration policies.

**Parliamentary Scrutiny of the External Dimension**

Since the large arrival of asylum seekers in 2015, the gap between Council and Parliament has further widened in this area. The Member States increased their intergovernmental cooperation in order to tackle the irregular migration through the so-called ‘Balkan-route’. The General Court of the EU ruled that ‘neither the European Council nor

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43 European Parliament resolution of 18 April 2018 on progress on the UN Global Compacts for Safe, Orderly and Regular Migration and on Refugees, P8_TA(2018)0118.
any other institution of the EU decided to conclude an agreement with the Turkish government on the subject of the migration crisis’. The European Parliament expressed its concerns about ‘outsourcing the refugee crisis to Turkey’, as it is ‘not a credible long-term solution to the problem’. It also expressed its criticism to the form and content of the deal. The Court approved of this strategy to use the intergovernmental framework by denying its competence to rule on the EU-Turkey Statement, despite the heavy involvement of the Commission, the Council president and the use of EU funds and EU policies as incentives for Turkey to sign the Statement. The circumvention of the institutional framework of the EU, clearly affecting the necessary checks and balances, has not only consequences for the democratic legitimacy but also for the level of accountability, including access to justice and fundamental rights. These interests beg for more competences and scrutiny by the European Parliament. Preferably those international instruments, with names like ‘compacts’, ‘the Joint Way Forward’ or ‘Memoranda of Understanding’, would have the status of a treaty. But even if this informal cooperation continues, Parliament could use its whole ‘toolkit’ in order to get involved in this external cooperation. The most logical strategy is to use its formal power to become involved in non-legislative instruments. In some instances, Parliament managed to create political linkage of the Return Fund to the Returns Directive. In Spring 2007, Parliament planned not to release the budget for the first year of the European Return Fund in 2008, which created pressure on the Council to agree with certain procedural safeguards for a humane and dignified treatment of returnees in order to achieve an agreement with the Parliament. It would be very logical to refrain from approving a EURA or Visa-Facilitation Agreement as long as the more comprehensive cooperation arrangement with that specific third country has not been discussed and agreed upon by Parliament. But with the same purpose, it could also freeze negotiations on secondary legislation in case of linkage with the external dimension. This could create leverage to demand an ex-ante evaluation of the human rights impact of a migration

44 General Court of the European Union, case nos T-193/16, NG, ECLI:EU:T:2017:129 and T-257/16, NM, ECLI:EU:T:2017:130; on 12 September 2018 CJEU declared the appeals against the decisions manifestly inadmissible, see C-208/17.

45 ‘The General Court declares that it lacks jurisdiction to hear and determine the actions brought by three asylum seekers against the EU-Turkey statement which seeks to resolve the migration crisis’, https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-02/cp170019en.pdf.


49 See Lutz 2010, p. 22.
deal, combined with the establishment of an independent monitoring system. Parliament could come up with a set of human rights criteria for such impact assessment and monitoring. Using its power of consent to gain influence on external cooperation on migration would also be a way to compensate for the absence of a right to initiative, which is currently impeding an effective performance. In 2018, the Parliament managed to agree on the need for humanitarian visa, in order to create safe and legal channels for refugees.\footnote{European Parliament resolution of 11 December 2018 with recommendations to the Commission on Humanitarian Visas, P8_TA(2018)0494.} The ever increasing externalisation, which prevents refugees from getting access to the EU territory, strengthens the need for such channels. However, the Commission and Council could afford not to respond to this resolution. Den Hartog and Reslow also point at the scrutiny role of Parliament regarding Funds, observing that its budgetary authority has been affected by the emergency mechanisms.\footnote{N. Reslow, \textit{Crisis, Change and Continuity: The Role of the European Parliament in EU External Migration Policy}, paper prepared for the ECPR conference, Hamburg, 22-25 August 2018; L. den Hertog, \textit{Money Talks. Mapping the funding for EU external migration policy}, CEPS Papers in Liberty and Security in Europe no. 95, Brussels: CEPS 2016; L. den Hertog, \textit{EU Budgetary Responses to the ‘Refugee Crisis’. Reconfiguring the Funding Landscape}, Papers in Liberty and Security in Europe no. 93, Brussels: CEPS 2016.} The Refugee Facility For Turkey was adopted as a Commission decision, and the EU Emergency Trust Fund for Africa (EUTF) has been established through the adoption of a constitutive agreement between Commission and some Member States only. Although the EUTF is framed as an emergency instrument, most of its resources consist of Official Development Assistance (ODA), which is intended to fund long-term development programmes. In their analyses of the implementation of the Fund, OECD and the European Court of Auditors observed that migration control is often prioritized above development goals, which underlines the importance of parliamentary scrutiny.\footnote{OECD Development Co-operation Peer Reviews: European Union 2018, December 2018; European Court of Auditors, \textit{European Union Emergency Trust Fund for Africa: Flexible but lacking focus}, special report no. 32, Luxembourg: European Court of Auditors 2018.} The increase of the budget for Asylum, Migration and Integration Fund (AMIF) and Internal Security Fund (ISF) was accompanied by parliamentary scrutiny, but the process of adoption happened in a rush, followed by a request from the Commission for urgent approval. The marginal role of Parliament contradicts to its traditionally strong position on the budget, for instance regarding the Multiannual Financial Framework. As with other EU programmes, the implementation of these funds requires transparency, monitoring and evaluation, accountability mechanisms, as well as preliminary and ongoing assessments of their impact on fundamental rights. Another weakness of the Parliament is that its scrutiny role is divided among different committees, whereas the external dimension encompasses all policy areas. That the role of Parliament is different at every policy area, makes an effective scrutiny extra challenging. As migration control is the main objective of the external dimension, LIBE committee would be best placed to play a central role in establishing requirements for the cooperation, assessing the agreements and monitoring their implementation.
6. Conclusion

Although the role of the European Parliament on asylum and migration legislation has strengthened since the entry into force of the Lisbon Treaty, it still struggles to safeguard democratic control on European asylum and migration policy in general. The choice of Member States to adopt the first generation asylum and migration instruments in a consultation procedure, has created a significant disadvantage for the Parliament. This has its effect up until now, as the subsequent recasts are based on the instruments negotiated among the Member States. Another main factor is that Member States tend to pursue their aims through intergovernmental cooperation, especially in the external cooperation, where the European Parliament has a much weaker position. Their tendency to circumvent the institutional framework has its repercussions for the democratic legitimacy and accountability of the EU. Another factor affecting effective control is that where the Commission previously shared the human rights approach of Parliament, it seems to prioritise the objectives of the Member States. Yet, the failing of a right to initiative makes Parliament depend on the acceptance of their proposals by the Commission. In order to compensate the lack of checks and balances, the Parliament needs to be creative as well. It can use its legislative and budgetary powers as a leverage to demand involvement and influence on the asylum and migration policies. A more comprehensive approach through which all relevant committees cooperate in establishing an integral position on the external cooperation, would not only avoid fragmented control or the possibility to be played off against each other, but also enhance coherence of the EU’s foreign policy. Lastly, the European Parliament could also strengthen democratic control by creating more transparency of the decision making process. Apart from urging the Council to grant public access to its working documents (in line with the CJEU jurisprudence), it could also create more openness in the trilogue process, for instance by opting for a second reading more frequently. More openness would enable civil society to be informed and become a player in the decision making process. Taking into account all current hurdles, it is amazing that Elspeth always manages to respond timely and thoroughly to new developments, and to be so influential in this way.

Dear Elspeth, I am sure that I will benefit from you closely watching EU decision making in this field. You are a great source of inspiration to me. Thanks a lot for our cooperation at the Radboud University, and I hope we find ample opportunities to continue it.