

# Ceci n'est pas un accord

Contesting informal externalisation: The European Parliament  
in informal readmission agreements

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Silke Maes  
84136613

Supervisor: Dr. Jan Vaska  
Charles University  
Prague, the Czech Republic  
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## Table of Contents

Abstract .....	5
Acknowledgements.....	6
Introduction: crises and the informal turn of return .....	7
Research question.....	8
Relevance: the need for an EP perspective .....	8
A. Informal externalisation in three ways .....	9
B. Conceptualising readmission.....	10
C. The Parliament in Externalisation: why the EP matters .....	11
D. Explaining limited Parliamentary influence.....	12
E. What drives parliamentary behaviour?.....	13
A MEANS: formal power, informal power, ability .....	13
I formal power: The EP's formal power under pressure.....	13
II Informal power: opposition through informal means.....	14
III Ability and access to information: European Parliament in the dark.....	14
B MOTIVES: Is the EP willing to employ its full capacity?.....	14
I Elite preferences: maximising influence and a preference for a 'moral' foreign policy?.....	15
II Public opinion: exclusion as an active choice?.....	15
III Role expectations, perceived responsibility of the Parliament and Crises .....	16
IIII Salience of the issue .....	16
Methodology .....	17
Case selection and time selection.....	17
Operationalising contestation.....	19
Small N comparative case study of Turkey, Afghanistan, and Ethiopia .....	20
METHOD 1: a qualitative content analysis of plenary debates and parliamentary questions .....	21
METHOD 2: elite interviews as an additional method .....	22
The coding process: a blended approach.....	23

Results of the case studies: an in-depth analysis of the salience actor, actor range and arguments of contestation.....	24
Case study 1: The EU-Turkey statement: a highly contested case .....	24
1. Context: the paradox of EU-Turkey relations and Turkey’s role in EU migration Governance ...	24
2. Salience and actor range: an agreement that caught the attention of many .....	26
3. International law, parliamentary involvement and cooperation with Turkey: an overview of contesting arguments.....	27
Conclusion .....	33
Case study 2: The Joint way Forward with Afghanistan: a moderately contested case .....	33
1. Context: An EU Afghanistan strategy of democratisation, reconstruction and development and limiting migration .....	33
2. JWF: a salient topic with a large actor range .....	35
3. parliamentary involvement, human rights (law) and development aid: an overview of contesting arguments.....	35
Conclusion .....	39
Case study 3: The Admission Procedures with Ethiopia, a limitedly contested case.....	39
1. Context: Ethiopia as a strategic partner, donor darling, and a challenging partnership with the EU .....	39
2. AP with Ethiopia: an agreement brought onto the agenda by one MEP .....	41
3. A leaked agreement: criticism on parliamentary involvement, legal basis, and human rights, an overview of contesting arguments.....	41
Conclusion .....	43
Discussion of the results: identifying similarities and differences .....	45
“if you are not informed, it is hard to contest”: a lack of information and visibility as an explanation for non-contestation .....	45
The importance of salience: an internal matter of importance, threats and the political capital of readmission agreements .....	47
Respect for human rights and international human rights law .....	48
Secrecy and Parliamentary involvement.....	51

	4
“was sich liebt das neckt sich”: prior relations with the partner country .....	51
Ideological composition of the parliament .....	52
Not all factors are equally important .....	53
Conclusion: what drives EP contestation of informal readmission agreements?.....	54
References .....	56
Annex I .....	69

## Abstract

In 2015, an unprecedented number of migrants entering the EU, and the failure to coordinate the inflow of migrants on the basis of solidarity led to an exponential growth in externalisation policies aimed at curbing migration flows. Readmission composed an important part of this strategy, constituting one of the EU's priorities. Many of the readmission agreements signed during the 8<sup>th</sup> parliamentary term took the form of informal agreements in which the European Parliament has no formal role. Previous research on the topic has argued that, in the wake of the migration crisis, the European Council cast a "shadow of hierarchy" on the European Parliament, actively undermining its role. However, an in-depth analysis of the arguments and drivers from the perspective of the European Parliament had, so far, not been conducted. Therefore, this thesis aimed to answer the following question: **what drives contestation by the European Parliament of informal readmission agreements?** To explain limited but varying Parliamentary opposition to informal readmission agreements and identify the drivers and arguments for contestation, this thesis conducted a qualitative comparative small n case study of 3 agreements (Turkey, Afghanistan and Ethiopia). The theoretical framework by Thevenin, which identifies means and motives for contestation, serves as a basis for the analysis. The analysis found that informal while readmission is generally not considered an important topic by MEPs, six factors can drive contestation: information as a precondition, salience, concerns for the respect for human rights and international law, defence of the Parliament's prerogatives, prior relations with the partner country, and the ideological composition of the Parliament. The results of this thesis suggest that one should look past the idea of a simple shadow of hierarchy cast by the Council upon the EP; and that several motives for contestation explain, at least in part, the disengagement of the Parliament from informal readmission agreements.

## Acknowledgements

Democratic control, respect for the Rule of law, and how to deal with the challenge of migration are some of the great questions of current-day politics. All these questions come together when studying informal readmission and parliamentary involvement. That informal readmission is a highly topical and relevant issue, was recently shown again with the new EU-Tunisia 'migration deal'.

I am grateful I could spend this year researching this topic. It was an opportunity to learn more about a matter I have since long been interested in. It was equally an opportunity to speak to experts in the field. I am very thankful to the MEPs and former MEPs for taking the time to talk to me about how the European Parliament, as an institution, deals with informal readmission. With this knowledge and encounters, I end my master's and my time as a student, but not before thanking some important people who helped me with my research over the past year:

First of all, my supervisor, whom I have had the luck to work with. Thank you, Professor Váška, for the professional and warm guidance, for being reachable, and for the excellent feedback.

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## Introduction: crises and the informal turn of return

While traditionally, migration management took place at the EU's border (Bialasiewicz, 2012), the EU has increasingly externalised its migration policy to third countries in recent years. The practice emerged in the 1990s when the European Commission proposed incorporating migration into the EU's external policy (Boswell, 2003). However, the migration crisis, which confronted the EU with the largest influx of refugees since the second world war, spurred this development (Niemann & Zaun, 2018).

The UNHCR estimates that, in 2015, more than 911,000 refugees and migrants, mainly Syrians, Afghans and Iraqis, crossed the European border (Spindler, 2015). Another 3,550 lost their lives at sea that year. On 18 April, a day before the Council meeting of EU foreign ministers, a fishing boat carrying 800 migrants capsized and sank off the Libyan coast (Sabic, 2017). The disaster gave impetus to the development of a plan to alleviate the overburdened southern EU states (Sabic, 2017). Yet, the introduction of an emergency relocation plan was met by heavy resistance, especially from the central and eastern EU member states (Sabic, 2017). Eventually, only 29,401 migrants were relocated over the course of two years (Sabic, 2017).

The failure to coordinate the inflow of migrants based on solidarity led to an exponential growth in externalisation policies aimed at curbing migration flows (Oliveira Martins & Strange, 2019; Ruhrmann & FitzGerald, 2017; Spijkerboer, 2022). Readmission composed an important part of this strategy (Cassarino, 2007). At the council meeting on 15 October 2015, return and readmission was listed as one of the EU's priorities <sup>1</sup>(European Council, 2023). Many of the readmission agreements took the form of informal political agreements of which the legal status is uncertain (Reslow, 2019). Informal agreements provide more flexibility, are quicker to implement, and respond to the demands from low-income partner countries who often oppose formal (and thus public) agreements, which are perceived negatively by the electorate (Cassarino, 2007). However, contrary to their formal counterparts, the European Parliament has no official role in the non-binding agreements, and hence, the externalisation policy severely restricted parliamentary involvement (Servent, 2020).

Previous research suggested that contestation of this policy by the European Parliament was often minor (Reslow, 2019). Indeed, most of the informal readmission agreements have remained undiscussed. On the other hand, the Parliament heavily criticised a few deals (including Turkey, Afghanistan, and to a lesser extent Ethiopia). Yet, also in these cases, little action was taken to stop them.

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<sup>1</sup> Together with cooperation with countries of origin and transit, and strengthening the EU's external borders

How has the European Parliament contested the developments, and what were the drivers underlying their behaviour? Was the limited involvement of the European Parliament a consequence of exclusion by the European Council and Commission, as most scholars suggest, or might its exclusion, at least in part, have been an active choice by the Parliament to appease its electorate on migration issues?

### Research question

While there is a relatively good understanding of the externalization policies introduced in the wake of the crisis, little is known about how the European Parliament (EP) contested these developments (Servent, 2018). The objective of this thesis is therefore to explain the limited opposition by the EP and identify arguments and drivers for contestation through a comparative analysis of three agreements that were met with different degrees of resistance. The research question is the following:

**What drives contestation by the European Parliament of informal readmission agreements?**

### Relevance: the need for an EP perspective

While the phenomenon of externalisation -including its legal, democratic and human rights consequences- has been researched extensively<sup>2</sup>, the European Parliament's role has remained understudied until now (Servent, 2018). Yet, its study is **societally relevant**. The Parliament is a crucial actor in providing democratic legitimacy. In addition, it also functions as a control body which holds the executive to account, restrains its scope of action, and ensures good democratic governance. Moreover, the EP is believed to add a moral perspective to external relations (Beetham, 2006; Stavridis & Jančić, 2016). Lastly, readmission is a topical issue. The recent EU-Tunisia 'migration deal' presented on 11 June, demonstrates that the process of informal externalisation is still ongoing (Preussen, 2023).

Moreover, studying the Parliaments' behaviour in informal externalisation is also important from an **academic perspective** as it helps to better understand and predict the Parliaments' behaviour in the process of informal externalisation. In addition, it adds to the knowledge of European parliamentary behaviour in the Field of JHA more generally. Currently, findings on the EP's behaviour in external affairs are based on studies in the field of terrorism and data protection (European Parliament, 2010; Kaunert et al., 2015; Servent, 2018). Studying the Parliament's behaviour in external migration policy will provide evidence about EP behaviour in external policies from a different domain.

In what follows, a review will be provided of the existing literature on informal externalisation, readmission and the drivers of EP behaviour and contestation in external migration management. The first part elaborates on the different forms in which informal cooperation in migration management occurs. The second part provides a conceptualisation of readmission. The third part deals with the role

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<sup>2</sup> See (Batalla Adam, 2017; Costello & Mann, 2020; Liguori, 2019; Müller & Slominski, 2021)



and importance of Parliamentary involvement. Finally, the last part of the literature review focuses on the drivers of Parliamentary behaviour.

## A. Informal externalisation in three ways

Informal cooperation with third countries takes on many forms and serves different objectives. According to Eleonora Frasca, externalisation through informal cooperation is done in three main ways: return and readmission, border control in third countries, and by supporting the asylum capacity in partner countries (Frasca, 2021).

### **1. border controls in third countries**

A first key aspect of the EU's externalisation policy concerns increasing border control capacity in third countries. To implement this policy, the member states rely on EU and non-EU agencies and local authorities to strengthen border control (Frasca, 2021). Firstly, the EU delegates power to EU agencies like the EBCGA, whose actions are often portrayed as purely administrative (Frasca, 2021). Unlike the formal status agreements, the informal working agreements the agency closes with third countries fall outside the EU procedure described in Article 218 TFEU (Frontex, 2023). In addition, Frontex officers are deployed in third countries to support border management on the ground<sup>3</sup>. Secondly, the EU also increasingly delegates power to non-EU agencies like the UN International Organisation on Migration (van Dessel, 2019). Lastly, local authorities also perform border patrols, who receive equipment and training from the EU. the support of border guards in Mali and the much-contested deal with Libya are examples of the latter (Frasca, 2021).

### **2. international protection and increasing asylum capacity in third countries**

A second area of informal cooperation focuses on asylum capacity and international protection (Frasca, 2021). To this end, the EU invests in reinforcing the asylum capacity of third countries and ultimately aims to classify them as safe third countries to justify the return of migrants from EU countries to these states (Costello, 2016). This reinforcement can consist of legislative changes in asylum law, but equally include support for job creation, as in the case of Ethiopia (EEAS, 2017). According to Frasca, assistance for developing the asylum system is mainly targeted at transit countries, including Tunisia, Morocco and Turkey (Frasca, 2021).

### **3. return and readmission to countries of origin or transit**

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<sup>3</sup> See (Regulation (EU) 2019/1240 of the European Parliament and of the Council of 20 June 2019 on the Creation of a European Network of Immigration Liaison Officers (Recast), 2019)

A last way of organising informal externalisation is through readmission (Frasca, 2021). While readmission agreements are traditionally highly formalised, non-binding arrangements are increasingly used to render return policy more efficient (Frasca, 2021). The agreements are negotiated outside of the EU framework and thereby circumvent Article 218 TFEU, which lays down the Parliament's power to consent and be informed, as well as the possibility of judicial scrutiny by the CJEU (Batalla Adam, 2017). The EU-Turkey statement, while not the only one, is the most well-known example of this kind. Lastly, readmission and return constitute an important element in the migration compacts signed under the Migration Partnership frameworks (European Commission, 2021).

#### 4. funds

Finally, for the pursuit of these three strategies, the EU needs funds (Frasca, 2021). On the one hand, official development aid is increasingly used to address issues linked to migration. On the other hand, new emergency external financial instruments have been introduced (Frasca, 2021), which include trust funds like the EU trust fund for Africa (EUTFA)<sup>4</sup> and the Refugee Facility for Turkey (Den Hertog, 2016). The increased use of emergency funds fits the trend favouring soft law (Carrera et al., 2018). However, the absence of scrutiny rights and transparency over the funds' management also further undermines the EP's budgetary authority (Frasca, 2021).

## B. Conceptualising readmission

As demonstrated above, the informal externalisation of migration management takes on many forms. In this thesis, the focus will be on informal readmission agreements. Therefore, the next part will provide a conceptualisation of this central concept. According to the Commission, readmission agreements are concluded to "facilitate the return and transit of persons who do not, or no longer fulfil the conditions of entry to, presence in or residence in the requested states" (European Commission, 2002). The agreements stipulate the conditions under which a country readmits its own nationals or, in some circumstances, third-country nationals. (IGC, 2002). In addition, they describe arrangements for the identification and provision of travel documents and include details on the removal procedures (for example, who is responsible for the removal and which border control points can take be used) (Cassarino, 2007; European Commission, 2002).

For the **sending or soliciting state**, readmission agreements are deemed beneficial because they speed up the identification process and lower the cost of detention (Cassarino, 2007). And while the outcome

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<sup>4</sup> Other trust funds include the EU Trust Fund for the Central African Republic and the EU Regional Trust Fund in Response to the Syrian Crisis

and actual implementation is often uncertain, concluding readmission agreements can serve as a political signal to the electorate that migration is being managed and controlled (Cassarino, 2007).

The benefits of the **receiving (solicited) state** are less straightforward. The return of their -or third-nationals may harm the domestic economy and is perceived negatively by the public opinion (Cassarino, 2007). For these reasons, solicited states are often reluctant to engage in readmission agreements, especially when they are formal in nature and publicly communicated. Therefore, in order to come to an agreement, sending states offer compensatory measures, which take the form of special trade concessions, accession talks, visa facilitation, a preferential regime for legal migration, technical cooperation and development aid. In addition, readmission agreements can be a means for the receiving country to portray themselves as credible partners and increase legitimacy on the international stage (Cassarino, 2007).

### C. The Parliament in Externalisation: why the EP matters

As demonstrated above, informal readmission agreements have important advantages for sending states. However, **their use also poses problems in multiple domains**. Besides repercussions for judicial oversight and the EU legal framework (Ott, 2020), recourse to soft law agreements also sidelines Parliamentary involvement (Moreno-Lax et al., 2021). Whereas in formal readmission agreements, the European Parliament has the power to approve, there is no such role for the Parliament in their informal counterparts (Servent, 2020).

The lack of parliamentary input and scrutiny is problematic because it is indispensable for ensuring democratic governance. Parliaments constrain the room for manoeuvre of the executive in international negotiations (Putnam, 1988), and as an elected forum (Bovens, 2007), they provide democratic legitimacy to decisions made (Bovens, 2007; Reslow, 2019). Indeed, to **render a policy democratically legitimate**, it is crucial that parliaments hold the executive to account, both publicly and privately, over how agreements are adopted and implemented (Reslow, 2019; Rosen & Raube, 2018).

Parliamentary scrutiny is also important from a **human rights** perspective (Cassarino, 2007). Firstly, Parliaments serve as a forum that provides (public) accountability by **monitoring**, for example, removal procedures to ensure compliance with EU and international law on human rights (Cassarino, 2007). This is especially relevant as **parliaments are often described as moral tribunes** in international cooperation on migration management, holding a special concern for promoting and defending human rights (Reslow, 2019).

## D. Explaining limited Parliamentary influence

In the literature, there is broad consensus that informal externalisation has led to the erosion of parliamentary power and oversight to the advantage of intergovernmental decision-making (Carrera et al., 2018). However, **the increasing disempowerment of the Parliament is contrary to what one would expect for multiple reasons**. Firstly, the European Parliament is a creative actor and has expanded its role over the years by strategically using its position in the policy process (Mello and Peters 2018). Secondly, the European Parliament can rely on its formal power in the context of readmission. Specifically, Article 218 TFEU prescribes that the institution must consent to international agreements. Consequently, when the Parliament is bypassed, it can contest the legality of the arrangement by engaging in a judicial proceeding before the CJEU (Gatti, 2018). The option has been used by the Parliament in the past (Gatti, 2018). Lastly, previous literature has demonstrated that the EP has exerted considerable influence in various international agreements. This was the case even when it concerned sensitive topics, including human rights clauses in formal readmission agreements (Billet, 2010) and international agreements on data protection and anti-terrorism (Servent, 2018).

Contrary to the examples mentioned above, the Parliament has, for the most part, not been included in setting and implementing political readmission agreements. Various hypotheses have been put forward to explain this limited involvement (Reslow, 2019). A dominant narrative is that, in the wake of the migration crisis cast, the European Council casts a "**shadow of hierarchy**" on the European Parliament, actively undermining its role and resulting in the institution's gradual disempowerment (Servent, 2020). The Commission and the member states have, indeed, put the European Parliament aside by undermining its budgetary authority and increasing the use of political agreements at the expense of formal agreements. However, **it is too simplistic to conclude that the European Parliament was merely a passive spectator in these developments**.

To have a complete understanding of the development that unfolded after 2015, the perspective of the European Parliament cannot be ignored. One Author providing **an alternative perspective** is Huff, who explains Parliamentary opposition based on the institution's ability and willingness to use its full power (Huff, 2015). However, Reslow's analytical framework provides the most comprehensive set of factors to analyse the behaviour of parliaments in international migration management (see Figure 1). Based on Huff's work, she differentiates between the **means** through which the Parliament can challenge the executive on the one hand, and explanations for the **motives** to challenge the executive on the other (Reslow, 2019).

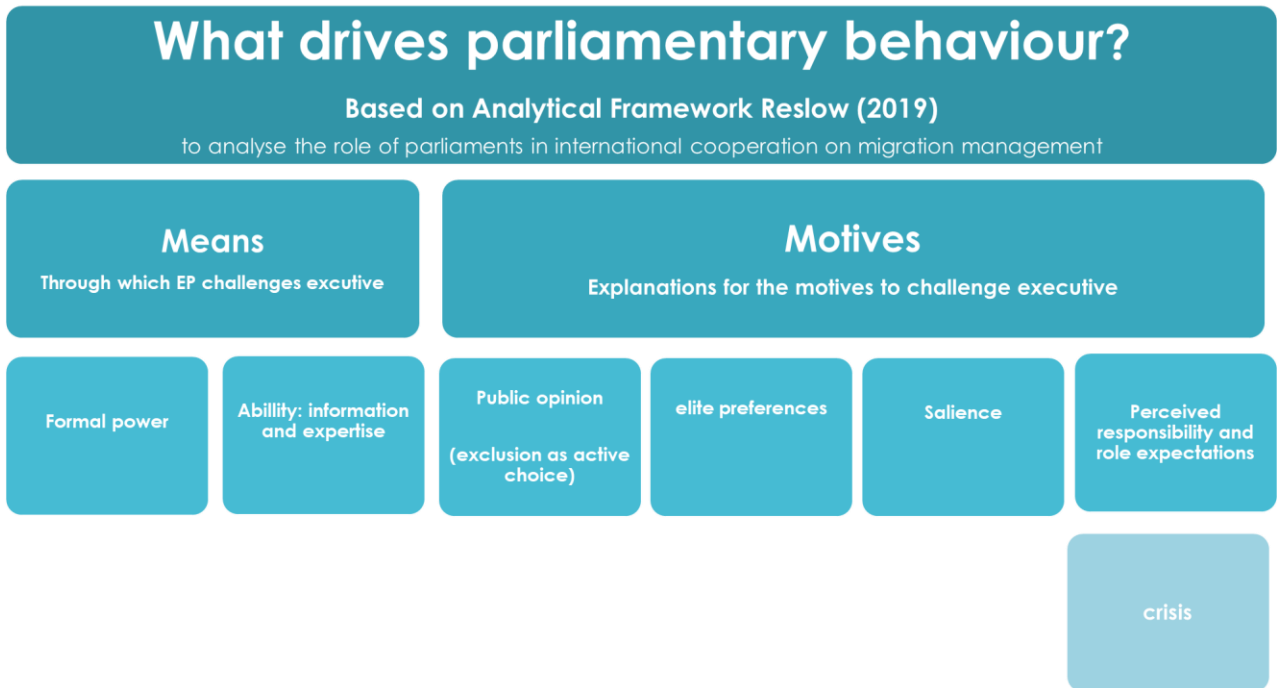


Figure 1: an analytical framework for parliamentary contestation based on Reslow (2019)

## E. What drives parliamentary behaviour?

This analytical framework provides a helpful basis to explain (the lack of) parliamentary contestation of informal readmission. Therefore, the following part will elaborate on the different means and motives which might play a role.

### A MEANS: formal power, informal power, ability

The first set of factors constitutes the means through which the European Parliament can challenge the executive. They comprise formal power, informal power, and ability.

#### I formal power: The EP's formal power under pressure

The European Parliament can rely on some formal power in the context of readmission agreements. Article 218 TFEU prescribes that the institution needs to give its **consent** to international agreements. When the Parliament is bypassed, it can **contest the legality** of the agreements with a judicial proceeding before the CJEU. This option has been used by the Parliament in the past (Gatti, 2018), yet, never to contest its exclusion from informal readmission agreements. A possible reason for this might be the use of different legal constructions, making it challenging to launch judicial proceedings before the CJEU. For example, the EU-Turkey statement of 18 March 2016 is based on the bilateral Greece-Turkey agreement, not an EU one (Hakki Onur & Yigit, 2023). The influence of this factor has been researched extensively in the literature (Servent, 2020). For this reason, this thesis will not go further into the constraints brought upon the parliament by a lack of formal power.

## II Informal power: opposition through informal means

In addition to its (limited) formal power, the Parliament can also carve out a role for itself by using informal means. These include asking questions to the Commission, organising debates, monitoring the budget, adopting resolutions and Parliamentary diplomacy (Reslow, 2019). If the Parliament is excluded from the decision-making process, it could try to influence the executive by providing different frames and policy alternatives that are considered legitimate by the executive (Riddervold & Rosen, 2016) and by forcing the executive to provide information and justify their policies when agreements are adopted (Reslow, 2019). Contestation does not need to stop there. During the implementation and evaluation stages, MEPs can **scrutinise the implementation** through naming and shaming and frame the 'lessons learned' to put pressure on future decisions (Reslow, 2019).

## III Ability and access to information: European Parliament in the dark

Thevenin argues that formal and informal power provide important means for parliaments to scrutinise and contest the executive (Thevenin, 2020). However, in order to use its powers and scrutinise effectively, the Parliament needs to have the ability to do so (Huff, 2015). These include access to the appropriate resources and **sufficient and reliable information** (Reslow, 2019). In the case of non-binding readmission agreements, the European Parliament was not involved any of the negotiations (Molinari, 2019). Furthermore, it becomes apparent from the parliamentary questions to the Commission that parliamentarians are often unaware of the exact terms of the agreement and that detailed information and letters and appendixes accompanying agreements were often not made public (Judith Sargentini et al., 13 October, 2016; Marietje Schaake (ALDE), 12 February, 2016).

The work of the Parliament is further complicated by the fact that agreements are signed under **different legal bases**. Some arrangements concern bilateral international agreements while others (such as Mali) fall under the Cotonou agreement, or concern EU-backed cooperation by member states (Turkey)<sup>5</sup>. The use of these different constructions, in turn, is making effective control and contestation more difficult.

## B MOTIVES: Is the EP willing to employ its full capacity?

According to Auel and Christiansen (2015), the "quantity and quality" of contestation by the Parliament are determined not only by the institution's capacity but also by its willingness to use its full capacity and to scrutinise and hold the executive to account. Interestingly, several scholars have pointed out that Parliaments do not always fully employ their formal rights (Auel et al., 2015; Pollak & Slominski, 2003). Given the nature of informal agreements, scrutiny is rarely automatic but depends on MEP's

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<sup>5</sup> See (Mario Borghezio (ENF), 12 January, 2017)

willingness to engage in the topic (Huff, 2015). It is argued that in external affairs - where formal power is limited - the attitude of MPs is the most important factor determining parliamentary scrutiny (Auel & Christiansen, 2015). Their willingness depends on various factors, including parliamentary culture, role expectations, saliency, public opinion and elite preferences (Huff, 2015; Reslow, 2019). The next part will therefore look into the factors that might impact the willingness or motives of MEPs to criticize the non-binding arrangements.

#### I Elite preferences: maximising influence and a preference for a 'moral' foreign policy?

Firstly, elite preferences, or the preferences of parliamentarians, can play a role in the nature and degree of involvement in and contestation of the agreements (Reslow, 2019). As principles of the executive, MEPs have an interest in minimising agency loss vis-à-vis the executive. To that end, it can be expected that MEPs are **interested in scrutinising the executive to maximise their policy influence** (Auel et al., 2015). In several resolutions and reports, the Parliament has expressed its regret for the lack of parliamentary involvement, which is considered a democratic shortcoming (European Parliament, 2017b). Although Reslow (2019) suggested that criticism of informal agreements<sup>6</sup> has been less unequivocal than on the circumvention of the Eps budgetary power<sup>7</sup> (Reslow, 2019), the European Parliament has nevertheless voiced its democratic concerns on the political cooperation agreements. Secondly, apart from MEPs' interest in being included in the decision-making process, it is believed that the European Parliament has a preference for a foreign policy that puts more emphasis on support for the **principles of human rights and democracy**. This preference for a 'moral foreign policy' has been described by multiple scholars (Boer & Weisglas, 2007; Manners, 2002; Stavridis & Jančić, 2016). On the other hand, other authors, including Reslow, warned that this argument should be nuanced (Reslow, 2019).

#### II Public opinion: exclusion as an active choice?

As demonstrated above, MEPs are interested in maximising their policy influence and minimising agency loss vis-à-vis the executive. However, Parliaments are not only principles of the executive but also agents of their electorate (Strøm Citation2003). Therefore, scholars have argued that MEPs' behaviour is also driven by a desire to continue the delegation relationship and, thus, to be re-elected (Auel et al., 2015). Consequently, **public opinion** can play a role in contesting informal agreements (Born & Hänggi, 2013).

Migration has been one of the main concerns of the European electorate in the past years (Directorate-General for Migration and Home Affairs, 2019). Some scholars have, therefore, suggested that the side-

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<sup>6</sup> E.g. the EU-turkey Statement, Migration Partnership Framework, Joint Way Forward with Afghanistan

<sup>7</sup> by setting up funds outside of the framework

lining of the Parliament has at least in part been an active choice not to upset the electorate (Reslow, 2019). For example, the European Parliament has never made use of judicial proceedings against any of the informal readmission agreements. The Parliament's relative inaction aligns with public opinion on migration management (Reslow, 2019). Its tacit support for the policies could be regarded as an **electoral strategy** to appease the electorate (Reslow, 2019).

### III Role expectations, perceived responsibility of the Parliament and Crises

Thirdly, Parliamentary culture and norm expectations on what are appropriate roles for parliamentarians vis-à-vis the executive likely influence the intensity of parliamentary scrutiny (Auel & Christiansen, 2015; Bressanelli & Chelotti, 2018; Laffan, 2014). Empirical research of the role of parliamentary culture on scrutiny in external affairs suggests that, if the Parliament considers the external dimension of migration management a matter for the executive, it is likely to put less energy into its oversight function over the policy, regardless of its formal power (Huff, 2015). In this respect, Huff argues that while the level of parliamentary scrutiny on external affairs varies across parliaments, there is a long-standing normative convention that **external affairs are a matter for the executive** (Huff, 2015). It is unlikely to be different for the European Parliament (Reslow, 2019). Lastly, parliaments may choose to support the executive's action in this field, not to undermine the country's or union's **diplomatic standing** in the case of international cooperation on migration (Reslow, 2019). This unwritten rule to form a united front with the executive might be particularly strong in times of crisis (Bressanelli & Chelotti, 2018; Laffan, 2014). From this perspective, it is possible that the EP opted to support the executive during the 2015 migration crisis (Fabbrini, 2019).

### III Saliency of the issue

Saliency is one last factor that could influence whether or not a parliament chooses to employ its full power to scrutinise the executive (Reslow, 2019). Saliency is the attention paid to the issue by policymakers, media or voters and the importance these actors attach to the issue (Moniz & Wlezien, 2020). **When the political saliency of a topic is high, it can be expected that Parliaments are more willing to contest policies** (Hänggi, 2004). As demonstrated above, migration was a highly salient issue to the electorate throughout the 8<sup>th</sup> parliamentary term. Therefore, one can expect parliamentary scrutiny. On the other hand, **the saliency of issues on the external dimensions is generally low**, and debate on the topics is often overshadowed by domestic (economic) issues (Huff, 2015). Consequently, it is likely that, while migration is heavily discussed and politicised by the Parliament, its external dimension - and therefore also informal readmission – is less contested.



So far, this thesis has provided an overview of the factors that might act as a driver for Parliamentary contestation: formal power, ability and access to information, elite preferences, public opinion, role expectations and salience. The remainder of this thesis is organized as follows. The next section elaborates on the methodology. This is followed by an analysis of three case studies (Turkey, Afghanistan and Ethiopia). The case studies will look into the agreements' context, salience and actor range and provide an in-depth analysis of the arguments for contestation. Subsequently, the discussion section will elaborate on the agreements' similarities (and differences), which can explain contestation. The last part comprises the conclusion, gives the answer to the research question, and provides shortcomings and suggestions for further research.

## Methodology

### Case selection and time selection

#### THE CHOICE FOR READMISSION

This thesis aims to better understand Parliamentary contestation of the informal externalisation trend. The literature review pointed out that informal externalisation takes place in three ways: border control, increasing asylum capacity in third countries, and readmission agreements. For the sake of feasibility, the current thesis will focus on one aspect of informal externalisation namely, readmission.

The reason for the choice of readmission is twofold. Firstly, Cassarino explained that “The need to define provisions aimed at concretely facilitating the return and readmission of persons has gradually become a **priority** in regional and international migration talks” (Cassarino, 2007, p. 181). Indeed, in the past ten years, the EU has concluded a significant has significantly increased the number of informal readmission agreements, and also within the MPFs, returns and readmission had high priority. Thus, readmission constitutes a central part of the EU’s external migration management strategy, which justifies our attention to the phenomenon.

The second reason is more pragmatic and relates to the availability and researchability of the data. Informal external policies encompass different types of cooperation agreements and constructions, of which the goal and the content differ depending on the country (European Commission, 2016). This leads to problems related to **access to information and the comparability of policies**. Contrary to other types of informal externalisation, research on informal readmission can rely on a comprehensive list of agreements. Cassarino has generated a Dataset inventory encompassing all European Readmission Agreements (EURAs) and EU-wide informal agreements linked to readmission, negotiated between 2000 and 2022 (Cassarino, 2022).

## **TIME SELECTION: VALETTA SUMMIT UNTIL THE END OF THE 8<sup>TH</sup> PARLIAMENTARY TERM**

This thesis includes all informal agreements linked to readmission that were closed between the Valetta Summit on 12 November 2015 and the end of the 8th parliamentary term (formally ending on 1 July 2019). 2015 was a year of major changes in the EU migration policy. The developments of that year were marked, in particular, by the **Valletta summit, which kickstarted the externalisation shift** (Ceccorulli et al., 2020; Spijkerboer, 2022; Tallis, 2016). Several authors, therefore, speak of the “post-Valetta era”<sup>8</sup> (Maru, 2021). During the summit, the EU and African leaders promised to step up their cooperation to better manage migration flows by addressing the root causes, opening up legal channels for migration, protecting migrants on migratory routes, combat human trafficking, and of course, by cooperating on return and readmission (Ruhmann & FitzGerald, 2017). The latter also formed an important part of the Valletta Action Plan (Ruhmann & FitzGerald, 2017).

**The analysis encompasses ten agreements from Cassarino’s list until the end of the 8<sup>th</sup> parliamentary term.** This end date was chosen because it encompasses both the crisis and its aftermath while eliminating that variation in contestation resulting from a change of compositions of the Parliament after the **elections**. By ending the selected period of analysis, which formally ends on 1 July 2019, the possible influence of this independent variable is eliminated.

A total of 10 informal agreements linked to readmission were concluded in this period (Cassarino, 2022). Two deals were excluded from the list to guarantee the comparability of the agreements: the Mobility Partnership concluded with **Belarus** on 13/10/2016, and the CAMM concluded with **India** on 29/03/2016. The arrangement with Belarus is left out because, it falls under the Eastern Partnerships - a specific eastern dimension of the European Neighbourhood Policy, which combines bilateral and multilateral cooperation (EEAS, 2021). Secondly, the CAMM with India is not considered because, unlike the other agreements, it contains only vague commitments vis-a-vis readmission, stating it would explore “possibilities for a Readmission Agreement” (EU, 2016, p. 4). The list of cases selected for this thesis can be found below in Figure 2.

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<sup>8</sup> characterised by financial incentives, negative conditionality and positive more-for-more cooperation

Date	country	type
07/03/2016	Turkey	Joint Statement (heavy contestation)
16/04/2016	Ghana	(JDM) Joint declaration on migration
3/05/2016	Niger	(JDM) Joint declaration on migration
2/10/2016	Afghanistan	Joint way forward/JDMC (medium contestation)
11/12/2016	Mali	(JDM) Joint declaration on migration (limited contestation)
24/07/2017	Guinea	GP (Good Practices)
25/09/2017	Bangladesh	SOP (identification and return)
5/02/2018	Ethiopia	AP (Admission Procedures for the return of foreign nationals from European Union member states) (limited contestation)
16/11/2018	Gambia	GP (good practices)
1/12/2018	Côte D'Ivoire	GP (good practices)

Figure 2: overview of informal agreements relating to readmission

### Operationalising contestation

This research aims to study Parliamentary contestation of the informal agreements listed above. Operationalization of the concept forms a crucial step prior to the analysis. Contestation is typically operationalized by measuring its three underlying concepts, namely the salience of an issue, the actor range, and the polarization of opinions (de Wilde et al., 2016). **Thevenin (2020) operationalized the respective concepts** in the context of an analysis of contested foreign policy in national parliaments (Thevenin, 2020).

Firstly, **salience (visibility)** can be measured by looking at the number of parliamentary debates and parliamentary questions on an agreement, as well as the number of speeches within a debate (Thevenin, 2020). According to Biedenkopf et al., salience is usually considered the key dimension at the EU level, arguing that topics can only be considered politicized or contested if they are raised by political actors in public debates (Biedenkopf et al., 2021). Secondly, for the **range of actors** involved, one should look at the number of speakers and their political party (Thevenin, 2020). Lastly, the **opinion or direction of the contesting arguments** is examined through an in-depth qualitative analysis of the debates, specifically focussing on the arguments and the justification provided by MEPs on the migration deals (Thevenin, 2020).

## Small N comparative case study of Turkey, Afghanistan, and Ethiopia

The research design of this thesis is a small N comparative case study, which explains contrasting outcomes (i.e. different degrees of contestation). Thevenin's operationalisation allows to group agreements into different categories of contestation. In this thesis, **four categories are distinguished: high contestation, medium contestation, limited contestation and no contestation**. A case study of an agreement is performed for each of the categories (with the exception of the no-contestation category). The selection of the cases was made through a preliminary analysis of parliamentary debates and questions. To map the different agreements according to their level of contestation, particular focus is put on the **"salience" dimension of Thevenin's framework** (Thevenin, 2020). As mentioned above, this dimension is considered the most important at the EU level (Biedenkopf et al., 2021). Indeed, as Hutter and Grande phrased stated: "Only topics that are raised by political actors in public debates can be considered politicised" (Hutter & Grande, 2014, p. 1004). In addition, a focus on the most important element of salience in the preliminary analysis allows to attribute agreements into their respective categories in a uniform way without a lengthy and time-consuming analysis on the content of the arguments.

In the preliminary analysis, the salience of the ten selected agreements was measured by looking at the number of Parliamentary questions and plenary debates organised on the topic. With two plenary debates and 141 Parliamentary questions, the **EU-Turkey statement** stands out as a highly salient case in the European Parliament. Secondly, the **Joint Way Forward with Afghanistan** was, while significantly less salient than the EU-Turkey Statement, still much discussed and the topic of a separate plenary debate on "EU commitments and the EP role in the EU-Afghanistan Joint Way Forward on migration issues" (*Debates - Afghanistan, Notably EU Commitments and the EP Role in the EU-Afghanistan Joint Way Forward on Migration Issues (Debate) - Wednesday, 26 October 2016*, 2016). **Mali and Ethiopia** are agreements with the same degree of salience. In both cases, a limited number of Parliamentary questions were asked, but neither was the topic of a plenary debate in the European Parliament. Therefore, they are attributed to the same "limited contestation" category.

For the analysis, **Ethiopia is chosen as a case study**. The primary reason is that - after an agreement with Mali was announced publicly by the Dutch foreign minister Bert Koenders and High Representative Frederica Mogherini - Mali claimed no such accord on readmission existed, and the deal and the agreement eventually failed (Diop, 2016). Consequently, the agreement with Mali has specific features that could influence the results. The fact that the agreement failed might have increased the salience. In addition, there is no possibility to measure possible contestation on the implementation of the deal. For these reasons, the "Admission Procedures" with Ethiopia will be analysed in the case study. An overview of the case studies can be found below in Figure 3.

## Grouping agreements: 3 case studies

### 1. Strong contestation:

Case study: EU-Turkey statement

### 2. Medium contestation:

Case study: Afghanistan: Joint Way Forward

### 3. Limited contestation:

Case study: AP Ethiopia

- Mali

- Ethiopia

### 4. No contestation

- India

- Ghana

- Niger

- Guinea

- Bangladesh

- Gambia

- Cote D'Ivoire

Figure 3: grouping agreements into four categories of contestation

METHOD 1: a qualitative content analysis of plenary debates and parliamentary questions

The main methodology opted for in this thesis is qualitative content analysis, which is defined as “a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns” (Hsieh & Shannon, 2005, p. 1278).

**Plenary debates** will constitute the primary empirical basis of the content analysis<sup>9</sup>. The source is easily accessible through the European Parliament Plenary website. In addition, scholars commonly use them as a source of data for similar research on contestation and politicization. This is because the debates provide an extensive publicly accessible data set on the European Parliament, allowing scholars to identify different patterns and contesting arguments used by MEPs in the context of an agreement (Lauwers et al., 2021; Thevenin, 2020).

In addition, **Parliamentary questions** to the Council and Commission will be subjected to a qualitative content analysis. According to Guinaudeau and Costa, Parliamentary questions are an alternative medium that has remained relatively understudied at the European level (Guinaudeau & Costa, 2022). While questions are not central to the MEPs' activities in the Parliament, they reveal patterns of opposition and are considered a key institutional window for contestation and politicization

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<sup>9</sup> Ethiopia forms an exception in this respect. To gain more insights into the arguments for contestation, a debate in the LIBE committee was considered relevant to the analysis.

(Guinaudeau & Costa, 2022). Lastly, Brack and Costa argue that, when for empirical research on contestation and politicization, questions provide a good indication of MEP's attention focus (Brack & Costa, 2018). The parliamentary questions are publicly accessible and can be retrieved from the public register of documents website from the European Parliament.

The debates and questions relevant to the agreements are selected by searching the name of the respective country on the Public Register of Documents website and European Parliament Plenary website. All relevant debates and questions within a **timeframe** of one month before and one year after the conclusion are selected. This way, potential contestation prior to the agreement as well as criticism on the implementation of the deals can be included in the analysis.

## METHOD 2: elite interviews as an additional method

In addition to analysing debates and Parliamentary questions, interview elites are conducted as an additional data source. There exists no single definition of **the term 'elite'** (Harvey, 2011). However, one of the most influential definitions of 'elite' is by Dexter, who defined this group as "the influential, the prominent, and the well-informed" (Dexter, 2006, p. 19).

It is important to mention that elite interviews have some **limitations** that need to be considered in the analysis. Interviews could, according to some scholars, be perceived as an imprecise tool; sampling is not representative, and interviewees can give different information on the same topic (Littig, 2009). In addition, because the questions relate to events that took place in the previous Parliamentary term, gaps in the interviewees' memories can pose problems for data gathering (Littig, 2009, p. 101). Despite these limitations, elite interviews are considered a **valuable addition** to this thesis. Interviews with elites provide a valuable additional source of information that would otherwise be inaccessible (Littig, 2009). Moreover, collecting interviews can help reconstruct facts, decision-making processes and networks (Welch et al., 2002, p. 613).

Elite interviews are particularly relevant in the context of informal agreements. Firstly, the majority of the accords has remained uncontested. Elite interviews could help uncover the **reasons and motivations for contestation and non-contestation**, something which would be impossible when only relying on public documents. Secondly, not all communication and information is **publicly accessible**. Discussions and arrangements, both within committees and between the committees and the Commission, cannot be uncovered through an analysis of the documents only. Instead, one needs inside information from people who were part of the discussions in the Parliament when the agreements were concluded.

The elites interviewed for this thesis were **members of the European Parliament during the 8<sup>th</sup> parliamentary term**. In total, **four semi-structured interviews** were conducted via Zoom. Three interviewees were members of the LIBE committee, which is the committee charged with migration and asylum affairs that regularly updated about readmission agreements by the Commission (European Parliament, 2019). Among the interviewees were a former member of the LIBE for the Verts/ALE fraction, the former vice-chair of the LIBE committee for the Verts/ALE fraction, an former substitute member and current LIBE member and coordinator for the EPP fraction. One last interview was conducted with the vice president of the Human rights subcommittee for the LIBE fraction. Two interviews were conducted in Dutch; two were conducted in English. The interviews – except for one after explicit permission, were not recorded.

Contrary to structured interviews, the relationship between the interviewer and interviewee is not strictly scripted in qualitative, semi-structured interviews. The interviews follow a conversational mode rather than a strict set of questions. The interviewer has an implicit agenda, but the exact questions differ depending on the context and the setting of each interview (Yin, 2015).

### The coding process: a blended approach

After gathering the material, the documents and interviews have to be coded. A qualitative content analysis takes place in three phases: **preparation, organisation and reporting** (Elo & Kyngäs, 2008). The preparation phase usually starts by defining the **unit of analysis** (Elo & Kyngäs, 2008). The unit of analysis can be a word or a sentence. However, according to Elo and Kyngäs, “the most suitable unit of analysis are observational protocols or whole interviews, which are large enough to be considered whole on the one hand, and small enough so that the researcher can keep in mind the context during the analysis” (Elo & Kyngäs, 2008, p. 109). The unit of analysis that was chosen for this thesis is “readmission agreement”.

The next step is to **make sense of the data**. This can be done inductively or deductively. A deductive approach starts from an existing theory that structures the analysis and respective coding categories (Elo & Kyngäs, 2008). An inductive approach on the other hand, starts from the data and formulates categories through interpretation. According to Yin, “Inductive approaches tend to let the data lead to the emergence of concepts; deductive approaches tend to let the concepts—if only taking the form of initial “categories” (which are another common form of concepts)—lead to the definition of the relevant data that need to be collected” (Yin, 2015, p. 100).

There is, however, a third approach, on which this thesis will rely for the analysis. According to Linneberg and Kosgaard, a combination of inductive and deductive coding is the most frequently used approach in practice (Skjott Linneberg & Kosgaard, 2019). The **blended approach**, sometimes called

abduction, refers to the combination of inductive and deductive elements consisting of a constant back and forth between data and theory (Skjott Linneberg & Korsgaard, 2019). This is the approach that will be taken for the current thesis. According to Linneberg and Kosgaard, the advantage is that “researcher remains open to surprises in the data while at the same time staying attuned to existing theories” (Skjott Linneberg & Korsgaard, 2019, p. 264). The technique encourages a flexible approach to the theoretical and empirical framework. With the use of both inductive and deductive coding, depending on the needs of the emerging analysis. In addition, it is an interesting way to rethink existing theories (Peirce, 1978).

**Abduction fits the current thesis best.** On the one hand, the research relies on the theoretical framework as described by Thevenin (2020). On the other hand, there is little existing research about the different arguments that are used to contest the agreements. Therefore, for the case studies, the documents' analysis will also rely on inductive coding. Subsequently, In the comparative analysis, the link to the theoretical framework by Thevenin will be made to explain (part) of the differences in contestation between the agreements. Finally, the coding and categorization of data will be carried out with the help of **NVIVO**, a qualitative analysis software that helps to analyse and structure data more methodically. (Hilal & Alabri, 2013).

## Results of the case studies: an in-depth analysis of the salience actor, actor range and arguments of contestation

### Case study 1: The EU-Turkey statement: a highly contested case

#### 1. Context: the paradox of EU-Turkey relations and Turkey's role in EU migration Governance

The EU-Turkey statement constitutes the first case study of the analysis. Turkey has been a **long-standing partner of the EU on many fronts**. The two engage in far-reaching economic cooperation, having a Custom's Union since 1995. In addition, the EU and Turkey also engaged in cooperation in the field of foreign policy. Since 2003, the country has been a member of the NATO military alliance and has participated in multiple EU-led operations (Alpan, 2021). Despite the strategic importance of EU-Turkey relations in (geo)political, economic and societal terms, the relationship between the two blocs has always been a complex one characterized by successive phases of rapprochement and regression (Turhan & Reiners, 2021).

However, the relationship between the **EU and Turkey has undergone major changes recently**. Today, the relationship seems to stagnate and diverge, with the key strategic partners increasingly lacking basic mutual trust (Müftüler-Baç, 2016, p. 17). The EU increasingly regards Turkey as an “unpredictable and unreliable partner and conflict-inducing neighbour” (Arısan-Eralp, 2019, p. 3) that is moving away



from the Union's core norms and values (Turhan & Reiners, 2021). Turkey, from its part, increasingly regards the EU as "an emerging geopolitical rival steering power struggles in Turkey's neighbourhood including Libya, Syria, and the Eastern Mediterranean" (Turhan & Reiners, 2021, p. 3). In their article on the new complexities of EU-Turkey relations, Turhan and Reiners speak of "**The paradoxical coexistence of increasing interdependence and the divergence of normative and material preferences**" that characterizes EU-Turkey relations (Turhan & Reiners, 2021, p. 4). According to the authors, the deadlock in accession and the growing interdependencies on specific issues have recently led to changing cooperation focused on functional interest-driven collaboration mechanisms. These include the 2013 readmission agreement between the EU and Turkey, the Visa liberalisation, and the EU-Turkey statement (Turhan & Reiners, 2021).

According to Turnhan and Reiners, EU's efforts to manage **migration through externalization had far-reaching implications for the changing EU-Turkey relations** (Turhan & Reiners, 2021, p. 13). With unprecedented numbers of migrations entering the EU in 2015, Turkey came onto the EU council's radar (Turhan & Wessels, 2021). In August 2015, Germany unilaterally suspended the Dublin regulation, causing a domino effect of internal border controls across EU member states (Scipioni, 2018). Lack of internal solidarity and Turkey's crucial strategic function as a key transit country led to increased engagement and institutionalisation of EU Turkey cooperation on migration management to address the high number of arrivals in southern Europe (Turhan & Wessels, 2021).

**The EU-Turkey statement** marked a critical moment for EU-Turkey relations. On 16 March, the EU and Turkey<sup>10</sup> agreed that all new irregular migrants that came into the Greek islands from Turkey (after 20 March 2016) would be returned to Turkey (European Council, 2016). For every Syrian returned to Turkey, another Syrian would be resettled to the EU (European Council, 2016). In addition, once irregular crossings from Turkey had been substantially reduced, a Voluntary Humanitarian Admission Scheme would be activated (European Council, 2016). Turkey would receive returned migrants from Greece and take all the necessary steps to prevent new migration routes from opening to the EU. In return, the EU would give financial support to Turkey to support the humane reception of migrants, for projects for temporary persons under temporary protection, and six billion euros for the construction of a refugee facility (European Council, 2016). Moreover, the EU, on its part, also promised to speed up visa liberalisation for Turkish citizens and the accession process (European Council, 2016).

While the deal was initially portrayed as a success story by the EU Council, stressing the number of migrants arriving in Europe decreased significantly after the conclusion of the agreement, the arrangement led to **heightened tensions with Ankara** shortly after its conclusion (Turhan & Wessels,

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<sup>10</sup> Although the agreement officially falls under Turkey-Greek cooperation.

2021). Also the accession process quickly deteriorated after the conclusion of the deal (Turhan & Wessels, 2021). In their article, Turhan and Wessels point to several factors which resulted in the standstill of Turkey's accession process: Turkey's heightened tensions with several EU Member States, the deterioration of relations after the failed coup d'état on 15 July 2016 and to the diverging geopolitical interests in Libya and Syria (Turhan & Wessels, 2021).

Firstly, Turkish president Erdogan regularly **threatened** to open Turkey's borders "in order to allow a mass influx of migrants to the EU if accession talks are halted or if Turkey is not granted visa-free access to the EU for its citizens" (Petersen, 2017, p. 1). The fear of suspension of the deal cast doubt among EU leaders about the sustainability of the agreement (Turhan & Wessels, 2021). Secondly, On 15 July 2016, a **coup d'état attempt** took place, which was followed by a period of instability, human rights abuses and purges. This led MEPs to question whether Turkey was in a condition to meet its international commitments and whether the accession talks should be halted and visa-free access should be restricted (Morano, 2016; Petersen, 2017). Thirdly, there were serious reservations about **Turkey's dubious role in the Syrian** war, with the Turkish invasion of Syria's Kurdish region and Erdogan's tacit support for ISIS (Heine, 2020; Yayla, 2020). For example, at the NATO Summit in London in December 2019, President Macron criticised Turkey for its ambiguous stance and support of the terrorist organisation (Yayla, 2020).

After briefly discussing the salience and actor range of the EU-Turkey statement, this case study will elaborate in more detail on the arguments of contestation that were used during the debates and in the Parliamentary questions. The case study will be closed with a short conclusion.

## 2. Salience and actor range: an agreement that caught the attention of many

The EU-Turkey statement was a **highly salient topic**. In total, 141 questions were analysed on the topic, and two debates were organised specifically on the "Legal aspects, democratic control and implementation of the EU-Turkey agreement" (European Parliament, 2016) and on "the implementation of the EU-Turkey Statement and the reinstatement of Dublin transfers" (*Debates - European Commission Recommendation on the Implementation of the EU-Turkey Statement and the Reinstatement of Dublin Transfers (Debate) - Wednesday, 14 December 2016*, 2016). The debates contained 74 and 30 speeches, respectively. The high salience can be explained by the time the agreement was signed. In 2015 and early 2016, the number of incoming migrants reached record highs, overburdening national migration services. The situation in Greece was especially precarious, creating a sense of urgency and an imperative to act. Lastly, news reports about the large numbers of incoming migrants, and the proximity of Turkey, made the situation equally a salient topic among the public. **The range of actors** engaged in the debate on the EU-Turkey statement was equally high. All political groups

in the Parliament engaged in the discussion. An overview of the participation per political group can be found in the table below in Figure 4:

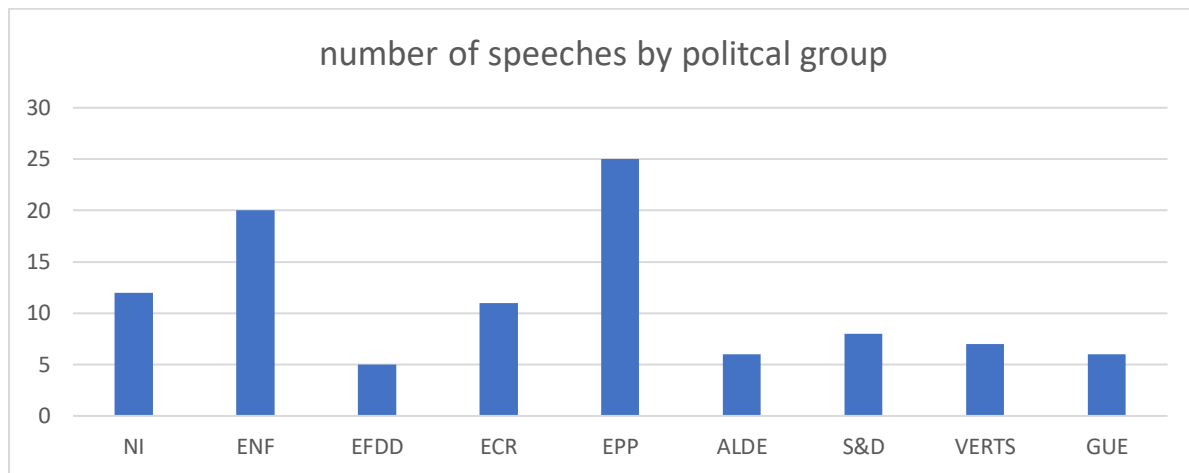


Figure 4: EU-Turkey Statement: Number of speeches by political group

### 3. International law, parliamentary involvement and cooperation with Turkey: an overview of contesting arguments

The salience and actor range show that the European Parliament has heavily debated the EU-Turkey statement. A sense of urgency, combined with the widespread feeling that the EU-turkey deal was not ideal, dominated the parliamentary discussions. The next part contains a summary of the analysis of the parliamentary questions and debates. The coding process found that the description of the problem was centred around three main topics: **concerns for the compatibility of the agreement with international (human rights) and EU law, criticism for the lack of Parliamentary involvement, and concerns about Turkey as a partner.**

#### 1. legal concerns and human rights: “human rights breaches on EU territory”

The most recurrent topic of contestation is the concern that the **EU-Turkey statement is in breach of international (human rights) law.** There are numerous references to the compatibility of the agreement with the principles of non-refoulement and the right to request asylum.

A Parliamentary question for the Commission on behalf of 59 MEPs (from the S&D, ALDE, GUE/NGL, Verts/ALE and EFDD fraction) inquired about the “**Compliance of the EU-Turkey deal with the non-refoulement principle**”. The question pointed out numerous issues relating to the human rights of Refugees hosted in, entered into, or returned to Turkey. The second part of the question then goes on to inquire about the compliance of the deal with international human rights law:

*The EU’s deal with Turkey has been deemed illegal by Peter Sutherland, the UN Secretary-General’s Special Representative on International Migration and Development, as deporting migrants and refugees without first considering their asylum applications would break*

*international law. In the light of these circumstances, on what grounds does the Commission believe that sending back migrants to Turkey would not breach the non-refoulement principle that is binding for the European Union?* (Barbara Spinelli et al., 18 April, 2016)

The heavy contestation through the lens of international law can be explained by the fact that – contrary to other (informal) readmission agreements - **the EU-Turkey statement involves human rights violations on European territory**. In contrast, while some MEPs might object to the principles of involuntary returns to other countries, it is not in breach with international law. In an interview with former MEP, the human rights breaches on European soil were pointed out as the main explanation for high levels of contestation of the agreement (Vice-chair LIBE, Verts/ALE. Elite Interview. 12 May 2023).

Closely related to the criticism regarding the compliance of the agreement with international law is the **concern about the reputation of the EU on the international stage**. Criticism from the UN high commissioner for refugees, and a resolution from the Council of Europe on the deal, gave rise to concerns about the EU's international image in human rights matters. In the context of an upcoming international summit, several MEPs voiced this concern:

*I want to be able to assure international organizations, especially the United Nations Refugee Agency, that we treat refugees as human beings, with all their rights —it seems unnecessary to emphasize this, but unfortunately it is not—, that we apply international humanitarian law and the corresponding legislation when repatriations take place.*  
(Enrique Guerrero Salom (S&D), 28 April 2016)

Besides concerns about the agreement's compliance with international law, the agreement equally raised doubts about the **compliance with the EU legal order**. In this regard, numerous questions were asked regarding the **exact legal status of the agreement**, and MEPs demanded to specify whether the agreement had another status other than an international or administrative agreement. Particular focus was put on the fact that the normal legislative procedure (as set out in Article 218 TFEU) was not followed for the negotiation and conclusion of the agreement:

*The ALDE Group recognises that we must be pragmatic and flexible in our response to a crisis, and that means we need agreements with other countries, including Turkey, but we need solutions that are legally watertight and that do not fall apart in the blink of an eye. The EU-Turkey agreement reminds me bit of a famous painting of the Belgian artist Magritte – ‘Ceci n’est pas un agreement’. If you check the website of the European Commission you will note that they have quietly replaced the term ‘agreement’ by ‘statement’ and this happened sometime between 19 April and 20 April, so the legal status of this whole thing has now been downgraded to basically not much more than a joint press release (...) This agreement is extremely fragile, both legally and in practice.*  
(Sophia in 't Veld (ALDE), 28 April 2016)

According to the Lisbon Treaty, international agreements should be negotiated by the Council and Commission in accordance with article 218 TFEU and approved by the Parliament, which should be

informed at all stages of the procedure (Article 218 TFEU (10)). If an agreement is in violation of the treaties, Article 263 TFEU gives the European Parliament the option to take legal action before the Court of Justice of the European Union. The option to bring action before court was a recurring topic in the debates and Parliamentary questions. In the interview with the former vice-chair of the LIBE Commission, it was said that MEPs have tried to bring the agreement before court, but that, legally, the agreement does not exist. The interviewees pointed out that a bilateral commitment made between the Greek and Turkish government cannot be scrutinized by the CJEU and that from the unilateral commitments made by the EU and Turkey, no reciprocal rights can be derived (former vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023; LIBE, EPP. Personal Communication. 5 May 2023). Consequently, while court action was subject to intense debate within the Parliament, no legal steps were taken.

However, practical difficulties put aside, it is a moot question whether the Parliament would have initiated a legal procedure. Parliamentarians were divided over the question of whether the agreement should be annulled. While fractions in the centre and right (EPP and ERC in particular) acknowledged that the deal was not ideal, they also stressed the need for immediate action. They, therefore, had no incentive to jeopardise the deal (LIBE, EPP. Personal Communication. 5 May 2023). In the interviews with former MEPs from the liberal and Verts/ALE fractions, it was pointed out that the parliament is right-wing oriented and that there was a majority in the Parliament that was willing to accept the informal agreements to alleviate the pressure posed by migration<sup>11</sup>. In addition, the fact that no resolution was adopted on the EU-Turkey statement further indicates that the Parliament had difficulties adopting a common position.

## *2. Information and Parliamentary involvement*

Secondly, while not the primary source of contestation, the lack of information and parliamentary involvement was also an important topic in the debates and parliamentary questions. MEPs denounced the **lack of information prior to the signature** of the agreement. Also from the interviews conducted, it becomes apparent that there was no prior communication about the statement. It was suggested that the agreement was concluded and negotiated mainly by Former German Chancellor Angela Merkel and Turkish president Erdogan, with little involvement of other actors (LIBE, VERTS/ALE. Personal Communication. 28 March 2023).

When information on the agreement was shared, little time remained to discuss it. A former MEP noted that, only at the last minute, the European Parliament was able to include some provisions on human

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<sup>11</sup> Mentioned in the following interviews: (former vice-chair DROI, ALDE. Personal Communication. 17 March 2023), (LIBE, VERTS/ALE. Personal Communication. 28 March 2023), (Vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023)

rights in the agreement (LIBE, VERTS/ALE. Personal Communication. 28 March 2023). However, the Parliament was largely confronted with a ‘fait accompli’, and **Parliamentary discussions on the deal started after the agreement entered into force** (LIBE, VERTS/ALE. Personal Communication. 28 March 2023). Only on 28 April, a month after the agreement entered into force, a first plenary debate on the legal aspects and democratic control of the agreement took place (European Parliament, 2016). It is likely that the lack of communication prior to the accord added to the frustration and provided another reason for contestation. The Afghan case, for example, was discussed by the designated committees before being signed (LIBE, VERTS/ALE. Personal Communication. 28 March 2023).

In the debate on 28 April, several MEPs denounced the lack of Parliamentary involvement and democratic control. While the EP was divided on various issues surrounding the agreement, MEPs seemed to find **common ground** concerning the right of the Parliament to be involved and the need for the EP to defend its prerogatives.

*“There would be many political reasons for contesting it: non-respect for human rights, democracy, freedom of expression; crushed minorities. But this must unite us all, regardless of political colour: the defence of the prerogatives and responsibilities of this House.”*  
(Massimo Castaldo (EFDD), 28 April 2016)

Other MEPs openly questioned where they “had to vote on this deal” (Ska Keller (Verts/ALE), 28 April 2016). Frustration about the lack of Parliamentary involvement and secrecy surrounding the deal remained a controversial issue after the deal was signed. Consequently, in several Parliamentary questions to the Commission and the Council, MEPs **requested to disclose documents**, letters and memoranda on the implementation of the EU-Turkey statement.

In an interview, a former MEP confirmed that MEPs found common ground with regard to the right of the Parliament to be involved, stating that the only reason why for some agreements, complicated debates have taken place (as in the case of Turkey) is that MEPs (on the right) had a **common concern to uphold ‘for the respect of rule of law’ and because they felt disregarded as parliamentarians** (Vice-chair LIBE, VERTS/ALE. Elite Interview. 15 May 2023).

### *3. Objections to Turkey as a partner*

A third source of criticism that was reflected in the debates, questions and interviews is the objection to Turkey as a partner. This theme forms - together with legal objections – the most recurrent argument of contestation. It comprises several sub-topics relating to the Regime (human and refugee rights and political instability) and threats by the Turkish government.

Many of the criticisms of the deal were linked to the Turkish regime. Firstly, MEPs expressed their reservations about the **human rights situation** in the country, and whether Turkey could be considered a safe country for refugees. Firstly, questions were raised about the general state of human rights in

the country, with MEPs referring to the violations of the freedom of speech and the government's crackdown on journalists, the treatment of the Kurdish minority, Erdogan's announcement concerning the reintroduction of the death penalty, and the temporary suspension of the European Convention on Human Rights. In the debate on the legal aspects and democratic control of the EU-Turkey statement, an MEP openly questioned:

*"How does a country, which as the Commission clarified last week, has never been considered safe by any Member State, does so overnight? (Elly Schlein (S&D), 28 April 2016)*

However, criticism was not limited to the respect for human rights in Turkey in general; it was also directed towards **the regime's treatment of refugees**. Comments were made regarding the low recognition rates for non-Syrians and Turkey's readmission talks with Afghanistan and Iraq, making it unsafe for non-Syrians to be returned to Turkey. The treatment of Syrian refugees equally caused concern. Amnesty International made reports of collective push-backs of refugees at the Turkish-Syrian border, which are in breach of the internationally recognised principle of non-refoulement. The report sparked critical reaction in the Parliament and was mentioned in several questions to the Commission:

*How can Turkey be considered a 'safe third country', given that Turkey retains a geographic limitation to the Geneva Convention by not guaranteeing the right to seek asylum to non-Council of Europe nationals? (Ernest Maragall (Verts/ALE) 11 April, 2016)*

Moreover, in the debates and questions, several MEPs expressed their concern that the **EU-Turkey deal might have deteriorated the situation for migrants and refugees in Turkey:**

*In accordance with the agreement, Turkey is obliged to prevent refugees from crossing illegally to Greece. According to an Amnesty International (AI) report from 1 April 2016, Turkey is applying radical measures to stop the refugee flow. AI states that 'Turkish authorities have been rounding up and expelling groups of around 100 Syrian men, women and children to Syria on a near-daily basis since mid-January'. Until very recently, Turkey pursued an open-door policy. Since the agreement entered into force, a number of legal concerns regarding human rights protection have been raised. (Ernest Maragall (Verts/ALE) 11 April, 2016)*

Scepticism of the agreement increased after the **failed coup attempt, which was mentioned 14 times in the debates and questions**. After the coup, questions about the sustainability of the agreement arose:

*In view of the widespread purges taking place in the country, in clear violation of all international human rights standards, does the Commission feel that the EU-Turkey agreement on sending back migrants is still viable from an ethical, legal and practical point of view? (Claude Rolin (EPP), 14 September, 2016)*

### Threats and blackmail: “The EU on their knees for Turkey”

Of all the themes, Turkey’s regular public threats to annul the agreement was the most recurrent point of critique of the EU-Turkey statement. The regular threats led to a belief that the deal was **unbalanced** and that the “EU was on its knees for Turkey”. MEPs pointed to the financial assistance worth six billion euro - over which MEPs argued they had no sufficient control - and to the even more controversial promise to speed up accession talks and visa liberalisation. The latter was among the most recurrent themes of the content analysis. In addition, the argument was prevalent among multiple political fractions in the Parliament, both on the left and right:

*Turkey continues the blackmail, demanding six billion euros, as well as the abolition of visas for Turkish citizens, who will be able to travel freely to the European Union, flooding its countries with thousands of new immigrants. (Maria Notis (ECR), 28 April 2016)*

The regular threats led to comments openly questioning whether Turkey was a **credible partner**. The comments also conveyed a fear that Turkey would stop implementing the agreement. Consequently, several MEPs asked the Commission questions about a ‘**Plan B**’ in the case Turkey would carry out its threat.

*Refugees Mr Erdogan has threatened several times to cancel all obligations undertaken by Turkey if the EU is not going to allow Turkish citizens to travel within the Schengen area without a visa for short stays. Can the Commission elaborate on ‘plan B’ in a case of failure of the EU-Turkey agreement on refugees? (Marlene Mizzi (S&D), 6 July, 2016)*

### EU-Turkey relations

The **regular threats** were made public by Turkish president Erdogan, and published in European media, automatically leading to increased visibility and politicization of the issue. In the interviews, it was suggested that, in contrast to other 3<sup>rd</sup> states who preferred not to make the agreements public, President Erdogan likely saw political capital in bringing the agreement into the public sphere (announcing it had received financial support from the EU, and was promised perspective to visa liberalisation and EU membership).

In addition, even without the threats, it is likely that an agreement with Turkey would have been contested in the European Parliament. “**Was sich liebt das neckt sich**” is how one former MEP phrased it in an interview (Vice-chair LIBE, Verts/ALE. Personal Communication. 15 May 2023). EU-Turkey relations are contentious, and cooperation with the country evokes strong emotions. On the one hand, Turkey has since long been a partner of the EU. On the other hand, Turkey’s increasing shift towards authoritarianism and a foreign policy that aligns less and less with the EU and NATO has made the partnership increasingly awkward, making Turkey a sensitive topic, regardless of the agreement's content (Bechev, 2022).



## Conclusion

In conclusion, the EU-Turkey agreement was highly salient and contested. The most prominent points of contestation concerned:

1. the **non-respect for international (human rights) law** and its repercussions for the EU's status in the world
2. cooperation with the **Turkish regime, particularly the many threats** from Erdogan to annul the agreement
3. To a lesser extent, criticism over the **lack of parliamentary involvement**.

Yet, despite the high degree of contestation, it must be noted that there was **no consensus** on the topic within the Parliament. At the time of signing, the EU was in the midst of a crisis, and the Parliament was divided on what should be done with the agreement. This division is also reflected by the fact that - while many low-barrier tools of contestation were used (debates and questions), no means of 'higher political cost' means - like resolutions, and especially judicial action- were employed. From all elite interviews, it became apparent that no majority could be found for the latter.

Consequently, the European Parliament's action was confined to contesting those elements of the deal the majority of the MEPs supported. Finding this common ground worked the best with respect to 'information sharing'. While most MEPs in the LIBE commission (and the EP as a whole) favoured the agreement, sometimes coalitions could be built between progressive and conservative fractions such as the EPP. For example, through joint effort, the LIBE commission succeeded in obtaining regular information about informal agreements in the form of letters from the Commission (DG Home). This was only possible because MEPs have a joint interest in being included in the decision-making process, in safeguarding the rule of law, and because conservative members from the south do not wish to carry the burden of immigration by themselves.

## Case study 2: The Joint way Forward with Afghanistan: a moderately contested case

1. Context: An EU Afghanistan strategy of democratisation, reconstruction and development and limiting migration

While the EU's engagement in Afghanistan has been underrepresented in scholarly literature, the EU has a long-standing engagement in Afghan affairs, dating back to the very establishment of the Union (Hassan, 2021a). The relations have changed over time (influenced by Soviet Occupation and later Taliban rule). According to Hassan, the strategy of the EU from 2001 until the recent takeover by the Taliban in 2021 has been one of democratisation, reconstruction and marginalisation (Hassan, 2021a). It is argued that The US campaign against Al Qaeda in the early 2000s, with the support of several EU member states, has undermined the development of EU-level security instruments (Hassan, 2021a).

Consequently, the EU developed a **distinct normative agenda** focusing on three goals: development, reconstruction and democratisation of Afghanistan (Hassan, 2021a). Indeed, development aid has been the priority vis-a-vis Afghanistan for almost two decades. The EU and its member states are, together, Afghanistan's largest aid donor, accounting for 34 per cent of funds of multilateral constructions between 2002 and 2021. (Hassan, 2021b).

The resurgence of the Taliban in the 2010s led to a **change in policy** and the tempering of EU ambitions. While democratisation and reconstruction remained priorities, the EU redirected its focus to ending instabilities in Afghanistan by including the Taliban as a partner in dialogues. According to Hassan, the move away from the lofty ambitions of the early 2000s "is also the result of affairs in Afghanistan directly impacting the internal politics of Member States" (Hassan, 2021a, p. 351). Indeed, Afghans, fleeing the increasing violence, constitute the second largest group of asylum seekers entering the EU. In 2016, most of whom arrived in Greece (European Parliament, 2017a). Consequently, due to a large number of Afghan asylum applicants, **Afghanistan became an internal affair of importance to the EU.**

This "prompted" the negotiations on an informal readmission agreement on 2 October 2016 (Hassan, 2021a). The Joint Way Forward aimed to halt irregular migration and ensure the effective return and reintegration of rejected asylum seekers in Afghanistan (Joint Way Forward on Migration Issues between Afghanistan and the EU, 2016). The JWF was agreed upon after implicit **threats from the EU to cut financial aid**, on which the Afghan government relies heavily (Kipp et al., 2020).

The returns to Afghanistan were **heavily criticized by the UNHCR and NGOs**, warning about the country's security situation and the destabilizing consequences of negative sanctions in a fragile security context (Kipp et al., 2020). Another major topic of concern was the ongoing war with the Taliban, who, in 2016, occupied 21% of districts (ECRE, 2020). However, some EU member states, amongst which Sweden, were already returning Afghans, and advocated for the EU-level agreement (LIBE, VERTS/ALE. Personal Communication. 28 March 2023). The return of Afghans, to a highly unstable country elicited sharp criticism from human rights groups (Slagter, 2019). Adding to the controversy was the fact that many of the Afghan migrants were unaccompanied minors (European Parliament, 2017a).

After the agreement was concluded, the **number of returnees increased** but later stagnated and decreased again to only 8 per cent in 2019 (2,370). The relatively small numbers raised additional questions about the proportionality of the agreement (Kipp et al., 2020). However, similar to the EU-Turkey statement, the JWF was also welcomed by a significant number of MEPs who called it a "step in the right direction" (Emil Radev (EPP), 26 October 2016).

## 2. JWF: a salient topic with a large actor range

The JWF was a salient topic in the European Parliament, although significantly less than the EU-Turkey statement. A total of 5 questions were asked on the topic. One debate was explicitly organised on the “EU commitments and the EP role in the EU-Afghanistan Joint Way Forward on migration issues”, which counted 22 speeches by MEPs (*Debates - Afghanistan, Notably EU Commitments and the EP Role in the EU-Afghanistan Joint Way Forward on Migration Issues (Debate) - Wednesday, 26 October 2016, 2016*). The range of actors engaged was equally considerably extensive, with all major political groups in the Parliament participating in the discussion. An overview of the participation per political group can be found in Figure 5.

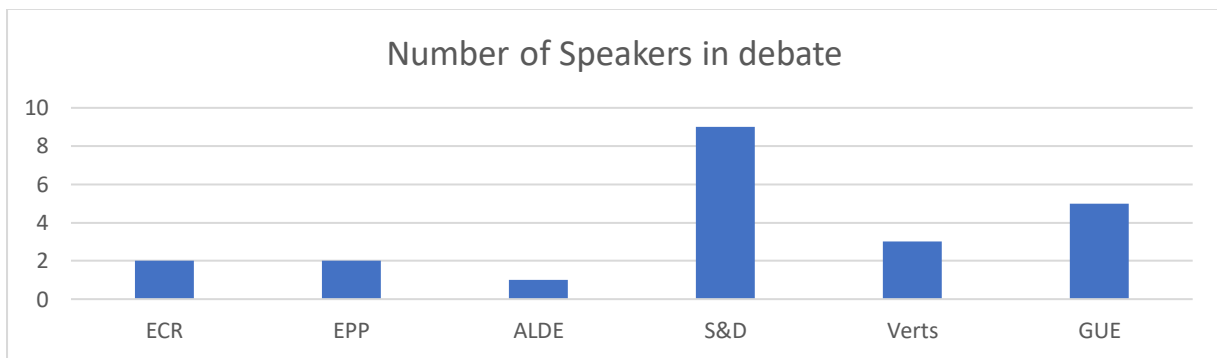


Figure 5: JWF: Number of speakers per political group

## 3. parliamentary involvement, human rights (law) and development aid: an overview of contesting arguments

The next part contains a summary of the analysis of the parliamentary questions and the debate. Similar to the EU-Turkey statement, the coding process found that the description of the problem was centred around three main topics: **criticism for the lack of Parliamentary involvement, concerns for the compatibility of the agreement with international (human rights) and EU law, and a concern about the use of development aid.**

### *Information and Parliamentary involvement: the primary argument of contestation*

The primary point of contestation in the JWF resolves around the veil of secrecy in which the agreement was covered, particularly **the lack of parliamentary involvement**. The parliament was not formally consulted and informed about the deal. It equally did not express its consent to the agreement. However, compared to the EU-Turkey statement, on which discussions only started after the accord was signed, the JWF was discussed more discussed prior to its conclusion. From the elite interviews, it

becomes apparent that ‘an exchange of view’ took place on the issue in a small group<sup>12</sup>, whereas this was not the case for other agreements (LIBE, EPP. Personal Communication. 5 May 2023). Also human rights issues **were more extensively discussed before the agreement** entered into force (LIBE, VERTS/ALE. Personal Communication. 28 March 2023). This makes the stronger focus on Parliamentary involvement, compared to the EU-Turkey statement, somewhat surprising. The focus on parliamentary involvement -a competence granted by the EU treaties- can be found in the debates and Parliamentary questions. A question for oral answer to the Commission on behalf of 23 MEPs from the Verts/ALE, S&D, GUE/NGL and ALDE group inquired about “the Role and Consultation of the European Parliament”.

*In line with Article 218(6)(a)(v) TFEU, the European Parliament’s consent must be obtained prior to the conclusion of association and similar agreements. Moreover, in line with Article 218(10) TFEU, the European Parliament shall be immediately and fully informed at all stages of the procedure. In light of the above, how and when does the Commission intend to formally consult and inform the European Parliament in relation to the conclusion of a ‘Joint Way Forward’ covering return and readmission cooperation between the European Union and Afghanistan? How does the Commission assess the compliance of the procedure that led to the signature of the ‘Joint Way Forward’ between the EU and Afghanistan with Articles 79(3) and 218 TFEU? (Judith Sargentini et al., 13 October, 2016)*

Similarly, in the **debates**, there was strong criticism about the fact that the European Parliament was not involved, impeding them from exercising their legitimate task of control:

*“The way in which a cooperation agreement with Afghanistan was completed behind closed doors at the beginning of this month does not deserve a beauty prize. Without any communication or consultation with the European Parliament, a joint statement was drawn up between the EU and Afghanistan.” (Kati Piri (S&D), 26 October 2016)*

**Even amongst those who welcomed the agreement**, criticism was expressed regarding the lack of transparency and parliamentary involvement and demanded to keep MEPs informed about further developments.

*I particularly welcome the signing of the Joint Way Forward. It is an extremely important agreement; important for both sides involved as it sets a clear framework for managing migration readmission. Having said this, I would like to regret strongly the lack of transparency in closing the deal on this and the fact that Parliament was not involved in its drafting at an earlier stage. Thus, I call on the High Representative and the Commission from now onwards to at least keep this House informed on progress regarding the agreement’s implementation. (Petras Austrevicius (ALDE), 26 October 2016)*

### *Legal – Human rights*

Secondly, the members of Parliament pointed out legal issues related to the agreement. Although present to a lesser extent than with the EU-Turkey statement, MEPs raised concerns that the deal was

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<sup>12</sup> coordinator’s meeting in the LIBE committee, with 1, maximum 2 members per fraction

not in accordance with **international law**, specifically, with the principle of non-refoulement described in Article 33 of the Refugee Convention. According to this principle, “a refugee should not be returned to a country where they face serious threats to their life or freedom” (Article 33 of the 1951 Refugee Convention, 1951). At the time of singing, Afghanistan was a country at **war**. Although the Commission argued that Kabul was safe, MEPs pointed out that not all returnees were from the country’s capital and that the justification did not suffice.

*With regard to the situation in Afghanistan, only one thing is really certain, and that is that it is not safe. Afghanistan is not a safe third country. To deny this is irresponsible, inhumane and cynical. The reality is frightening after 15 years of war: from January to September 2016, there were over 8,000 civilian casualties, according to the latest figures from UNAMA. That is why people fleeing this country need the right to stay. (Sabine Loesing (GUE/NGL), 26 October 2016)*

In the interview, a former MEP stressed that the war situation was, indeed, one of the factors leading to higher contestation of the Joint Way Forward (former vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023). In the interview, it was pointed out that while many of the countries with which agreements were closed were not democracies, migrants did not face the threat of indiscriminate violence from armed conflict upon return to their countries (e.g. Mali and Ethiopia) (former vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023).

#### *Afghanistan, a safe country? Human rights concerns and the question of unaccompanied minors*

Thirdly, the Joint Way Forward was contested based on the human rights situation in Afghanistan, with MEPs arguing that it is not a safe 3<sup>rd</sup> country. They pointed to the lack of woman’s rights, the recruitment of young men by the Taliban and Daesh and the fact that several provinces do not fall under the authority of Kabul.

*In Afghanistan, women have hardly any rights, young men are recruited by Taliban and Daesh, and entire provinces do not fall under the authority of Kabul. ECHO, our emergency aid agency, is warning of a humanitarian disaster this winter. (Judith Sargentini (Verts/ALE), 26 October 2016)*

In addition to this, concerns were raised about the return of **non-accompanied minors**, for whom there was no care available in Kabul.

*We do not want to think that the European Union is going to fail in its obligation to protect thousands of people, including, Commissioner, unaccompanied minors, who will now be able to be forcibly returned to a country ravaged by violence and poor as few . We do not want to think wrong, Commissioner, but it is very difficult for us not to do so. (Elena Valenciano (S&D), 26 October 2016)*

Moreover, as in the case of Turkey, the agreement caused concerns about the consequences for the EU's **image abroad**, although to a lesser extent than with the Joint Statement.

*The European Union seems bent on dynamiting its image abroad. This Parliament in no way wants to contribute to this, but we will not remain silent either as to the content or as to the forms of realpolitik which, Commissioner, is moving further and further away from our values.* (Elena Valenciano (S&D), 26 October 2016)

#### *Leveraging development aid*

In addition to democratic, legal and human rights concerns, several MEPs felt that the agreement reached with Afghanistan was an unbalanced deal. However, unlike the Turkish case - where the MEPs denounced the blackmailing on the part of Erdogan - criticism was this time addressed to the EU, which implicitly threatened to cut development aid if Afghanistan did not agree to readmit its citizens.

*Mr President, the European Union's foreign policy is gangrening from readmission agreement to agreement. To make development aid dependent on the number of repatriations accepted by a country is obscene!* (Ana Gomes (S&D), 26 October 2016)

Indeed, reaching an agreement was a difficult process, and in order to come to convince the Afghan government, the EU used sticks and carrots. The deal was negotiated in the runup to a donor conference in Brussels, "where international donors pledged aid for Afghanistan for the four coming years" (Koutrolikou, 2019, p. 48). International aid is vital for the country, making up 40% of the GDP (Koutrolikou, 2019). One MEP stated:

*It is perfidious that in the run-up to the donor conference on Afghanistan, the EU threatened to drastically cut development aid if it is not prepared to take back an extrapolated 80,000 refugees - and that as a Union that has the protection of human rights at the top of its own flag* (Sabine Loesing (GUE/NGL), 26 October 2016)

#### *The use of development aid for migration management purposes*

The trade-off between international aid and readmission was not the only reason for concern. An even larger controversy concerned the use of development assistance to finance readmission policies.

*We are seeing a worrying drift in the EU's relations with third countries because everything is being seen through the prism of the migration issues and no longer through the prism of tackling the root causes of migration, which are global poverty and inequality. That is why my Committee has expressed reservations about aspects of the way the Commission proposes to use development assistance, DCI, to fund readmission for those not given asylum.* (Chair of the Committee on Development Linda McAvan (S&D), 26 October 2016)

In the interviews, similar comments were made. A former MEP stated that the EU's foreign policy was taken over by internal priorities, which was to halt migration (former vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023). Against this backdrop, several MEPs opposed plans to use aid funds to reintegrate asylum seekers and construct a terminal at Kabul airport to deal with returnees.

*The Commission wants to use part of the money for the reconstruction of Afghanistan to reintegrate failed asylum seekers from Europe. That is not allowed – there are rules for that: development money must be used for development cooperation and not to finance our repressive migration policy.*

(Judith Sargentini (Verts/ALE), 26 October 2016)

## Conclusion

In conclusion, the JWF was a moderately salient topic involving a large range of actors within the Parliament. The primary topics of contestation concerned: parliamentary involvement, concerns for human rights (law), and the (mis)use of development aid funds.

1. the lack of **parliamentary involvement and secrecy** was the most recurrent argument in the debates and parliamentary questions. The result is somewhat surprising considering the fact that the agreement was more discussed prior to its conclusion than in the case of Turkey. Nevertheless, the MEPs rightfully pointed to the lack of transparency and the disregard of the Parliament's prerogatives.
2. Secondly, a concern for **human rights and compliance with international law** formed an important theme in the debates. Similar to the EU-Turkey Statement, questions were raised regarding the compatibility of the agreement with international law, more precisely, with the binding principle of non-refoulement, as Afghans, including minors, are returned to a country in a state of war, that cannot be considered safe. Similar to the case with Turkey, the agreement also caused concern for the EU's image abroad.
3. Thirdly, the **(mis) use of development aid funds** was a contentious issue. The use of development aid by the EU as leverage for its migration policy was met with criticism from certain MEPs, who denounced the EU's implicit threat to withdraw development aid in the runup to an international donor conference. Lastly, an even larger point of controversy concerned the use of development assistance to finance the readmission policies (such as the construction of an airport in Kabul), which MEPs argued was against the EU rules on development aid, more specifically, Article 208 TFEU, which states that EU development cooperation policy "shall have as its primary objective the reduction and, in the long term, the eradication of poverty" (Art. 208 TFEU, 2008, p. 141).

## Case study 3: The Admission Procedures with Ethiopia, a limitedly contested case

1. Context: Ethiopia as a strategic partner, donor darling, and a challenging partnership with the EU

A third case study of a limitedly contested agreement is non binding Admission Procedures signed with Ethiopia On 5 February 2018. Under the deal, the "the two sides committed to develop cooperation in the area of return and readmission, by jointly defining admission procedures for the return procedures of Ethiopians nationals illegally present in the territory of the EU Member States" (General Secretariat

of the Council, 2017, p. 1). The agreement was signed against the background of **reinforcement of the existing relations between the EU and Ethiopia in the field of migration** (General Secretariat of the Council, 2017).

Indeed, as one of the few stable partners in the Horn of Africa, Ethiopia is considered an **important partner of the EU** on the continent for, amongst others, matters of regional peace and security (EEAS, 2019) and one of the only countries with which the EU could cooperate on migration (Castillejo, 2017). In addition, Ethiopia is an important country of destination and transit<sup>13</sup> (Castillejo, 2017) and one of the largest recipients of EU aid, with support exceeding 2 billion euros for the period of 2014-2020 (Mitta, 2021).

In his article, Castillejo stated that: “Ethiopia had been a **helpful partner for the EU on migration** at the regional level, acting as a constructive partner in the Khartoum process and the Valletta summit, including by championing certain issues and bringing other African partners on board” (Castillejo, 2017, p. 26). It was, consequently, selected as one of the five priority countries in the Migration Partnership Framework launched in June 2016 (EEAS, 2016). However, cooperation in the field of migration did not yield the results the EU (and Ethiopia) had hoped for.

**Interests and goals did not align**, and the partnership with Ethiopia soon became one of the most challenging under the MPF, causing relationships to sour (Castillejo, 2017). On the Ethiopian side, the focus on return was lamented by the country’s political leaders, who wished to cooperate in other areas, expecting stronger support to address the root causes, open up legal migration channels, and job creation (Castillejo, 2017). It was also found that the focus on return was disproportionate, especially when one juxtaposes the high number of refugees the country is hosting with the relatively low number of people eligible for return (Castillejo, 2017). On the other hand, on the European side, there was frustration over the fact that Ethiopia did not deliver on return (Castillejo, 2017).

Within the MPF, **returns and readmission had a high priority**. Cooperation in this field was further deepened through the ‘Admission Procedures’ in 2018. However, the issue of readmission had reached a complete deadlock, causing political tension to rise and impeding further collaboration (Castillejo, 2017). In an attempt to push through an agreement, the EU made use of **negative conditionality** (Castillejo, 2017; Rasche, 2023) by delaying the disbursement of EUTF funds (Kipp et al., 2020); although this was not formally acknowledged (Castillejo, 2017).

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<sup>13</sup> At the time of signing, Ethiopia hosted over 850.000 refugees from neighbouring countries and had an estimated one million internally displaced people



While the 2018 readmission agreement increased the returns, the results were limited<sup>14</sup> (Kipp et al., 2020). Scholars suggested that the **positive incentives** for cooperation – especially for a large country like Ethiopia - were simply not attractive enough to obtain the cooperation the EU envisages (Castillejo, 2017). Moreover, Ethiopia strongly **opposes the conditionality** imposed by the EU, which has likely hardened its position and further reduced its willingness to collaborate (Castillejo, 2017). The country does not want to be “seen dictated by the EU”, especially not towards its own population and the Ethiopian diaspora (Castillejo, 2017). Lastly, the country can rely on other sources of finance, like **China**, for which Ethiopia constitutes equally an important country of cooperation (Castillejo, 2017; Hackenesch, 2013).

## 2. AP with Ethiopia: an agreement brought onto the agenda by one MEP

**The AP with Ethiopia was a non-salient topic.** Unlike the two previous cases, in which the agreements were subject to a separate debate in the European Parliament, this was not the case for Ethiopia. In fact, for the examined period, no plenary discussions were organised related to the country. The agreement was brought on the agenda by one MEP, who submitted two questions to the Council and one to the Commission, and was also the only speaker in a committee debate on the agreement in the LIBE Committee organised in light of the questions on 20 and 21 June 2018 (*DRAFT AGENDA Meeting Wednesday 20 June 2018, Thursday 21 June 2018, 2018*).

## 3. A leaked agreement: criticism on parliamentary involvement, legal basis, and human rights, an overview of contesting arguments

Given the limited material, the analysis is inevitably shorter and less comprehensive than for the Turkey and Afghanistan cases. Nevertheless, some important arguments can be drawn from the questions and debate. The analysis found that the principal argument in the contestation of the EU-Ethiopia agreement was the **lack of Parliamentary involvement**, in particular, the fact that the Parliament had to make its assessment on the basis of a leaked version. This argument was followed by **criticism on the legal basis of the agreement and a concern for human rights**.

### *Information and consultation of the Parliament*

The primary point of criticism relates to the lack of parliamentary involvement, particularly to the fact that the **agreement was not shared with the EP but leaked**. In all three questions and the debates on 20 and 21 June, the MEP criticized that the assessment had to be made based on a leaked version of the agreement.

*On 29 January 2018, the Council approved a procedure for returning Ethiopians to their country of origin. Neither the Council nor the Commission published the text, so that the European*

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<sup>14</sup> the number of returnees increased by 35 between 2017 and 2019, from 205 to 240 returns

*Parliament was compelled to base its assessment on a leaked version.  
(Judith Sargentini, 15 February, 2018a)*

During the debate, the asker of the question, also lamented the **lack of consultation** and information sharing for non-binding agreements:

*I asked to clarify when it would consult the EP on the informal agreement with Ethiopia on readmission. The answer I got is that the EC is regularly informing us. And I thought we had a principle agreement here, that since the trend is moving from official readmission agreements to informal cooperation with third countries, we would continue to treat this as official as possible. So informing is not the same as consulting.  
(Judith Sargentini (Verts/ALE), 21 June)*

The MEP equally criticized the fact that information has to be asked for and is **not provided automatically**. According to the MEP, information has to be puzzled together with the help of Google. Consequently, the lack of relevant and trustworthy information from the Commission makes it harder for the parliament to scrutinise the agreements effectively.

*It is incredibly unfulfilling, the struggle for clarity and openness and to see how development aid links with agreements made with 3rd countries. I find it very unhealthy that we have to puzzle this together via google, because that is what we are doing. And I feel very limited in my possibility as an MEP to scrutinize agreements.  
(Judith Sargentini (Verts/ALE), 21 June)*

To remedy this unsatisfactory situation, the MEP urged the Commission and the Council to work towards more transparency and share information proactively on their **own initiative** instead of waiting until it is asked for by the Parliament.

*Yesterday the answer [from the Council] was that you can through the official channels ask us for these documents and we will provide them for you. From our side [European Parliament] we need to constantly ask for these bits and pieces. But I would also like to urge the Commission not to wait to be asked and work towards transparency and just provide us with these agreements when they are made.  
(Judith Sargentini (Verts/ALE), 21 June)*

Even when the Parliament explicitly requests information on specific agreements, it was felt in the debate that there was an **unwillingness by the Commission and the Council to share this information** with the committee. The answers to the questions on the agreement with Ethiopia were considered unsatisfactory. The asker of the question and the LIBE Committee Chair Claude Morales lamented the fact that the answers to the Commission and the Council were not provided in due time. In addition, the answers to the questions were perceived to be vague. The fact that the Council decided not to send a representative to the LIBE committee to address the issue added to the frustration.

*I also understand that the council did not send a representative and I would like to note that. I find that highly impolite. Still, to make the point that questions need to be answered in time. And by the way, it would be nice that if questions are asked, they are actually answered, and*

*not vaguely touch upon the topic.*  
(Judith Sargentini (Verts/ALE), 21 June)

Lastly, **the sudden cooperative attitude of the Ethiopian Government towards involuntary return caused suspicion**. During the exchange of views at the LIBE Commission in June, it was argued that the agreement of the Ethiopian government was contrary to earlier statements made by the government on the EU-AU summit in Abidjan and the by the Ethiopian embassy.

*I asked the Commission whether they could elaborate on the fact that the agreement with Ethiopia includes involuntary returns, whereas the EU-AU agreement that was put together in Abidjan stated that African countries were willing to cooperate on voluntary returns, not on involuntary returns. How do you explain that there was a willingness on the Ethiopian side to actually go ahead with this?*  
(Judith Sargentini (Verts/ALE), 21 June)

#### *legal basis*

Secondly, in addition to the lack of Parliamentary involvement, the legal basis of the analysis was questioned. In a question to the Commission, Judith Sargentini inquired about the compatibility of the agreement with the treaties, particularly regarding Article 79 on the legal basis and Article 218 on the requirement of parliamentary approval (Judith Sargentini, 15 February, 2018a). During the exchange of views in the LIBE Commission on 20 and 21 June, the MEP reiterated this point, expressing discontent over the **legal nature** of the document:

*This is an agreement that has not been published but leaked. But it was voted in a council meeting. The first article says: this is not a legal document, rights cannot be derived from it. (...) Could you maybe elaborate on this non-existing piece, that is not legislation but is voted in council and does function as a basis to return people?*  
(Judith Sargentini (Verts/ALE), 20 June)

#### *Human rights*

While the legal basis and parliamentary involvement were the most prevalent arguments, the consequences of the deal for human rights were also mentioned in the questions and Commission debates. In a question to the Council, Judith Sargentini inquired about the potential risks deriving from transferring information on illegally residing Ethiopian nationals to the Ethiopian intelligence and security services.

*What does the Council intend to do to mitigate potential risks arising from the transfer of information concerning people illegally resident in the EU who may be Ethiopian nationals to the Ethiopian NISS (National Intelligence and Security Services) and arising from the admission of Ethiopian missions with the aim of identifying Ethiopians?*  
(Judith Sargentini, 15 February, 2018b)

#### *Conclusion*

In conclusion, the agreement with Ethiopia is an interesting case. While there is generally a relatively large interest from MEPs in EU-Ethiopia relations, the salience and actor range in the discussion on the

EU-Ethiopia agreement was limited, with only one MEP engaging in the topic, touching upon the issues of parliamentary involvement, the legal basis and human rights (LIBE, VERTS/ALE. Personal Communication. 28 March 2023).

Indeed, in an elite interview with the author of the Parliamentary questions, it was pointed out that only a few MEPs were dedicating their time to puzzling together the informal constructions and investing their time in gathering the difficult-to-find information. Other topics tended to dominate the political agenda, and informal readmission was, for most MEPs, **not important enough a topic**. However, unlike other uncontested agreements, the AP with Ethiopia made it to the agenda of the LIBE committee because the arrangement was not shared with the Parliament but **leaked** (former vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023).

#### *Parallels with Mali*

Interestingly, something similar happened in the case of Mali, which has been attributed to the same category of contestation. On 11 December 2016, A joint declaration on migration with Mali was drawn up by Dutch Foreign Minister Bert Koenders on behalf of the EU after his visit to Bamako (Euractiv, 2016). However, after public statements by the Dutch foreign minister, Mali's Minister for Foreign Affairs claimed no such agreement existed (Diop, 2016), and the deal ultimately failed (Dutch Ministry of Foreign Affairs, 2016). The agreement, which was not shared with the Parliament by the Council or the Commission, but was informed after a public statement, led to several questions and speeches during the plenary session (Mario Borghezio (ENF), 12 January, 2017).

## Discussion of the results: identifying similarities and differences

In the next chapter, a comparative analysis of the selected cases will be made, **looking for similarities (and differences) that can explain contestation**. Previous research has already pointed out the limitations imposed relating to the limited formal power of the European Parliament in non-binding agreements and “the shadow of hierarchy” that was cast upon the Parliament by the Council and The Commission, undermining its power (Servent, 2020). This thesis has looked into other factors that might explain the Parliament’s limited involvement. As mentioned above, most agreements that were closed between 2015 and 2019, were not discussed by the EP. The next part will aim to **explain why the cases of Turkey, Afghanistan and Ethiopia were- unlike others- contested, and why differences in contestation arise**.

Six factors of importance could be identified. The first relates to the ability of the Parliament as described in the theoretical framework by Reslow (2019), namely **the visibility and access to relevant information**. The three others relate to factors Reslow described as the Parliament’s motives for contestation. These are the **salience, the elite preference** for the respect of **human rights and international law**, and the elite preference for the **defence of parliamentary influence**. No sufficient evidence was found for the relevance of public opinion – even though it was mentioned in one of the interviews. However, **the ideological composition of the Parliament** was found to have a major influence on the degree and way agreements were contested. Lastly, an **additional factor** to the existing theoretical framework was identified: the **‘EU’s relationship with the third country prior to the agreement’**. The latter factor is particularly important for the Turkish case. Finally, no sufficient evidence was found to confirm the existence of the motive of **‘role expectations and perceived responsibility’** (even though the elite interviews hinted at the inferiority complex of the EP and the fact that few MEPS consider informal readmission an important topic).

“if you are not informed, it is hard to contest”: a lack of information and visibility as an explanation for non-contestation

The first identified variable that could be an explanatory factor is the visibility and access to information. From all elite interviews, it became apparent that MEPs felt insufficiently informed about the conclusion and implementation of informal readmission agreements. As Reslow (2019) suggested, insufficient information has repercussions for the ability of the Parliament to scrutinise and effectively contest agreements. **“if you are not informed, it is hard to contest”** is what a former member of the LIBE committee said (LIBE, VERTS/ALE. Personal Communication. 28 March 2023).

Another MEP argued in an interview that, while some agreements (like Turkey and Afghanistan) were very visible and much discussed in the public sphere and the Parliament, others remained under the radar (LIBE, EPP. Personal Communication. 5 May 2023). **Knowledge about the existence of an agreement is, thus, a precondition for contestation** and could give a first explanation for why some agreements were not mentioned at all in the Parliamentary debates or questions.

In addition, even when MEPs were informed about the existence of an agreement, **the extent to which information was shared differed**, which likely had an impact on the degree of scrutiny and contestation. One interviewee pointed out that, in the case of Afghanistan, MEPs were informed in smaller groups. For example, in the case of the JWF, an exchange of views took place in the coordination meeting (where one, maximum, two members per fraction are present). For other agreements, this was not the case (LIBE, EPP. Personal Communication. 5 May 2023).

Another factor that may influence the degree of contestation is the **inflow of information from NGOs**. In the interview, one MEP stressed the importance of information from NGOs to scrutinise the Council and Commission on readmission. Especially in those cases where little information is shared through formal channels, NGO reports give rise to discussions in the Parliament (LIBE, EPP. Personal Communication. 5 May 2023). Some agreements may have been more contested because more information was provided through non-governmental organisations active in the field. The analysis showed that MEPs regularly referred to reports and statistics published by NGOs during speeches and Parliamentary questions on the EU-Turkey statement and the Joint Way Forward. In addition, a former MEP pointed out during an interview that many non-public roundtables were organised with NGOs to discuss the EU-Turkey statement (LIBE, VERTS/ALE. Personal Communication. 28 March 2023). Further research should be conducted to analyse the link between NGO activity in a partner country and the degree of Parliamentary contestation.

Lastly, while access to information is undoubtedly an essential factor in predicting whether or not an agreement will be scrutinised and contested, the analysis suggests that it is **not a sufficient factor to determine contestation**. The “Good Practices” signed with the Gambia on 16 November 2018 is a good example to illustrate this point. The agreement contains clear commitments, was confronted with implementation difficulties (Zanker & Altrogge, 2022), and was the subject of a complaint with the European Ombudsman after a civil society organisation asked the Commission to make the agreement public (EU, 2020). In addition, from the analysis, it becomes apparent that the members of the LIBE committee were informed about the agreement in the committee meeting on 20 June 2018, during which the representative of the Commission announced that the agreement would enter into force six months later (European Parliament, 2018). Yet, the deal remained undiscussed in the plenary and

questions. Further research should examine to what extent the agreement was contested within the LIBE committee and why broader scrutiny and contestation in the Parliament did not occur in this case.

### The importance of salience: an internal matter of importance, threats and the political capital of readmission agreements

The analysis found evidence for one factor relating to the ability of the Parliament to contest: the absence of information and visibility. The other variables identified relate to the motives or willingness of parliamentarians to challenge informal readmission agreements. Firstly, the importance of salience, identified by Reslow as a relevant motive for contestation, was also found in the analysis and Interviews. Salience is the attention paid to the issue by policymakers, media or voters, and the importance that these actors attach to the issue (Moniz & Wlezien, 2020). When the political salience of the topic is high, previous research found that parliaments are generally more likely to contest policies (Born & Hänggi, 2005).

#### INTERNAL MATTER OF IMPORTANCE

An analysis of the debates, parliamentary questions, and interviews with former and current MEPs show that the salience of most agreements was very low in the examined period. One MEP stated that while the Parliament had sufficient means to follow up and scrutinise informal readmission agreements, **“it is simply not important enough an issue”** (former vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023). Other issues - the aftermath of the economic crisis and Brexit in particular - overshadowed the discussions on informal readmission in the examined period<sup>15</sup>.

The analysis of the documents and the results from the elite interviews suggest that **informal readmission is not salient until it becomes an internal matter of importance** (to the MEPs and the broader public). This result aligns with earlier studies which found that the salience of issues on the external dimension is generally low and that debate on the topic is often overshadowed by domestic (economic) matters (Huff, 2015).

The agreement with **Turkey**, which was much discussed by the Parliament and the general public, forms an exception. The initiative was a direct result of the **crisis** on the Greek islands. Extensive media coverage of the unprecedented number of migrants entering Europe through the Mediterranean route created a need for immediate action to solve the precarious situation in Greece and safeguard the functioning of the Schengen agreement. In addition, what makes the agreement with Turkey even more of an internal matter, is the promise of **visa facilitation and EU accession**, which was part of the deal.

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<sup>15</sup> Mentioned in following interviews : (former vice-chair DROI, ALDE. Personal Communication. 17 March 2023) and (former vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023)

The analysis of the documents showed that these promises were a major reason to contest the agreement. Lastly, all interviewees believed that Turkey's **proximity** (the EU dealt with a country at its borders) was a factor of importance.

To a lesser extent, the argument also applies to **Afghanistan**. Afghans were the second largest group of migrants coming into the EU, and the issue of Afghan refugees was regularly discussed in the Parliament and among the broader public. The analysis of the documents shows that, although to a lesser extent than the Turkey statement, the JWF was framed as a **solution to a crisis in the EU which needed swift and vigorous action**<sup>16</sup>. In contrast, **other agreements** (including Ethiopia) concerned fewer migrants and were not framed as a response to an internal crisis in the debates or questions.

### **THREATS AND BLACKMAILING, THE POLITICAL CAPITAL OF READMISSION AGREEMENTS**

A second factor that drew extra attention to the EU-Turkey statement, further increasing the salience, were **the regular threats expressed by the Turkish government**. The threats were a major topic of controversy in the plenary debates on the EU-Turkey statement. In addition, they were covered in the news, keeping the issue a matter of public discussion its conclusion (Gotev, 2016).

Additionally - unlike other partner country governments who preferred not to make the agreements public - it appears that Turkey saw **political capital** in announcing a deal was reached with the EU. In an interview, an MEP stated that it is likely that both the EU and Turkey saw political capital in announcing that a deal had been reached (LIBE, EPP. Personal Communication. 5 May 2023). The preference of the Turkish government to communicate publicly increased the salience of the agreement, which likely resulted in increased contestation by the European Parliament.

### [Respect for human rights and international human rights law](#)

Thirdly, besides the access to information and the salience of the agreement, the results also indicate that the **content of the accords** influences to a large extent the degree of contestation by the Parliament.

While further research should confirm the results of this study, the analysis shows that the major topics in all three contested cases were respect for human rights and international law. Although the number of contested agreements is limited (meaning the results should be approached with caution), **contestation seems to be in a positive relation with the severity and scale (numbers of migrants) of non-compliance with international (human rights) law.**

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<sup>16</sup> See (Dimitris Avramopoulos (EC), 26 October, 2016)



This finding suggests that **human rights and compliance with international law are important motives for the European Parliament** to scrutinise and contest informal readmission agreements. However, it is important to mention that contestation did not take on the same proportions over the different parliamentary groups. In addition, there was no majority in the European Parliament to contest the legality of the agreement before CJEU. Therefore, while the finding should be nuanced, the results do seem to confirm to some extent earlier findings that the European Parliament has a preference for a foreign policy that puts more emphasis on the principles of Human rights and democracy (Beetham, 2006; Manners, 2002; Stavridis & Jančić, 2016).

In **the case of Turkey**, the concern that the statement is in breach **of international (human rights) law** is the most recurrent topic of contestation in the analysis. For example, 59 MEPs submitted a joint question to the Commission inquiring about the “compliance of the EU-Turkey deal with the non-refoulement principle” (Barbara Spinelli et al., 18 April, 2016). In the question, it was stated that The UN Secretary-General’s Special Representative on International Migration and Development considered the agreement illegal, as deporting migrants and refugees without first considering their asylum applications is in breach of international law (Barbara Spinelli et al., 18 April, 2016).

Indeed, according to Jenny Poon, there are two **non-refoulement** relevant concerns relating to the EU-Turkey statement, one directly and one indirectly (Poon, 2016). Firstly, the author deems the agreement in breach of the prohibition of **collective expulsion**. Secondly, by characterising Turkey as a **safe country** - whereas it does not have the proper asylum procedures in place - it is argued the EU might be in breach of indirect refoulement (Poon, 2016). Amnesty International has warned that migrants in Turkey are at greater risk of being returned to their country of origin (Amnesty International, 2017). In addition, Human Rights Watch expressed concerns about Turkey’s geographical limitation to the Refugee Convention and that non-Syrian claimants in Turkey are not eligible for temporary protection in Turkey (HRW, 2017).

Each of these concerns was represented in the data. In an interview, a former MEP pointed out that, in contrast to other informal agreements, the EU-Turkey statement involves **human rights violations on EU territory**. In contrast, other agreements, such as Ethiopia, did not involve pushbacks (former vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023).

**The Joint Way Forward with Afghanistan**, the second most contested case of the analysis, equally raises questions about its compatibility with international law. While contestation of this agreement was primarily centred around the issue of Parliamentary involvement, concerns for human rights and the agreement’s compatibility with international law formed the second most used argument of contestation. According to Article 33 of the 1951 Refugee Convention, which describes the principle of

non-refoulement, “a refugee should not be returned to a country where they face serious threats to their life or freedom” (Article 33 of the 1951 Refugee Convention, 1951). When the agreement with Afghanistan was signed, **the country was at war with the Taliban**. The Commission argued that Kabul was safe; the validity of this argument, however, was questioned by several MEPs during the debates.

In an interview, a former MEP argued that Afghans were returned to a country that was at war, distinguishing the JWF from other agreements (former vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023). The MEP stated that while many of the partner countries were not democracies, returnees did not face serious threats to their life or freedom. This was different for people who were returned to Afghanistan. Adding to the concerns for human rights in the JWF was the **return of unaccompanied minors**, for which there was no organised care in Kabul.

Slightly less prevalent but linked to the issue of compatibility with EU and international law, it the use of development aid for migration management. In the discussions about the JWF, several MEPs argued that the plans to build a new airport in Kabul<sup>17</sup> with development funds violated the EU treaties - which prescribe that eradicating poverty is the guiding principle for development aid - and the international principles on ‘DAC-able development aid’.

In the case of **Ethiopia**, the least contested of the three agreements, concerns for the agreement’s compliance with international law were not present. However, while criticism was primarily directed towards the lack of parliamentary involvement and a legal basis, questions were also raised about the deal’s consequences for human rights. More specifically, criticism was directed towards the potential risks from the transfer of information of Ethiopian nationals to the intelligence and security services of an authoritarian regime.

In addition to the severity of (perceived) violations of international law, the **scale of the agreement** (the number of migrants and refugees) mattered for the degree of contestation. The factor was mentioned in several of the elite interviews. The EU-Turkey statement dealt with the largest number of migrants, followed by Afghanistan. The number of people who returned to Ethiopia was rather limited. Lastly, when MEPs expressed their fear over possible human rights violations and the compliance of the agreements with international law, this was often linked to a concern for the **EU’s international image in human rights matters**. This is especially relevant for the deal with Turkey, which the UN and the Council of Europe explicitly condemned.

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<sup>17</sup> To better manage returns

## Secrecy and Parliamentary involvement

A second elite preference identified in the literature review is the interest in **scrutinising the executive to maximise their policy influence** (Auel et al., 2015). From this perspective, one can expect that the more obviously the Parliament is sidelined, the more likely it is the agreement will be contested. While future research should further explore this link, the results indicate that this relationship exists indeed. Two cases are of particular interest when explaining this finding: Turkey and Ethiopia.

Firstly, **Turkey**, the most contested case, was not discussed before the signing of the agreement. Discontent about the (complete) lack of communication prior to the conclusion of the deal was voiced in the Parliamentary debates and questions. In addition, it was pointed out as a motive for contestation in the elite interviews. A former MEP pointed out there was no communication about the agreement before its conclusion and suggested that not even all member states were well informed about the negotiating process (LIBE, VERTS/ALE. Personal Communication. 28 March 2023). The former MEP further pointed out there was no time to discuss the agreement stating it was already “a done deal” and that only at the last minute could the Parliament ensure some additional human rights guarantees. It is likely that the **lack of communication prior to the agreement** added to the frustration and provided another reason for contestation. In contrast, the Afghan case, for example, was discussed by the designated committees before being signed (LIBE, VERTS/ALE. Personal Communication. 28 March 2023).

In the case of **Ethiopia** (as well as Mali, which was attributed to the same category), the Parliament was not informed about the agreement by the Commission or the Council. Instead, the deal with Ethiopia was scrutinised in the LIBE committee based on a **leaked version** of the official Council document. Neither the Council nor the Commission published the text, so the European Parliament had to base its assessment on a leaked version of the official Council document. Similarly, in the case of Mali, the Parliament was not informed by the Commission or the Council but through a press release (Dutch Ministry of Foreign Affairs, 2016). In conclusion, based on the context and analysis of the Turkish and Ethiopia cases, it can be argued that the blatant sidelining of the Parliament likely provided an additional reason for contestation.

## “was sich liebt das neckt sich”: prior relations with the partner country

A fifth factor, which was not included in Thevenin’s theoretical framework, concerns ‘the prior relations with the partner country’. The factor was found to be of particular importance in the Turkey case. In an interview, a former MEP stated: “was sich liebt das neckt sich” (former vice-chair LIBE, VERTS/ALE. Personal Communication. 12 May 2023), arguing that EU-Turkey relations are a contentious issue and that cooperation with the country evokes strong emotions. Indeed, despite the strategic importance of

EU-Turkey relations in (geo)political, economic and societal terms, the relationship between the two blocs has always been a complex one characterized by successive phases of rapprochement and regression (Turhan & Reiners, 2021). Recently, relations deteriorated, and **mutual distrust** increased (Müftüler-Baç, 2016, p. 17), resulting in a paradoxical situation characterized by both **growing interdependence and the divergence of normative and material preferences** (Turhan & Reiners, 2021, p. 4). Friction with several EU member states, the deterioration of relations after the failed coup d'état on 15 July 2016, and the diverging geopolitical interests in Libya and Syria further increased tension (Turhan & Wessels, 2021).

The EU-Turkey statement, and the contestation it caused in the EP, cannot be seen in a vacuum. One needs to take into account the relations prior to the agreement. Further research should look into the exact role of EU relations with third states. However, it is likely that, the nature of EU-Turkey relations, and the proximity of the state, led to heightened contestation, to some extent, irrespective of the contentment of the agreement.

#### Ideological composition of the parliament

Sixthly, in her theoretical framework, Thevenin pointed out the importance of **“public opinion”** as a motive for parliaments to contest external migration policies (Thevenin, 2020). While electoral preferences were briefly touched upon in one of the interviews (LIBE, VERTS/ALE. Personal Communication. 28 March 2023), and although its relevance as an explanatory factor for non-contestation of informal migration agreements was suggested in previous research (Reslow, 2019), no sufficient evidence was found in the analysis to confirm this hypothesis.

However, the **ideological composition of the parliament** - which is an expression of the EU's electorate preferences - was found to have an important explanatory value<sup>18</sup>. This final factor could, in part, explain why the **overall contestation by the European Parliament is low**. This is especially true for the use of resolutions, budgetary control, investigations and judicial action. No resolutions were voted on any of the analysed agreements<sup>19</sup>. In the interviews, former MEPs<sup>20</sup> pointed to the **right-wing orientation of the Parliament**. One interviewee explained that while Parliamentarians (both on the right and the left) were dissatisfied with the informal constructions which excluded the European

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<sup>18</sup> According to McDonald et al., the median voter chooses the pivotal parliament, in translating the preferences of the public into policy (McDonald et al., 2004).

<sup>19</sup> even though some agreements were mentioned in resolutions on other topics (8 in the case of Turkey and 2 in the case of Afghanistan).

<sup>20</sup> Mentioned in following interviews : (former vice-chair DROI, ALDE. Personal Communication. 17 March 2023), (LIBE, VERTS/ALE. Personal Communication. 28 March 2023) and (former vice-chair LIBE, VERTS/ALE. Personal Communication. 12 May 2023)

Parliament, the majority of the MEPs had no interest in endangering the accords with, for example, a budgetary or judicial procedure (LIBE, EPP. Personal Communication. 5 May 2023). Consequently, **no majority** could be found in the European Parliament to engage in “contestation of high political cost”<sup>21</sup> and the Parliament was confined to contesting those elements of the deal the majority of the MEPs supported.

Finding this **common ground** worked the best with respect to ‘**information sharing**’. Sometimes coalitions could be built between progressive and conservative fractions such as the EPP. In an interview, it was argued that the only reason why, for some agreements, complicated debates took place is because of a **common concern for the principles of democratic accountability and rule of law** and because members felt disregarded as Parliamentarians. The Former MEP added: “you cannot make a Parliamentarian angrier than not letting them have a say”. (former vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023)

This common interest has allowed the organisation of some complex debates, the inclusion of criticism of the agreements in several resolutions, and it has helped the committees advocate for more information sharing vis a vis the Commission (former vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023). The latter was **not entirely unsuccessful**. For example, the LIBE commission Insisted that a representative from the Commission (DG home) would come to the Committee to inform the members about the state play of informal agreements. In addition, through joint effort, the LIBE committee eventually succeeded in obtaining regular information about informal agreements in the form of letters from the Commission (add DG HOME) (former vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023). As one interview pointed out, this was only possible because there was an understanding across the political groups that the Parliament had to be more informed about the matter (and because conservative members from the south do not wish to carry the burden of immigration by themselves). (former vice-chair LIBE, Verts/ALE. Personal Communication. 12 May 2023).

### Not all factors are equally important

The analysis suggests that information should be regarded as a precondition for contestation, but is in itself, not sufficient as a factor. The salience of an agreement (and whether it forms an important matter to EU internal affairs), concerns over the compatibility of the agreement with international law, and relations with the partner country, seem to be the key factors in predicting the degree of contestation by the European Parliament. Lastly, while some factors are more important than others, the sum of

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<sup>21</sup> Resolutions, budgetary procedures, legal action

present factors of contestation will, according to the analysis, determine the degree of contestation by the Parliament. An overview of the theory and juxtaposed findings are presented in **Annex I**.

## Conclusion: what drives EP contestation of informal readmission agreements?

In 2015, an unprecedented number of migrants entering the EU, and the failure to coordinate the inflow of migrants based on solidarity led to an exponential growth in externalisation policies aimed at curbing migration flows (Oliveira Martins & Strange, 2019; Ruhrmann & FitzGerald, 2017; Spijkerboer, 2022). Readmission composed an important part of this externalisation strategy, (European Council, 2023), and the recent EU agreement with Tunisia shows that this process is still ongoing. Many of the readmission agreements took the form of informal agreements in which the Parliament has no formal role, thereby severely restricting parliamentary involvement. While the phenomenon of externalisation -including its legal, democratic and human rights consequences- has been researched extensively, the European Parliament's role has been understudied.

Previous research on the topic has argued that, in the wake of the migration crisis, the European Council and Commission cast a "shadow of hierarchy" on the European Parliament, actively undermining its role and resulting in the institution's gradual disempowerment (Servent, 2020). An alternative hypothesis suggested that the lack of involvement has, at least in part, been an active choice of the EP not to upset the electorate (Reslow, 2019). However, a more in-depth analysis of the arguments and drivers from the perspective of the European Parliament had, so far, not been conducted.

Therefore, this thesis tried to answer the following research question: **what drives contestation by the European Parliament of informal readmission agreements?** Through a qualitative comparative small n case study of three differently contested informal readmission agreements<sup>22</sup>, the current thesis aimed to answer this question with the help of Thevenin's theoretical framework distinguishing between means and motives of Parliamentary contestation of external migration policy.

Firstly, a qualitative content analysis of parliamentary plenary debates and questions, supplemented with a select number of elite interviews with (former) MEPs found that the vast majority of the agreements were not contested. In fact, most arrangements were not even mentioned in any of the plenary debates or Parliamentary questions. Informal readmission was generally not considered an

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<sup>22</sup> Turkey (highly contested), Afghanistan (moderately contested) and Ethiopia (limitedly contested)

important topic by MEPs and that other themes (Brexit and the economic situation) tend to dominate the debate. Consequently, **non-contestation should be considered as the norm.**

Secondly, **six factors** were identified that drive parliamentary contestation. Firstly, it was found that a precondition for contestation is the knowledge about an agreement and access to relevant **information**. In addition, the analysis found five motives for contestation by the Parliament: **salience of the issue<sup>23</sup>, concerns for the respect for human rights and international law, defence of the Parliament's prerogatives, prior relations with the partner country, and the ideological composition of the Parliament.** The results of this thesis suggest that one should look past the idea of a simple shadow of hierarchy cast by the Council upon the EP; and that several motives for contestation explain, at least in part, the disengagement of the Parliament from informal readmission agreements.

This thesis has provided several factors that likely influence Parliamentary contestation. However, the results should be approached with caution, keeping in mind the following limitations of the current research. Firstly, one should keep in mind, that the several agreements selected for this research come under different names, and contain – although similar – slightly varying provisions. In addition, some agreements are not publicly accessible, and it is therefore impossible to know the exact content of certain deals. This in turn complicates the **comparison.**

Secondly, this study has looked at the EP as an institution, without providing a detailed analysis of the **intra-Parliamentary struggle** and the different arguments political groups put forward. While the choice to not consider the internal dynamics of the institution, is legitimate, future research should further look into levels, arguments and drivers of contestation of different political groups. In addition further research should look into the contestation within the LIBE and its surrounding committees such as DEVE and the Human Rights subcommittee, as the degree of contestation might differ and agreements not discussed in the plenary might have been a topic of debate in the dedicated committees.

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<sup>23</sup> A topic becomes salient when it becomes an internal matter of importance

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## Annex I

THEORY	FINDINGS
<b>MEANS</b>	
<ul style="list-style-type: none"> <li>- <b>Formal power</b></li> <li>-<b>Shadow of Hierarchy</b> cast upon the Parliament by the Council and the Commission (Servent, 2020)</li> <li>-informal externalisation led to the erosion of parliamentary power and oversight to the advantage of intergovernmental decision-making (Carrera et al., 2018)</li> </ul>	<p>Demonstrated by existing literature</p>
<ul style="list-style-type: none"> <li>- <b>Ability: information</b></li> <li>-Ability as a precondition to use (in)formal power and scrutinise effectively (Huff, 2015)</li> <li>-importance of appropriate resources and sufficient and reliable information (Reslow, 2019).</li> </ul>	<p><b>Information about the agreement as a precondition for contestation</b></p> <ul style="list-style-type: none"> <li>○ Possibly: inflow of information from NGOs</li> <li>○ Not a sufficient factor for explaining contestation</li> </ul>
<b>MOTIVES</b>	
<ul style="list-style-type: none"> <li>- <b>Saliency</b></li> <li>-positive relationship between political saliency and Parliaments willingness to contest policies (Hänggi, 2004)</li> <li>-the saliency of issues on the external dimensions is generally low, topic overshadowed by domestic issues (Huff, 2015)</li> </ul>	<p><b>Salient agreements are more contested</b></p> <ul style="list-style-type: none"> <li>○ High saliency when internal matter of importance <ul style="list-style-type: none"> <li>▪ Solution to crisis</li> <li>▪ Visa liberalisation and EU membership</li> </ul> </li> <li>○ Threats</li> <li>○ Political capital in public communication</li> </ul>
<ul style="list-style-type: none"> <li>- <b>Elite preferences: human rights</b></li> <li>EP has a preference for foreign policy that puts emphasis on principles of human rights and democracy (Beetham, 2006; Manners, 2002; Stavridis &amp; Jančić, 2016).</li> </ul>	<p><b>concern for human rights and international (and EU) Law</b></p> <ul style="list-style-type: none"> <li>○ Severity and scale of (perceived) of violations influences contestation: non-refoulement, minors (and use of development aid for migration management to lesser extent)</li> <li>○ Related concern for international status EU</li> </ul>
<ul style="list-style-type: none"> <li>- <b>Elite preferences: maximising influence</b></li> <li>interest in scrutinising the executive to maximise their policy influence (Auel et al., 2015)</li> </ul>	<p><b>Obvious sidelining parliament influences contestation</b></p> <ul style="list-style-type: none"> <li>○ Prior communication</li> <li>○ Leaked agreement</li> </ul>
<ul style="list-style-type: none"> <li>- <b>Public opinion</b></li> <li>-MEPs' behaviour driven by a desire to continue delegation relationship and re-election (Auel et al., 2015)</li> <li>-exclusion as an active choice by Parliament (Reslow, 2019)</li> </ul>	<p><b>Ideological composition EP as a reflection of the electorate's preferences</b></p> <ul style="list-style-type: none"> <li>○ majority EP in favour of returns, therefore willing to accept informal format</li> <li>○ common ground EP: right of the EP to be informed and consulted</li> </ul>
<ul style="list-style-type: none"> <li>- <b>Role expectations and perceived responsibility</b></li> <li>-external affairs as a matter for the executive (Huff, 2015)</li> <li>-Parliaments support the executive's action not undermine the bloc's diplomatic standing (Reslow, 2019).</li> <li>-particularly strong in times of crisis (Bressanelli &amp; Chelotti, 2018; Laffan, 2014)</li> </ul>	<p><b>Results inconclusive</b></p>
/	<b>Prior relations with partner country</b>

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|--|--|
|  | <ul style="list-style-type: none"><li>○ Mutual distrust, interdependence and differing (material or normative) preferences</li><li>○ Proximity</li></ul> |
|--|--|