



# The new European Parliament and its role in the external dimension of EU migration policy: Time to stand up for our values

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Two weeks before the European Parliament elections, heads of state and government of the EU met informally in Sibiu, Romania, to discuss the EU's strategic plans for 2019-2024. The four 'overarching priorities' on the leaders' [strategic agenda](#) were (1) protecting citizens and freedoms, (2) developing Europe's economic base and model for the future, (3) building a greener, fairer and more inclusive future, and lastly, (4) promoting Europe's interests and values in the world.

While all of these objectives are important and intertwined to a certain degree, under the research agenda of "Global Europe" launched at TMC Asser Instituut, our attention will be focused on the fourth priority area, as it envisages positioning "Europe as a global player in the new strategic context", working towards maintaining and developing the rules-based multilateral order, cooperating with countries of origin and transit on migration, as well as promoting EU's interests and values. Given the challenging international environment, it is not difficult to foresee that these are ambitious objectives, fraught with many underlying tensions, which are bound to create a fertile ground for our research. There are many challenges facing the EU, but perhaps the most difficult one, both internally and externally, is staying true to its foundational values. Internally, recent developments in some member states, such as Hungary and Poland, demonstrated how

unequipped the EU is in dealing with rule of law and democracy problems at home.

Externally, promoting its interests and values simultaneously proved to be very difficult, bordering to mission impossible in some areas, such as migration. EU action/ inaction in this field during, as well as after, the so-called migration 'crisis' can be seen as a litmus test, which is worth exploring more closely.

Since an exhaustive study of the issue will not be possible within the scope of a blogpost, the focus here will be on the role of the European Parliament (EP) in EU action taken in the external dimension of this area, i.e. its role, or rather the lack thereof, in concluding agreements, deals and different types of soft law arrangements that have become ever more prevalent in the last few years. Since the current elections mark the 40th year of the existence of direct Parliamentary elections at EU level, the rise of the EP as one of the most important EU institutions is worth recalling before focusing on its more recent role in the external dimension of migration policy.

## **EP as the source of democratic legitimacy in the EU**

The EP is the only EU institution directly elected by European citizens across the member states of the EU, even though the elections still take place on the basis of



national lists and in accordance with [national rules](#). It was transformed from a Parliamentary Assembly composed of representatives of national parliaments, to a true Parliament with the first direct elections that took place in 1979. Ever since, the EP has been seen as the main source of democratic legitimacy of EC/EU actions and decision-making. High hopes have been pinned on it, as its modest powers have been steadily increased with every Treaty amendment in hope to alleviate the EU's dreaded 'democratic deficit'. However, the fact that these amendments also made the structure and functioning of the Union ever more complex and difficult to comprehend, means the debate on the democratic deficit never truly subsided.

Today, the EP co-legislates with the Council of Ministers on the vast majority of issue areas governed by the Treaties: from the internal market, to agriculture, the environment, transport, energy and importantly EU's budget. Its importance as an actor in EU external relations has also increased considerably over the years. When and how did this happen?

### **The EU's increased internal and external powers**

Initially, in the framework of the EEC, the Parliamentary Assembly was envisaged as a mere consultative body. It had to be consulted on certain issues as a matter of procedure; however, the Council could ignore its opinion, if it wished to do so.

The most significant increase in the powers of the EP both in terms of its participation in the internal legislative process as well as its participation in concluding international agreements (under what is now Art. 218 TFEU) were introduced with the Treaty of Maastricht.

Internally, the Maastricht Treaty introduced the co-decision procedure that placed the EP on an equal footing with the Council of Ministers, even though initially applicable to a limited amount of issue areas. Externally, in addition to increasing the instances in which the EP was to be consulted, it brought an 'assent' (now renamed as 'consent') requirement of the EP for concluding international agreements which establish "a specific institutional framework by organizing cooperation procedures"; have important budgetary implications; and which entail the amendment of an act adopted under the co-decision procedure. In the areas where it co-decided and its assent/ consent was required, the EP was elevated to a force to be reckoned with. The threat of the veto ensured its views were taken into account by those who wanted to see a piece of legislation passed or an agreement concluded.

With the changes introduced by the Lisbon Treaty, the role and powers of the EP increased even further. The most important development was the extension of the co-decision procedure to many more issue areas: by now, it applies to [more than 90%](#) of the legislation adopted in the EU. This



was also the reason why it was renamed as the ordinary legislative procedure. With the Lisbon Treaty, the number of international agreements for which the consent of the EP is required, also increased drastically. Now the consent of the EP is required also for the conclusion of association agreements as well as agreements covering fields to which the ordinary legislative procedure applies (Art. 218(6)(a)(i) & (v) TFEU).

The importance of the latter cannot be overstated as it covers not only trade and investment agreements under the Union's prolific Common Commercial Policy, but also Readmission Agreements (Art. 79(3) TFEU) that would previously fall under the EU's third pillar under the Maastricht Treaty. In all other cases, with the exception of instruments adopted on the basis of the Common Foreign and Security Policy (CFSP), the consultation procedure applies. The CFSP is still an area subject to special rules and procedures, where the EP does not play any role in the conclusion of international agreements. However, the requirement that it be "immediately and fully informed at all stages of the [Art. 218 TFEU] procedure" (Art. 218(10) TFEU) applies to all areas covered in the Treaty, including the CFSP. By issuing Resolutions, preparing studies and reports on all issues it deems relevant and important, the EP makes sure its views are known to all.

It is impossible to mention all the ways in which the EP takes part in and influences EU external action; however, it is important to

mention its role in the budgetary procedure, which gives it leverage over all policies covered in the Treaties, including the CFSP. The approval of the EP is required for the adoption of the Multi-annual Financial Framework as well as the annual budget. However, it should be noted that in addition to the powers provided in the Treaties, the EP has also sought to maximize its role and powers by concluding inter-institutional agreements with the other two actors, namely the Council (one relevant for [CFSP](#), and another for [non-CFSP action](#)) and [the Commission](#). As to what extent and how the EP exercises these powers to shape and scrutinise EU external action, it is not difficult to discern differences between different policy areas. While the EP more readily uses all its power and clout in the field of Common Commercial Policy, it seems more hesitant to do so when it comes to more politically charged issue areas such as migration, to which we now turn.

### **The EP's role in cooperation with third countries to tackle migration challenges**

The EP and especially its Committee on Civil Liberties, Justice and Home Affairs ([Libe Committee](#)) play a very active role in the development of EU asylum and migration policies. The Libe Committee commissions studies, issues reports and organizes hearings on proposals that are on the legislative agenda. However, internally, there is a deadlock on how to reform the Common European Asylum System and the specific instruments comprising it. As opposed to



the internal deadlock, all member states agree that more should be done externally to manage migration flows by cooperating with third countries situated on migration routes to Europe. Cooperation with these countries is perhaps the most controversial aspect of EU external action of the last few years. While that objective in itself might not be problematic, it is the way in which it has been pursued that raises many questions.

In the name of more efficient and flexible action, the EU resorts ever more often to concluding international soft law instruments instead of concluding binding international agreements. What is emblematic of these kinds of flexible arrangements is “lack of consultation and transparency” as well as disregard for the possible consequences for the rights of those affected ([EP Resolution P8\\_TA\(2017\)0124, para. 69](#)). One such example is the “[Joint Way Forward](#)” with Afghanistan, which in practice is a Readmission Agreement adopted without regard to the relevant procedure provided in the Treaty (Art. 79(3) & 218 TFEU). The Parliament expresses its discontent in resolutions it adopts by stating that it “Deeply regrets that in the EU migration policy framework and refugee movements response, the EU and its Members States have opted for the conclusion of agreements with third countries, which avoid the parliamentary scrutiny attached to the Community method” ([ibid](#), para. 70). As important as these resolutions are, the EP’s powers today enable it to do more than express its discontent with the state of affairs in this area.

The EP fought for its rights with tooth and nail (see cases [Les Verts](#), paras. 23-24 (recognized EP’s acts can be challenged), and [Comitology](#) (recognized EP’s right to bring action to protect its prerogatives)) and it is now a privileged applicant with unlimited access to the Court of Justice of the EU (CJEU), which individuals affected by these shady deals are not. Due to strict admissibility requirements, individuals have very limited direct access to the Court, even in cases where there is a binding legal instrument adopted in line with Treaty procedures (see [Plaumann](#)). In the absence of such an instrument, access to the Court becomes even more difficult. In that respect it is regrettable that it was not the EP that brought the case challenging the legality of the [EU-Turkey Statement](#) instead of [few individuals](#). In addition to the human rights of the individuals affected by the deal, what was also at stake in this particular case was the rule of law and the EU’s institutional balance, as the EP was entirely side-stepped in the process. A case brought by the EP would mean the Court would have to examine the Statement in light of the latter principles, which the Court was able to avoid in a case brought by individuals. Moreover, going to the Court was not the only option for the EP. As mentioned above, it has more ways to influence internal decision-making, one being through the power of the purse. A significant part of the [Facility for Refugees in Turkey](#) is financed through the EU budget. The fact that all institutions, including the EP, seem to play along the tune of the member states in this area is disconcerting and bad signal for



future policies in this field.

One might wonder whether the EU-Turkey deal can be justified in light of the emergency prevalent at that time. Can we expect the institutions to resume their 'normal' functioning in line with Treaty procedures once the emergency fades? Asylum application numbers have already fallen to pre-crisis levels, however, the perception of the threat posed by migration has not, as shown by the public debate leading to the current elections. It was not enough that Parliament expressed concern over the EU-Turkey deal. With hindsight, its warning not to replicate it was not of much impact either ([EP Resolution P8\\_TA\(2017\)0124, para. 67](#)). Subsequent cooperation with Libya, which aimed to reduce number of arrivals in the Central Mediterranean, left many stranded in detention centres amidst raging civil war.

Despite these shortcomings, EU's citizens' expectations of the EP are as high as ever. While we expect the national governments to do whatever it takes to win the next election, the expectation with the EP is that it has a longer-term and broader vision as a transnational institution, which at least to some extent, acts outside the constraints of national politics. Citizens want more EU action in many policy areas across the board, including in the area of migration (see, [Eurobarometer survey commissioned by EP, p. 10](#)). The expectation is that as the embodiment of EU's democratic legitimacy, the EP remains faithful to EU's underlying

principles and values, and fulfils its role of political control (Art. 14 TEU). It is these expectations and these hopes that explain a history of sixty-two years of existence with unparalleled increase in functions and powers.

We live in interesting times in which EU's view of the world and itself is being seriously challenged both from within and without. Time will reveal the true magnitude of the challenge and whether the EU will be able to withstand it, by staying true to its identity and values, or whether it will bring about change in its deeper tissue.