

# **The EU-Turkey Deal as a Member State Decision: A Crisis for the European Parliament?**

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## **Abstract**

The European Union made a deal with Turkey in March 2016 in an attempt to lower the number of refugees coming to Europe. In return the EU would give financial aid to refugees staying in Turkey. This is known as the EU-Turkey deal. The European Parliament shall consent to agreements with countries outside of the EU, but the EU-Turkey deal was never passed by this institution. The European Parliament is still expected to participate in the implementation of the deal, most prominently, by approving funding to Turkey over the EU budget. The way the funding process is set up further limits the European Parliament's influence over the EU-Turkey deal. In this qualitative case study, I explore what can explain the limited impact of the European Parliament on the EU-Turkey deal. I find that the Parliament was in fact pushed out of the creation of the deal. This may show that the EU in this case is moving in a more intergovernmental direction, despite its supranational development in the past decades. Additionally, the European Parliament has scarcely been able to use its formal powers in the implementation process. However, the Parliament has managed to get access to information about use of European tax payers' money through its budgetary power, and through the more informal method of parliamentary diplomacy. Theory on foreign policy suggests that the European Parliament can use informal power to influence and get access to information about decisions. However, my findings suggest that the Parliament has been more concerned with keeping communication with the other EU institutions transparent and open since the creation of the EU-Turkey deal in 2016. This is in stark contrast to the closed-door meetings that led to the creation of the EU-Turkey deal, and shows that the European Parliament is working to uphold its democratic mandate – despite the lack of democratic processes in the creation of the deal.

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## Abbreviations

AFET	Committee on Foreign Affairs
CJEU	Court of Justice of the EU
Court	The General Court
DEVE	Committee on Development
DG Echo	Directorate-General for European Civil Protection and Humanitarian Aid Operations
DG Near	Directorate-General for Neighbourhood and Enlargement Negotiations
EP	European Parliament
EU	European Union
FRT	Facility for Refugees in Turkey
IPA	Instrument for Pre-accession Assistance
JAP	Joint Action Plan between EU and Turkey 2015
LIBE	Committee on Civil Liberties, Justice and Home Affairs
MEP	Member of European Parliament
NGO	Non-governmental organization
TFEU	Treaty on the Functioning of the European Union

# 1 Introduction

## 1.1 Background

In 2015, the EU received a sudden increase in the number of refugees and migrants arriving at its shores. More than a million people sought refuge in Europe in 2015, and most of them came through Turkey (Lehner 2019). The EU was desperately seeking a solution to stop migrants and refugees coming into the EU. Without a good framework for handling a large number of refugees, and with the urgency seen by many to solve the crisis quickly, it was seen as necessary to cooperate with Turkey to lower the number of refugees (Oltean and Iov 2017). Turkey was hosting almost 3 million refugees (United Nations High Commissioner for Refugees 2017), and saw the benefit of cooperating with the EU – especially to get financial aid to manage the high number of refugees in the country. The sense of urgency and crisis made the two negotiating partners hold a number of formal and informal meetings in 2015 up until the EU-Turkey deal in 2016 (Oltean and Iov 2017).

The EU made a Joint Action Plan (JAP) with Turkey in October 2015. The content of this plan is the groundwork for what eventually became the EU-Turkey Statement in 2016. The JAP provided a sketch of commitments on both parts to stop migration flows to Turkey and the EU. It explains what each party intends to do (Gatti 2016). The plan was only concerned with migrants who were not in need of protection, i.e. not asylum seekers. It was only later that autumn that the EU and Turkey began discussing sending refugees back from the EU to Turkey, particularly concerning Syrian refugees. The JAP also included some commitments from the EU's side to give financial support to Turkey (Lehner 2019), but the plan was otherwise not as specific as the EU-Turkey Statement of March the next year. In March 2016, the EU member states (hereafter 'member states') negotiated a deal with Turkey that solidified the intents of the JAP and had clear goals for implementation of the deal. It also provided stronger promises from the EU's side and doubled the previously agreed upon financial aid to refugees in Turkey. The results of this negotiation was published as a press release by the European Council called the EU-Turkey Statement (European Council 2016). I use the term the "EU-Turkey deal" throughout my thesis. This is to be understood as the entire agreement between the EU and Turkey on migration management, and consists of the JAP of October 2015 and the EU-Turkey

Statement of March 2016 (Smeets and Beach 2019). When only referring to the content of the Statement itself as a single document, I use the term the “EU-Turkey Statement”.

The Statement that was published in March 2016 in broad lines sets out to restrict migrants coming from Turkey to Greece, and in return, the EU would give financial aid to refugees in Turkey. At first sight, the EU-Turkey deal arguably seems like an international agreement. This is because the parties committed to delivering on the content of the Statement, and the fact that the EU, the member states and Turkey have delivered on many points since its conclusion. A more detailed discussion of whether it is in fact an international treaty is found in chapter 4.4.

What is peculiar about the EU-Turkey deal seemingly being an international agreement is that by EU law, the European Parliament (EP) shall consent to any international agreement made by the EU and a third party. The EU-Turkey deal was never passed by the EP, and its members thus never got the chance to consent to the agreement. However, the Statement set out some paths for implementation that require the EP’s consent. As I explore, the promise of speeding up Turkey’s accession to the EU and visa liberalisation for Turkish citizens are two such processes in which there is a clear role for the EP, and that the EP has to consent to. Additionally, any money promised to Turkey that comes from the EU budget has to be approved by the EP. These parts of the implementation process suggest that there is a role for the EP, but findings suggest that the EP has some difficulty exercising its given right – just like it has a seemingly limited right in the creation of the deal.

## **1.2 Research question and outline**

### **Research question**

The apparent breach of EU law and difficulty of the EP to have influence over the EU-Turkey deal and its implementation, leads to the following question:

*What can explain the limited impact of the European Parliament on the EU-Turkey deal?*

The question is meant to englobe both the creation of the EU-Turkey Statement in March 2016, and the EP’s role in the subsequent implementation process. I answer this question by first looking at the mechanisms that pushed the EP out of the decision to make a deal with

Turkey, and then by examining whether the EP has been able to take more control over how the deal was carried out after its conclusion. I first focus on the legal status of the EU-Turkey deal, because it says something about whether or not there *should* have been a place for the EP in the decision-making process. The legal status may also give insight into whether the EU-Turkey deal is placed into the realm of foreign policy. In the foreign policy field, the member states are the decision-making powers, and the policy area does not follow co-decision procedures of which the EP is a part. However, the EU-Turkey deal also concerns the policy area of migration, and it can also be seen as an international agreement with Turkey. Both of these factors would suggest a larger role for the EP. Whether the EU-Turkey deal is a foreign policy decision, a migration decision or an international treaty thus helps explain the EP's role in its creation.

The thesis is a case study of the EP's role in the EU-Turkey deal. I focus on the EP specifically because it is, apparently, the only major institution in the EU normally involved in concluding international agreements, that never got to voice its opinion on the EU-Turkey deal. The aim is to shine a light not only on how the EU-Turkey deal was made and implemented, but also to say something about the functioning of the EU. If the EU-Turkey deal is intergovernmental and bypasses existing EU Treaties, it is a clear sign that the member states still take the lead in some EU cases. This is not surprising in foreign policy. But it should not occur in policy areas that have been transferred to the EU level, such as migration policy, notably after the Lisbon Treaty of 2009. What is interesting about the EU-Turkey deal is that it to some extent shows a reversion back to intergovernmentalism in the EU. However, the European Commission (hereafter 'the Commission') has, as I will explore, been heavily involved in creating the deal, and has been tasked with implementing it. The prominent role of the Commission as a driver for the EU-Turkey deal suggests that there is still a level of supranational involvement. The EP then being largely excluded creates issues for democratic representation in the EU. The EU-Turkey deal shows that the EU and its member states can make important decisions with the help of the executive power of the Commission, but without the democratic accountability and scrutiny the EP is meant to represent.

As I will show, whether in breach of or in line with EU treaties, the EP was indeed pushed out of the conclusion of the EU-Turkey deal. I then move on to explaining where this leaves the EP in the implementation of the deal. The EU-Turkey Statement shows that the EP is pivotal to getting the EU-Turkey deal implemented, because certain processes laid out in the Statement require the EP's consent. Also here, the EP's formal role is strong, but the execution of the implementation still maintains a limited role for the EP. There are then more informal

forms of influence the EP can engage in to get a say in the deal, and scrutinise the implementation process. I go into this analysis to show if there has been, despite the intergovernmental features of the creation of the EU-Turkey deal, still some supranationality and democratic oversight in the years that followed the Statement.

## **Outline**

To answer the question of why the EP had a limited role in the EU-Turkey deal, I first go into a theoretical discussion about the role of the EP in the EU system. An exploration of supranationalism and intergovernmentalism says something about the role of the EP in migration cooperation with third countries, such as the EU-Turkey deal. It can also say something about the issues of democratic representation and scrutiny in EU decision-making. EU democracy of a strong or a weak role for the EP in the EU. Because the existing literature points to an intergovernmental tendency in the creation of the EU-Turkey deal, I explore which options for influence and power that leaves the EP. Foreign policy literature gives some indications to the avenues for EP influence in the implementation part of the EU-Turkey deal. In my following methodology chapter, I show that I have chosen a case study of the EP's role in the EU-Turkey deal. I lean on interview data and document analysis to answer my research question.

In my findings and analysis, I first look at how the deal came to be. I find that it was two European Heads of State that negotiated what became the EU-Turkey Statement in March 2016, which points to the fact that this might have been an intergovernmental deal. A court case a year later also confirmed that no EU institution takes responsibility for the Statement. But the literature and evidence suggest that both the European Council and the Commission were essential to getting a deal in place and allowing the concessions in the negotiations from the EU side. There might then be traces of supranationality in the deal that is now being actively used to keep migrants and refugees out of Europe. I go into this debate because, as mentioned, the legal and institutional status of the deal can say something about whether or not the EP should have had a role in creating and approving the deal with Turkey. It also gives insight into the severe lack of democratic scrutiny in the decision-making process. The democratic aspect of concluding international agreements is secured in EU treaties, and was reinforced in the Lisbon Treaty in 2009. I show that there is a discrepancy between the democratic processes that are secured with the involvement of the EP in international treaties, and the actual way the member states, and the EU, concluded the EU-Turkey deal.

Second, I take a dive into the processes that followed the EU-Turkey Statement that were crucial to getting the deal concluded – and that are important parts of implementing the deal. Turkish accession to the EU and visa liberalisation for Turkish citizens are two processes that were already ongoing before the EU-Turkey Statement in March 2016, but of which the EU promised to speed up the process as part of its concessions. The EP has to consent to both of these processes being concluded, but it has never come to a point where the EP has been able to exercise this right. The EP also has a right to be involved in approving any money coming over the EU budget to refugees in Turkey. This is perhaps where they have the most formal and informal power – a use of power for the EP that is also present in the field of foreign policy. However, the way the funding to Turkey as part of the EU-Turkey deal is set up limits the EP's power to scrutinise and consent to how the money is spent.

Finally, I move onto a discussion about the tools the EP has when their power over an issue is limited. I show that the EP has been quite heavily involved in direct contact with Turkish authorities and civil society, i.e. parliamentary diplomacy. As for informal contact with relevant EU institutions, this is limited – this is seemingly because the Members of European Parliament (MEP) choose it themselves. MEPs and employees in the EP are, according to my findings, more concerned with securing open, transparent and democratic processes where European citizens' interests are secured. This is in stark contrast to the hidden and secret processes of certain member states that led to the EU-Turkey Statement being published.

With my thesis, I hope to contribute to the literature on migration deals, democracy in the EU and the power of parliaments in general. Much of the literature on the EU-Turkey deal highlights the breach of EU treaties in the creation of this deal, and write about the deal as an example of an intergovernmental crisis decision. I highlight that crises might explain parts of why the EP was left out of the creation, but despite the time pressure a crisis evokes, the treaty that defines the EP's right to consent to an international agreement, Article 218 of the Treaty on the Functioning of the European Union (TFEU), includes a clause for a time limited response from the EP in a crisis. This could have speeded up the process, while still granting the EP its right to co-decision and at the same time ensured democratic accountability for an agreement with a third country. As one of my interviewees pointed out, she thought the EU-Turkey deal would in fact also have been implemented with the EP's consent, but possibly with some more ambitious goals for resettlement of Syrian refugees coming through Turkey into Europe (Interview #3).

### 1.3 The EU system

To have a clear overview of the institutions I am discussing in this thesis, the following is a quick review of the powers of the different institutions. First, the European Council sets the larger political agenda for the EU, but it does not have legislative power. It consists of national and EU level leaders (European Union 2016). In the Lisbon Treaty of 2009, the institution was formally recognised as an EU institution and its president got the mandate to represent the EU externally (European Parliament 2020b).

The Commission promotes the interests of the EU as a whole. Its members are appointed by national governments. The Commission's role in the legislative process is to propose laws that are subject to a vote by the Council of the European Union and the European Parliament. In the Council of the European Union (hereafter 'the Council', and not to be confused with the European Council), "governments defend their own country's national interests" (European Union 2016). They are co-legislators with the European Parliament. The European Parliament (EP) consists of 705 directly elected members (Members of European Parliament, hereafter 'MEP'). It is the only EU institutions whose members are directly elected by European citizens, and therefore has "the powers and responsibility to hold the EU institutions accountable" (European Parliament n.d.).

The Commission, Council and the EP have power through the "ordinary legislative procedure", also known as the co-decision power or issues being dealt with through trilogue, in policy areas that are transferred to the EU-level (European Union 2016). The member states approve all treaties that guide the functioning of the EU and define the power areas of the EU. Hence, the treaties guide within which policy areas the Commission can propose laws to the EP and Council (European Union 2019).

The EU has become more integrated over the years, and an increasing number of policy areas have been transferred from national governments to the EU level. With the Lisbon Treaty of 2009, 40 new policy areas were included in the EU's realm of passing laws. Among these were immigration. The Treaty also gave the EP the role of approving the annual EU budgets on equal footing with the Council. Another aspect of the Lisbon Treaty that is relevant for this thesis is that the treaty gives the EU "full legal personality", that means the EU has the power to sign international treaties. But they "may only sign international agreements that are compatible with EU law" (European Parliament 2020b). The Lisbon Treaty also gave the EP power to approve or reject international agreements.

## 1.4 The EU-Turkey deal and criticism

Some of the main elements of the EU-Turkey Statement that came about in March 2016 are as follows: (1) All irregular migrants coming from Turkey to Greece after 20 March 2016 would be returned to Turkey; (2) For every Syrian returned from Greece to Turkey, another Syrian will be resettled in the EU. This is known as the one-to-one mechanism; (3) The EU will work to lift the visa requirements for Turkish citizens and speed up Turkey's accession process to the Union; and (4) The EU will provide monetary aid to refugees in Turkey through the Facility for Refugees in Turkey (FRT) (European Council 2016).

The EU-Turkey Statement was quickly criticised by Members of European Parliament (MEP) and non-governmental organisations (NGO) (Smeets and Beach 2019). For example, Amnesty International criticised the deal for creating inhuman conditions for refugees in Greece and challenged the idea that Turkey is a safe third country to send refugees back to (Amnesty International 2016). Many have also pointed out that the conclusion of the EU-Turkey deal did not follow standard procedures for concluding agreements with third parties.

As I will discuss in more detail, evidence shows that the European Parliament (EP) was completely left out of the conclusion of the deal with Turkey. It is seen as a purely member states led deal, but it will become evident that other EU institutions were also heavily involved in creating the content of the agreement with Turkey. This is in full opposition to the intentions of EU integration the past decades, which has transferred more power to the European Parliament. It also clashes with specific EU treaties that outline the EP's right to consent to any such agreement. However, the EU-Turkey deal is also implemented, and my analysis shows that this entails a role for the EP. There are certain processes in which the EU cannot legally circumvent the EP, like visa liberalisation, accession talks and allocating money over the EU budget. But my findings suggest that also here, the EP's has to some extent not been able to use its formal powers.

## **2 Theoretical framework and literature review**

### **2.1 The EU: Supranational or intergovernmental?**

In this theory and literature review chapter, I aim to show how the European Parliament (EP) can influence decision making processes of the EU. First, I discuss the role of the EP as a representative for democracy in the EU. Second, I highlight the institutional structures that lie behind the formal competences (and lack thereof) of the EP, and then move on to a discussion about what the EP can do if they are not successful in having influence in the formal way.

#### **The European Parliament as a democratic institution**

To go back to the basics of societal organisation, the role of the parliament, both in national and international settings, is to represent citizens interests. Just like in a national parliament, European citizens elect members of parties to represent them in a legislative assembly. European citizens' views are represented both by their national parliaments, and thus indirectly through the Council in the EU, and directly through the EP. But the lack of influence of national parliaments on EU policies, highlights the importance of a strong EP (Kiiver 2006, in Crum and Fossum 2009). Parliamentary representation is important because it gives citizens a sense of agency and a control over decisions through representativeness, and democracy is important in all policy areas because initiatives by the EU have to be paid for by citizens' taxes (Lord 2011).

What is particular about the EP is that its powers have increased over the years, most recently the Lisbon treaty in 2009 gave it more power over a larger number of issue areas. The EP is thus lifted to an almost equal level with the Council in the EU system, and has gotten more power to scrutinise the Commission. It also serves to provide EU politics with more democratic legitimacy (Crum and Fossum 2009). However, there are problems with the democratic nature of the EP, one is that EP elections are still "second order elections" (Reif and Schmitt, 1980 and Marsh, 1998, in Crum and Fossum 2009) with low voter turnouts. This points to a tendency of democratic deficit in the EU, where even if the EP increases its power, this does not necessarily translate to citizen engagement and contribution (Crum and Fossum 2009).

What my further discussion on the role of the EP shows is that although the democratic features of the EP are present in certain issue areas, such as in migration policies, the EP has

no formal powers in others, such as in foreign and security policy. A discussion of the reasons behind this follows below. I go into the discussion of whether migration deals with third countries, such as the EU-Turkey deal is, falls into an intergovernmental or supranational understanding of the EU. An intergovernmental view of international agreements on migration, and the EU-Turkey deal especially, moves this issue area towards executive politics and away from democratic control and scrutiny. A premise of democratic control that is not upheld by the institutions meant to safeguard democracy for European citizens, then creates a false sense of control for the citizens the EU governs.

### **The formal structures behind the European Parliament's powers**

In this section, I explore whether migration deals are supranational or intergovernmental in nature. The EP has gained increased rights that would suggest the EU has moved towards more supranationalism, but at the same time, the member states' continued importance works in favour of a more intergovernmental view on the EU. This discussion is relevant for my research question because it can say something about the formal role of the EP system and what role it has in different policy areas. As I will show, the EU is supranational in the field of migration and intergovernmental in the field of foreign policy – and migration deals fall into a mix between the two.

First of all, the EP has gained increased formal competences over the years. This may show that the EU has become more supranational in nature. The EP gained a role as a co-legislator along with the Council in 2005. Here the EP gained the ability to veto in cases of migration policy (Ripoll Servent 2019). With the additional power allocated to the Commission and the European Court of Justice (CJEU) after the Lisbon Treaty of 2009, the EU should in theory be more supranational and thus have more power transferred to the EU level from the member states (Ripoll Servent 2019). Migration policies are at an increasing level dealt with at the trialogue level with the involvement of the Commission, the EP and the Council showing that migration issues have been supranationalised over the past decade (Reslow 2019).

Although the EP has gained more formal competences, the role of the EP depends on what policy field one researches. The field of foreign policy and external relations of the EU are kept at an intergovernmental level, with the member states at the forefront of these relations (Reslow 2019). There are tensions in the migration agreement area because the field combines migration and foreign policy. There are debates about to what extent the member states play a role, or if it is the supranational institutions that play a larger part in forming migration policies

that involve third parties. Labelling migration policies that involve third party countries as a foreign policy area has given member states the power to place the policy area at an intergovernmental level (Reslow 2019).

Bonjour, Ripoll Servent and Thielemann raise the issue that scholars of EU migration do not agree on the role of EU institutions in the field of migration. In early years of the EU, the Union was uniquely an intergovernmental organisation. Intergovernmentalists coined the term ‘venue shopping’ to explain how member states move policy issues to the EU because it makes them able to “circumvent national constraints on migration control” (Guiraudon 2000, in Bonjour, Ripoll Servent and Thielemann 2018, 410). However, with the recent extended powers of the EP, the Court of Justice of the European Union (CJEU) and the Commission, the idea that member states have full control of the migration policies no longer holds (Thielemann and Zaun 2018). This supports the view put forward by other scholars that the EU is moving in a more supranational direction. On the other hand, when the EP gained larger powers, it moved towards finding consensual agreements with the Council, where national governments are represented. This was to establish the Council’s legitimacy as an EU institution (Bonjour, Servent, and Thielemann 2018). But the Council’s position in migration issues might still be different from the national governments’ positions, because it is easier for the Council to argue for more liberal positions on migration and asylum than what the voters in these countries want (Bonjour, Servent, and Thielemann 2018, 414). The EP moving closer to the council, which represents the member states’ governments, might still not mean that the EU is moving towards the wishes of the member states and thus loses the effects of supranationality.

Thielemann and Zaun exemplifies the venue shopping-theory put forward by Guiraudon in 2000 with the EU-Turkey deal (2018). They note that venue shopping may also be used to adopt more restrictive policies in some cases, like in the case of the EU-Turkey deal. However, the EU institutions are often seen as taking a more liberal approach to migration and asylum than the member states (Bonjour, Servent, and Thielemann 2018; Thielemann and Zaun 2018). The member states, by moving issues to the EU agenda instead of the national agenda, can depoliticise issues that are often subject to populist pressures. The EU system might in fact serve to “enable unpopular decisions” (Thielemann and Zaun 2018, 908). Although many scholars have moved away from venue shopping as a theory, because it is largely associated with purely intergovernmentalist tendencies, the mechanism might arise in certain cases. Lavenex supports the view that the EU-Turkey deal fits into an image of ‘venue shopping’ where the member states moved their agreement to the EU level. She argues that the EU-Turkey deal is in fact an informal deal, that is not anchored in EU treaties and institutions, but a member

state deal (Lavenex 2018). This shows that venue shopping as a term is back on the agenda in an EU that is supposed to have largely moved away from intergovernmentalism.

There may be a difference between how the EU works in a crisis and how it works in a 'normal' situation. The EU-Turkey deal, having been made in the middle of the refugee crisis, might benefit from being analysed in a crisis perspective. Ripoll Servent explains how crises shape the EU's decision making in the migration field. As an example of this, she explores the failure of the EU to reform the Common European Asylum System (CEAS) after the crisis and finds that the EP was not successful in using its legislative power to reform the system. There are two potential explanations for this failure of the EP, she argues. One is based on the standard account that the EP is a co-legislator with the Council, where "the EP and Council need to find intra- and interinstitutional compromises to pass legislation" (Ripoll Servent 2019, 294). In this view, the EP should be successful if it can find an intra-institutional political majority.

Thus, taking the standard account, the EP should have a stronger position if it manages to unite the political groups of the EP to form a united opinion on a case. Ripoll Servent finds that although the EP managed to do everything "right" in forming a united position on the CEAS and should in theory have been successful in getting their position heard, the power and influence of the European Council overshadowed the EP. Forming a united position in the EP is more difficult in a crisis situation, and also because the EP has become "more ideologically diverse since the 2014 elections" (Ripoll Servent 2019, 295).

The other theoretical explanation has its roots in the 'new intergovernmentalism' field. This means that the EU bypasses supranational institutions that should have gained more formal powers, to again make the Heads of State key in decision-making (Ripoll Servent 2019, 296). In the new intergovernmentalism view, the European Council has become a dominant EU institution because it represents the member states. Ripoll Servent, however, argues that this branch of theory has not explained what effect this increased power of the nation states has on the role of the EP.

In the new intergovernmentalism view, the EP might be successful if it manages to argue that its position does not require further integration or for states to give away more power to the supranational institutions of the EU. The EP's power may in turn be reduced in a crisis if a topic is "perceived by (some) member states as so sensitive that nothing can be decided without the intervention of the European Council" (Ripoll Servent 2019, 297). In these cases, the EP might be asked to step aside to let the wishes of the member states be more important. In the reform of the CEAS, the European Council was indeed very involved in legislative process –

something that is normally not the role of this institution – and criticised for having bypassed the Council and the EP, which officially are the legislators of the EU (Ripoll Servent 2019). Ripoll Servent argues that the increased role of the European Council might indeed serve as the main explanation as to why the EP failed to get a stronger position in reforming the CEAS. Ripoll Servent's view supports the idea that intergovernmental tendencies of the EU serve as an explanation to the limited power of the EP in the field of migration policies.

Bickerton, Hodson and Puetter coined the term 'new intergovernmentalism', which might explain the important role of member states in EU decision-making. There is a common belief in the research field that more EU integration is synonymous with taking power away from nation states and giving it to supranational institutions (Bickerton, Hodson, and Puetter 2015). The authors argue that although the EU could have moved in a more supranational direction, it has instead allocated more power to institutions where member states are represented and given them more supranational powers. Competences that could have been given to for example the Commission have instead been given to institutional bodies that are not supranational (Bickerton, Hodson, and Puetter 2015). The term new intergovernmentalism, according to the authors, explains more EU integration since the Maastricht Treaty of 1992, without more supranationalism.

Schimmelfenning on the other hand criticises Bickerton, Hodson and Puetter's argument that more supranational tendencies in non-supranational organisations is an argument for the fact EU has become more intergovernmental. The increasing supranational attributes of the intergovernmental institutions actually means that the EU has become more supranational (Schimmelfennig 2015). He also criticises Bickerton, Hodson and Puetter for having left out the EP in their classification of supranational bodies. Schimmelfelding highlights that the fact that the EP has gained a co-decision power is a clear argument for more supranationalisation of the EU in recent years. What is lacking in both Bickerton, Hodson and Puetter and in Schimmelfenning is a discussion of in which policy areas their arguments hold. As I have explored above, the EU might be somewhat more supranational in migration policies, but still hold an intergovernmental position in the foreign policy field. It is not as simple as saying that the EU in all policy areas acts in one specific way or requires the same theoretical lens of analysis.

So, the EU might be seen as a supranational organisation because more competences have been transferred to the EU level away from the member states. However, this is only true in migration policies. In foreign policy, the member states still hold a significant position and

the formal role of the EP is minimal. Whether the EP should in fact have some formal influence over the EU-Turkey deal thus depends on whether the EU treated it as a foreign policy agreement or as a migration policy measure. This might shape the level of informal activity the EP has to engage in to influence decisions on the deal and its implementation in EU laws and practices, as I will explore in the next section.

Thielemann and Zaun extend the intergovernmental understanding of the EU. They argue that EU agreements during a crisis often involve supranational institutions at a very limited level. The EU-Turkey Statement, which they label as an intergovernmental one, is an example of such a crisis agreement where the member states took the lead (Thielemann and Zaun 2018). They argue that this was done to speed up the process, but also that it shows an unwillingness to give away power on certain decisions to the supranational institutions, which include the EP.

Smeets and Beach highlight the fact that the EU-Turkey deal was led by the European Council, with help from the Commission, but without including the other law-making institutions that are normally involved in policy and treaty making. They argue that the crisis sentiment in the EU in the middle of the migration crisis meant the deal had to be struck faster than normally. Thus the deal was not made through “the formal, hierarchical, intra- and inter-institutional action channels” (Smeets and Beach 2019, 3). The deal was possible to implement with such speed because the EU used informal governance. This comes into play when a situation cannot be handled through the formal rules and established procedures (Smeets and Beach 2019). In crisis situations, member states tend to provide the institutions with more leeway to sidestep formal rules and channels (Kleine 2013, in Smeets and Beach). So, if the European Council was able to circumvent standard procedures and the EP was left out of the decision-making process, it is also interesting to research what the EP did to get back power over the EU-Turkey deal.

## **2.2. Formal and informal powers of the European Parliament**

I have showed that external migration deals fall into a hybrid of foreign and migration policy and that crises might move the EU towards more intergovernmentalism. This creates the debate of whether migration deals are supranational or intergovernmental in nature. In the case of the EU-Turkey deal, it seems like it may be classified as an intergovernmental deal, because of the apparent sole involvement of the member states in its creation.

To be able to say that external migration deals, and in particular the EU-Turkey deal, are intergovernmental, there needs to be only member state decision making. If the Commission or the European Parliament (EP) have formal decision-making powers in them, they are no longer intergovernmental, and rather have traces of supranationalism in them (Riddervold and Rosén 2015). Similarly, if the EP or the Commission have not been able to influence the decision-making, the deals could be deemed purely intergovernmental.

Although named intergovernmental, the EP does hold formal powers over the EU-Turkey deal, it at least *should have* under EU law. According to article 218 of the Treaty of the Functioning of the European Union (TFEU), all agreements with third countries, i.e. non-EU countries, should be voted on by the EP (Article 218 TFEU 2008). The EP thus has a clear formal power in migration deals, and they normally fall into the supranational picture of the EU today.

But the EP was not granted the opportunity to exercise this formal power in the case of the EU-Turkey deal. The CJEU in 2017 found that the EU-Turkey deal was purely a member states deal. No EU-institution is legally responsible for the creation of the deal. It is not an EU agreement, but a member state political statement (Carrera, den Hertog, and Stefan 2017). I explore this court case in further detail in chapter 4.2. This means the EP, as well as the Council, the European Council and the Commission, legally are not involved in the deal. That also means that the Article 218 TFEU that promises inclusion of the EP in international agreements was not followed, because the member states are not bound by this. As Reslow puts it: “the unclear legal status of the EU-Turkey deal makes the formal role of the EP diminished” (Reslow 2018, 8). As noted before, the deal was struck in a hurry because of the refugee crisis, which may also explain the EP being pushed aside from their normal formal powers granted after the Lisbon Treaty in 2009. This shows that migration deals in themselves are not necessarily intergovernmental, but the EU-Turkey deal is.

Seeing that the EU-Turkey deal can be treated as an intergovernmental agreement, the deal may share some characteristics with the field of the EUs Common Foreign and Security Policy (CFSP). This policy area is still characterised by intergovernmentalism. The EU has gained increased formal competences in the CFSP field, but the same amount of power has not been awarded to the EP in this policy area (Rosén and Raube 2018). The EP is left out of the loop when large events and crises hit in foreign policy, and is not part of the EU’s “crisis response team” (Rosén and Raube 2018, 77). That means the EP has few formal powers in this area, but it does have a right to consult in foreign and security policy cases.

The characteristics of the EU-Turkey deal that makes it relevant to analyse in a foreign policy perspective are essentially: Decisions are led by the member states; it is mainly driven by events; issues are treated quickly; and the EP still have budgetary power and power to vote on anything that normally goes through the EP. Additionally, in the area of CFSP the Court of Justice has no jurisdiction and the EP does not have co-decision-making powers that it enjoys in other policy areas (Riddervold and Rosen 2015). Taking the foreign policy theory approach to the EU-Turkey deal, even if migration deals could normally fall into a more supranational understanding, makes it possible to use the theoretical frameworks laid out for example by Rosén and Raube. They argue that it is not only formal power on paper that determines how much influence the EP has over foreign policy decisions (2015).

What Rosén and Raube do is to divide the avenues of influence of the EP in foreign policy into formal and informal influence (2015). Formal powers and influence may take the form of voting rights, right to veto decisions, right to propose alternative decisions or amendments, and power to control the budget. These are direct and visible avenues for the EP to change policies. As shown by Carrera et al (2017) who explored the legal status of the EU-Turkey deal, the EP had no power in the decision-making phase of the deal. Many of the formal rights of the EP in migration deals are then lost when the member states take the lead. In the case of foreign policy, the budget power is the most strictly formal kind of influence the EP can use. The EP also holds this formal power in the case of the EU-Turkey deal. When it comes to informal influence, this is all types of influence that go outside of the created avenues for power. As will become clear, the informal influence of the EP is often about getting access to information or being able to criticise and scrutinise decisions.

Since the EP did not have decision-making power, what is left as the most important form of formal influence in the EU-Turkey deal then seems to be the budgetary powers of the EP. The power to vote over and monitor the money coming from the EU budget to any project is an important one. The EP holds this power in both the migration field, where it has decision-making powers, and in the foreign policy field, where the EP is not part of the policy making institutions (Reslow 2018). Seeing that the 3 billion euros promised over the EU budget was an important concession and an important part of the implementation of the EU-Turkey deal, the EP seemingly does hold some important formal power in this deal. How the EP can exercise their power in this area is explored in the findings and analysis.

The EP can use its formal budgetary power to get more information from the other EU institutions. Thus, the formal budgetary powers give the EP a unique ability to be kept in the loop and monitor how money is spent. It also means the Commission will inform the EP about

cases that concern the budget to stop the EP from vetoing. The Commission also informs the EP about how it takes the Parliament's opinion into account (Rosén and Raube 2018). What Rosén finds is that the EP can often use its budgetary power to demand more information. In the case of funding activities in Iraq and Afghanistan in 2005, the EP demanded to participate in meetings about the activities in the countries. If not, it would not approve funding over the EU budget (Rosén 2014 in Rosén and Raube 2018). What is interesting to look for in the empirical data on the EU-Turkey deal is to see if the EP has managed to use this power to gain the ability to scrutinise and access information about the money going to Turkey from the EU, like in the case of Afghanistan and Iraq. However, what is particular about the EU-Turkey deal is that a part of the money going to Turkey comes directly from Member States, and is thus outside of the normal budget (Reslow 2018). A more detailed exploration of this follows in chapter 5.2.

The reason access to information is important is that parliaments in general usually have difficulties knowing what the executive power is up to. That means the EP will try to argue access to information before new policies are made. When new areas of EU power are established, such as the Common Security and Defence Policy in the 1990s, the EP spends a lot of time negotiating regular access to information. What is important for the EP is to get as much information as possible, sometimes also sensitive information the member states are not necessarily willing to give them. This formalised access to information can be created as a standard procedure that will apply to all decisions within a field, and that is negotiated before any decision is made within a policy field (Rosén and Raube 2018). What is particular about the EU-Turkey deal is that the EP was granted a range of powers through Article 218 TFEU, but the EP were unable to exercise their given right to consent to international agreements in the EU-Turkey deal decision-making.

Another more informal mechanism the EP can use to gain influence is to scrutinise decisions made by the executive power after the decision is made. As Rosén and Raube wrote: “the task of parliaments is not only to authorise policies but also to hold the executives accountable for their activities” (2018, 80). In a formal situation, the EP has actual power to stop payments or stop not yet decided activity. But the effectiveness of this type of influence by the EP does not depend on how much formal power they have to do so. It is rather the *willingness* of the EP to do so that determines if it has an effect. And even if the EP cannot formally change the policy in question, it could alter the likeliness of a similar policy to happen again. Additionally, it may cause reputation problems for the executive power that is “named and shamed” (Rosén and Raube 2018, 72).

Another aspect of the EP's power is the use of parliamentary diplomacy. This is diplomatic contact between the EP and a third party that circumvents the other EU institutions. It "refers to a wide range of activities undertaken by members of parliament, or parliament as an institution, to increase mutual understanding between countries and to improve scrutiny of government" (Bajtay 2015, 4). The EP can have contact with countries outside of the Union both on a regular basis, also before a crisis decision is struck, and after a decision of the EU executive power is made. The advantage of parliamentary diplomacy is that the EP has the opportunity to meet with people on many levels, in civil society, government and parliamentary level (Rosén and Raube 2018). The use of parliamentary diplomacy can put pressure on other EU institutions (Redei 2014 in Rosén and Raube 2018). This type of diplomatic activity is also a way for the parliament to get more information about a topic, and "bridge the gap of 'information asymmetry' between the executive and the legislature" (Bajtay 2015, 6). The EP can not only use parliamentary diplomacy to gain more knowledge, but also to spread democracy and political change abroad. This may be particularly relevant for its contact with Turkey, that has, as I will discuss in detail, failed to reform certain laws to fit the EU's requirements necessary to grant Turkey visa liberalisation and accession to the Union. In conclusion, when the EP lacks formal powers over an issue or a policy area as a whole, it can use other more informal avenues of influence to make changes or get information.

### **2.3 Theory expectations**

Based on the literature and theories presented above, I expect to find the following to be true about the EP's influence on the EU-Turkey deal: (1) The EP did not have any formal power in the creation of the EU-Turkey deal. This is already confirmed by other scholars, but I will explore in more detail how the process of creating the EU-Turkey deal left the EP out of the decision. (2) The reason the EP was left out of the creation of the deal was because the EU was in crisis mode and in a rush. This however does not mean the EP cannot gain influence after the creation of the deal by the member states. (3) The EP has formal budgetary power, and money going to all projects, even foreign policy ones, have to be passed by the EP. What could be found in the case of approving money to help refugees in Turkey with money from the EU budget is that the EP has been able to scrutinise and supervise the allocation of money to Turkey. (4) The EP has used informal powers to gain influence over the EU-Turkey deal in the

years since it was created. This can take the form of for example getting information and parliamentary diplomacy, according to the literature.

## 3 Methodology

### 3.1 A case study of the EU-Turkey deal

In this thesis, I am doing a case study where I aim to answer the question: What can explain the limited impact of the European Parliament on the EU-Turkey deal? A case study takes a deeper plunge into one specific case and is an intensive analysis of this case (Bryman 2012). In addition to explain the case chosen, it also has to shed light on a larger population of cases (Gerring 2017).

My initial reason to study the EU-Turkey deal was that it seemed like a stand-out case in crisis management and handling the refugee crisis in Europe. Finding that it was in fact criticised by many for breaking a number of EU and human rights laws, it was interesting to look at what made this deal special and subject to criticism. The lack of involvement of the EP (which breaks the EU laws of EP consent in third party agreements) made it interesting to look at how excluded the EP really was. That is why I study the EP's influence on the EU-Turkey deal – both in the decision-making and the implementation part.

Even it is seemingly a special case of migration management, it is also relevant to research the EU-Turkey deal as a case of how EU strikes deals with countries outside of the EU. Lehner argues that the EU-Turkey deal is important because “it could serve as a blueprint for other ‘deals’” (2019, 183). If Turkey is seen as a safe third country to send refugees to by the EU and the legality of the deal is accepted, then similar deals could be struck with other countries migrants and refugees pass through on their way to Europe. However, Smeets and Beach note that all the negative reactions to the deal make it unlikely that a similar deal will be repeated with other countries (2019). Studying the EU-Turkey deal might still be interesting, because in future deals that carry the same characteristics, the same type of influence from the EP's side might be expected. It might then contribute to understanding the role of the EP in the EU.

Although I found that the EU-Turkey deal and the EP's (lack of) involvement interesting because it seemed odd and unique – on a closer examination it is really a case of several mechanisms and events. In my thesis, I study the behaviour and power of the EP. This might seem like a very specific institutions with little transferability to other cases. However, there are elements that may make the study relevant for other researchers in the future as well. First, I use theory from foreign policy, and others can see if tendencies in this policy area can apply to other policy areas, like I check in my thesis. It is also a contribution to the literature about

reversion to intergovernmental tendencies in EU policy areas that had already been supranationalised, and can thus say something about how the EU complies with the democratic processes and oversight that the EP represents. That is the case for the EU-Turkey deal as a migration agreement, where the EP should have power, but where member states took the lead. This may also be the case in other migration deals. The EU-Turkey deal can also be a case of EU decision-making in a crisis. More specifically, my research is about the influence of the EP in a crisis situation. Additionally, Rosén and Raube point out that the EP works quite similarly to national parliaments. Their influence on foreign policy might resemble what other parliaments are experiencing (Rosén and Raube 2018). Therefore, the findings might contribute to the literature on how parliaments in general work and how they are able to uphold their democratic mandate in issue areas or situations where they have little influence.

### **3.2 Data collection**

In my thesis I combine document analysis and interview data to answer my question. This way, I triangulate my findings by combining inferences drawn from one data source with that of another to make my final conclusions. This is to make my findings more credible both for me and the reader. I also used the interviews to check some document observations and to better understand if I interpreted them right (Bryman 2012). Triangulation is one of the mechanisms that can be used to ensure validity of the research (Golafshani 2003).

#### **Interview selection and analysis**

I conducted four expert interviews in Brussels in February 2020. This was to get a better understanding of the processes of how the EP works on getting influence over the EU-Turkey deal. These interviews were meant as a mapping and understanding part of my analysis, as well as serving some explanations to things I had already found in documents and meeting recordings. I chose to focus my interviews on people from and in connection with the EP because I was initially most interested in how the EP works - as opposed to having interviews with people both in the Commission, the member states and the institutions representing the member states.

I contacted a number of people who were linked to the work on the EU-Turkey deal because they were in relevant committees or worked on Turkey, immigration or foreign affairs

in the EP. While I got some immediate positive responses from people via e-mail, it was also time consuming and difficult to get the right people to talk to me and be available to meet in Brussels. I was also sent in a loop between people who recommended me to talk to the same people, and people referring me back to others who had already declined to talk to me. I ended up having five interview appointments in Brussels, one of which fell through because he cancelled last minute. I was also able to meet with some people in the think tank Centre for European Policy Studies (CEPS) who took their time to help me understand the topic I am writing about. The interview part of my data collection took a lot of time, also because I spent time planning and making appointments.

Two of my interviewees wished to remain anonymous and two were willing to talk to me under their full name. A list of the time, place and information (anonymised and not) are found in Appendix I. I refer to my interview data as for example (Interview #1) throughout my analysis, because it makes it easier to separate the interview data from document and secondary sources. I offered all my interviewees to be anonymous if they wished. This was to make sure they felt they could talk to me without restraints or fear of it coming back to them. With the two who wished to stay anonymous, we agreed on how I could refer to them in the thesis. The two people who were fine with me using their name said what they said to me was already out in the open or online as their opinions. They have also had the opportunity to read their quotes included in this thesis before submission. In terms of validity, using the full name of the interviewees gives more credibility. It also makes it easier for other researchers to conduct the same interviews again to see if they get the same results. However, the anonymous interviews I did gave just as valuable insight into the workings of the EP, and they were able to speak freely without being recognised. I do not think they would have agreed to talk to me had it not been anonymous. I refer to the people in my interviews by their gender, instead of referring to them by the more neutral *they/them*. This is because I think it makes it easier to separate between what the interviewee says about their experience, and their explanations of what MEP's or the EP as a whole were doing. With very little other identifying information about my two anonymous interviewees, I still think I keep their identity hidden.

However, one obstacle to getting good and truthful accounts from my interviewees was that all the interviews but one took place in a public café that the interviewee suggested. In one of my interviews, the interviewee asked to move to another table, because in the middle of the conversation, a Turkish person she knew sat down close to us. She said she would not be comfortable speaking about the EU-Turkey deal in front of him. We had no problem talking for

a long time after we moved. She also specified that opinions she expressed to me were also subjects she had written openly about in media before.

I made my interview guide based on the findings in my theory chapter. I kept it semi-structured because I wanted to make sure I got the answers to the subjects I wanted to cover, but I also wanted to allow for open questions to get some deeper reflections from my interviewees. This format also fit the allocated time for each interview, which was around 30 minutes each. I got the answer to what I needed and had few enough questions to let the interviewee talk, without me worrying about one question taking up all the time. Sometimes the interviewee also talked about a topic I wanted to ask about before I had asked my question.

Kvale highlights the fact that interview questions should not be leading or shape the answers of the interviewee to secure reliability (1996). Although I tried to keep my questions open, I noticed that I sometimes used words the interviewees would not necessarily have chosen themselves. For example, when asking an interviewee (#1) about the EU-Turkey deal, he was quick to say it could not be named a “deal”, but was a statement, namely to reflect the fact that it was not legally a binding treaty – a debate that is covered in the analysis chapters. My choice of wording could have been different, but had I simply used the term “statement” it would not necessarily reflect the fact that the EU-Turkey Statement has implications that could classify it as an agreement (Peers 2016). I therefore stand by the use of the word “deal” because the term “statement” is a choice of word the EU uses, that does not necessarily reflect the true nature of the deal.

In another interview I asked if the interviewee (#2) was surprised when the press release known as the EU-Turkey Statement was released. This was to check if the EP really was not aware that there would be an understanding with Turkey until the press release was published. She answered: “I don’t know if we were surprised, but a little bit”. Had I kept the wording more open, such as “What was your reaction when the press release was released?”, I might have got another wording or a better explanation of what her, as an employee in the EP, felt.

In my transcripts I have tried to reflect the tone of the interviewees and the manner in which something was said. For my own analysis, it was valuable to keep formulations such as “Hmm.. no.” and “No, no!” instead of a simple “No.” This better reflects if the confirmation or rejection of something I wanted to check out was something the interviewee had thought a lot about or if they had to think about it. This, in my opinion, enhances the reliability and replicability of the study, because it kept the transcripts as true to the real conversation as possible. Although I have tried to keep the transcripts as true to the recordings as possible, one

problem with the transcription is that English is not the mother tongue of neither me nor my interviewees. Sometimes language barriers, noises from the café we met in, mumbling or an accent I am not familiar with made it difficult to hear what the interviewee was saying. I have listened to my recordings several times to be able to accurately cite my interviewees, and I have kept the quotes included in this thesis as close to the original sound file as possible. For one of the interviewees to whom I sent the quotes included in this thesis, I was also able to double check a word I could not identify in my recording. She corrected the quote to include the word I thought she said, but I was unsure of.

### **Document selection and analysis**

In document analysis, the texts used (including video recordings) are not produced to be used for research. Many EU documents available online are arguably meant to be readable for the general public of the EU as part of a democratic process. The documents are meant to be accessed by bureaucrats, politicians and citizens of different countries with different official languages. It could then be argued that there are little cultural or language barriers for a Norwegian person to understand the documents, even if Norway is not a member of the EU and the documents are not available in my mother tongue. Had I researched official documents coming from one single country, I might have experienced a cultural or language barrier to understanding the documents.

I found my documents through the EU official websites. This makes me certain the documents are truly coming from the EU, and they are clearly marked by which institution produced them, who the contact persons are and the dates they were made. This increases the trustworthiness of the documents. However, I do acknowledge that even if the documents are trustworthy, the information in them do not necessarily reflect the truth. Documents do not present reality, but a depiction of reality through the eyes of the one who produced the document – in this case an EU institution (Bryman 2012). They are written to convey an impression of the author that is favourable to the author. It might be that the EU as a whole, or the institutions of the EU, want to put themselves in a good light. As Atkinson and Coffey put it: “We cannot (...) learn through written records alone how an organization actually operates day by day. Equally, we cannot treat records—however ‘official’—as firm evidence of what they report” (2011, in Bryman 2012, 555). This again highlights the importance of triangulation and double-checking information from one source. I hope my interview data help me overcome some of

the doubt about the truthfulness of document findings. But interview data are not perfect either, and the findings from two types of data sources serve to strengthen the validity of the findings.

Additionally, it is important to remember that one document on its own does not necessarily reflect the whole picture. A document might be part of a series of documents, such as a meeting and the minutes and summary that precedes and succeeds it, a parliamentary question and its answer or an amendment to a policy proposal and the original proposal (Bryman 2012). For document analysis, it is also important to analyse both the content and the context. As noted before, all the documents produced in relation to the EU-Turkey deal were produced in an EU that were going through a crisis and was seeing a high number of refugees and migrants arriving at its shores. In addition, the context itself might be worth analysing. As noted in the theory, the EP asking for and getting information is a sort of influence. This means the fact that a meeting between the EP and the Commission, where the Commission informed on a topic, took place is itself evidence of communication and influence. What the provided information was is not always relevant.

For information about the accession talks and visa liberalisation I have used reports that the Commission publishes every year to track the political situation and the progress of Turkey on processes with the EU – this was invaluable to understanding what had been going on with the accession process and visa liberalisation processes that were highlighted in the EU-Turkey Statement. Here, I found information about the outstanding reforms Turkey had to make to meet the requirements the EU has set for any of these processes to be concluded. Coming out yearly, the reports gave a clear picture that Turkey was standing practically still on their end to meet the goals set in the EU-Turkey Statement and the Joint Action Plan.

As for understanding the communication between the EP and the other EU institutions, I found a recording of a meeting held in November 2019. Here the Commission came to inform three EP Committees on, among other, how the money going to Turkey as part of the EU-Turkey deal was spent. I could have included more of these types of meetings, but one meeting itself was in my opinion enough to give an example of how the EP can influence the processes surrounding the allocation of money to Turkey over the EU-budget. The topics raised in this meeting was also something some of my interviewees brought up. I also asked my interviewees about similar types of meetings, and they gave valuable insight into why these types of meetings are important and the influence it gave the EP.

As for the understanding of the budget process and Facility for Refugees for Turkey (FRT), which is the mechanism set up to allocate the money promised to Turkey in the EU-Turkey deal, I quickly understood that this was a complex subject to dive into. The same goes

for the court case that serves to explain the legal status of the EU-Turkey deal. That is why I lean on a few reports from the think tank Centre for European Policy Studies (CEPS) for my document analysis. This is an independent think tank that have followed the EU-Turkey deal closely. I use the think tank's interpretation of some of the more complex documents I wanted to include. CEPS have done extensive studies on the funding and institutional structure of the FRT and court cases relating to the EU-Turkey deal. To save time and to better understand the structures of the EU judicial system and budget structure, I in some cases lean on these reports instead of the original documents. This gives me a better understanding of the subjects and is helpful to analyse the subjects correctly. However, it does create a distance between me and the documents, so I have read many of the documents they refer to myself.

I have decided to include documents up until the end of 2019, except for a few more recent examples of parliamentary diplomacy. This is because I wanted to include a longer period of implementation into my scope of analysis. Although most discussion about the EU-Turkey deal in the EU comes from 2016, the topic has been on the agenda in the EU several times in the years since. This is particularly linked to political development in Turkey, which makes the EU discuss its cooperation with the country. Broadening my scope to almost four years since the EU-Turkey Statement was published also gives a fuller picture of the progress made by both the EU and Turkey in implementing the elements of the Statement. The development in Turkey in March 2020, when Turkey said they would no longer stop refugees from going to Europe, and the Greek Prime Minister Kyriakos Mitsotakis named the EU-Turkey deal "dead" (CNN 2020), is however not part of my main analysis. This is because I conducted my interviews before this development, and the interview data do not reflect this. Additionally, it does not gravely change the role of the EP in the creation or implementation of the deal.

I have chosen to mostly limit my analysis to the communication between the EP and the Commission. That is because the Commission is tasked with implementing the EU-Turkey deal, and the most relevant target of the EP's influence. This is also the impression I got from my interviewees, that they were mostly concerned with the communication with the Commission. It is also difficult to widen the analysis to MEPs' contact with the member states, because this type of contact might happen in the home country of each politician. Language barriers and time constraints made me abandon that type of influence in my analysis. But there is no doubt that it might have also created a fruitful analysis to focus on MEPs' avenues for influencing their own national parliaments. That is the topic of a different thesis.

### 3.3 Validity and reliability

Reliability is, according to Golafshani, about trustworthiness (2003). It is also about repeatability and replicability (Bryman 2012). I have shown how I ensure that my interview data are as trustworthy as possible, and I have included the names of the two interviewees that did not wish to be anonymous, which makes it possible for anyone to repeat the study following the interview guide in Appendix III. As for document data, all the documents I have used are open and available online. Many however point to the fact that reliability is not a term that is necessary to apply to qualitative studies. Some argue that validity in itself can ensure reliability: "Since there can be no validity without reliability, a demonstration of the former [validity] is sufficient to establish the latter [reliability;]" (Lincoln and Guba 1985, 316, in Golafshani 2003).

Kvale defines a valid argument as "sound, well grounded, justifiable, strong and convincing" (1996, 236). By applying the structure of basing my findings within a research field, and relying on the previous work of other scholars, I try to make the conclusion of this thesis well grounded. For Kvale, a valid inference is "correctly derived from its premises" (1996, 236). This is about measuring what one thinks one is measuring. For qualitative studies, this is about the observations reflecting the phenomena of interest.

The art of creating a valid argument is about questioning, checking and theoretically interpreting findings (Kvale 1996, 241). To ensure a valid argument, I try to explore alternative interpretations and see how my findings can be seen in light of the theory. I try to be open about my interpretations and why I draw the conclusions I do. I am also open to not finding what I am looking for. I have laid out some theory expectations, i.e. what I assume I could find in the documents and interviews. This thesis is not, however, limited to verifying or denying these expectations, as strict hypotheses would be subject to. It is about seeing in what direction the theory and previous literature in the field takes me, but still be open for not finding what is expected, or not finding conclusive answers to the expectations. I think this keeps my interpretation open, although not completely withdrawn from any previous assumptions.

Both validity and reliability are terms that emerged for quantitative research, and although some authors apply the criteria set out for this type of research to qualitative research as well, there are other ways to go about it (Bryman 2012). For qualitative researchers, one way to ensure validity is by credibility. Credibility is about saying why one arrived at the conclusions one did, even if there are many possible ways to reach that. Qualitative researchers do not, mostly, assume to present a truth about the social world, but rather one interpretation of it.

Credibility can be achieved by for example triangulation (Bryman 2012). As explained, I do this in my thesis by combining interviews and documents to check if what I find by one method or in one document or interview, is in accordance with the other method, or the other interviews and documents. By doing this, my interpretations and conclusions are based on several accounts of the same thing, giving what I hope will be a more credible and solid proof of my inferences.

As discussed, validity is about measuring what you think you are measuring (Bryman 2012). One particular issue with my thesis is the difficulty in measuring impact, influence or power. I do not take it on me to try to establish a definite answer to exactly how the EP has managed to influence the decisions regarding the EU-Turkey deal. There are two main reasons for this: 1) It would require a completely different setup of my thesis, and I would have had to narrow down my research to one specific issue or case in which the EP managed to get influence. I have rather tried to give a larger overview of the discrepancies that exist within the EU-Turkey deal and how it was made, and how the implementation process is being carried out. To give a full answer to the limited impact of the EP, I have provided a wider range of evidence, rather than one specific moment in time. However, I acknowledge that focusing on one specific point of influence for the EP would make an interesting thesis – but a different one. 2) I found little evidence in my documents and interviews that the EP had actually managed to have a big say in any decisions regarding the EU-Turkey deal. Going on a treasure hunt to find that one or few moments where they had real impact could be a dead end. That is of course a risk with any research question: that there might not be what one is looking for. That is also an interesting find. I do however, with my interview data and documents show that the EP has managed to be heard in the Commission, and that that is seen as a form of influence by at least one of my interviewees.

## **4 The creation of the EU-Turkey deal: An intergovernmental agreement**

In this chapter I aim to explain what happened when the European Parliament (EP) was left out of the creation of the EU-Turkey deal of March 2016. The deal however assumed the involvement of the EP in the implementation of the deal. For the EU to deliver on its promises to Turkey, the EP has to consent to some ongoing processes and budget decisions. But the evidence shows that also here, the EP's power was more limited than what one might predict. In the last section, I explain how the EP can overcome the lack of formal involvement in the deal, by showing the informal practices the EP has engaged in to get influence over the EU-Turkey deal implementation.

### **4.1 Formal powers – abnormal practice**

First of all, I explore how the EU-Turkey Statement came to be made – without the inclusion of the EP. How the deal was made and the resulting legal status of the Statement itself is important to explain the role of the EP. As I show, the ambiguous nature of the deal makes it difficult to assess whether the EP *should* have been involved, although existing EU Treaties suggest a role for the EP in such an international agreement. It has also made it presumably even more difficult for the EP to get its righteous influence over the deal.

The EU-Turkey Statement was published as a press release by the European Council on March 18 2016 (European Council 2016). What is particular about this deal is that it was not made as a standardised agreement with a country outside of the EU. As discussed in the literature review, all agreements with countries outside the EU have to be subject to a vote by the EP. This is laid down in article 218 of the Treaty on the functioning of the EU.

“(A)greements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure (...). Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement: After obtaining the consent of the European Parliament in the following cases: (...) Agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative

procedure where consent by the European Parliament is required (...) (and agreements with important budgetary implications for the Union” (Article 218 TFEU 2008).

Although it is the Council that opens negotiations with a third party, “the European Parliament shall be immediately and fully informed at all stages of the procedure.” (Article 218 TFEU 2008). And as one of my interviewees confirmed when asked if she knew about the content of the press statement before it was released: “No, no, no. As it was a press statement, we were aware together with the public of the conclusion of such an informal statement, in the form of a press statement. So no, we were not aware, we were not consulted beforehand” (Interview #4). She said it did not come as a big surprise, because it fit the political climate at the time, where the EU was working on finding a solution to the high number of asylum seekers in Europe, “but it did come as a surprise that such an agreement would take place in such a form, that is for sure” (interview #4).

The EU-Turkey Statement sparked a lot of criticism from the MEPs. One interviewee, who is an assistant to an MEP, said:

“My boss did a lot of press releases and speeches about this deal, because she was absolutely against it and she was absolutely against the way it was organised, because the Parliament was not involved. On this question, normally the Parliament is involved as a co-legislator. So, it was really unusual and it is a bit unfair for the Commission to do so” (interview #2).

She said she felt the Commission did not care about the EP, which represents the European citizens, and only cared about the opinion of the member states. “It was frustrating for the MEPs I think” (Interview #2). The interviewee said it was not possible to work against the deal once it was made, they could only criticise the decision (interview #2). The initial reaction from many people working in the EP was both a criticism of the content of the deal, but also the form it took (interview #4). “What we did immediately, the first reaction was to ask our legal services of the European Parliament whether they thought that it was legal for such a statement to be concluded (...) without the involvement of the European Parliament” (interview #4). The legal services said this was a press statement, and nothing could be done – which was later confirmed by the General Court of the CJEU, as I will come back to in the next section.

The theory suggests that in a crisis situation, the EU works differently from normal procedures, by taking the member states' opinions more into account than the view of the EU institutions. Ripoll Servent found that the European Council especially takes a more prominent role in crises, and that the EP is asked to step aside when it is talk of a sensitive issue that has to be treated with time constraint (Ripoll Servent 2019). This can be done both to speed up the process, but can also be because the member states are unwilling to give away power to supranational institutions (Thielemann and Zaun 2018). The theory then would suggest that because of the apparent need to find a solution to the refugee "problem" quickly, the EU might have gone outside of the normal avenues of finding solutions.

On the question of whether the crisis played into the way of concluding this deal, one interviewee said that on other works on relocation of refugees in 2015/2016, the EU used crisis response mechanisms, where the Council only consults the EP and does not have to ask for the EP's consent.

"This is not a novelty. What is new is there was not even [consulting when the EU-Turkey deal was made]. Consider that for the conclusion of international agreements, the Parliament does not have to be consulted, it has to *consent*. From our perspective, as Parliament, we were stripped of our right and prerogative to consent on an international agreement" (interview #4).

This contributes to show that people close to the EP thought they would have power to consent or reject the deal, as is laid down in EU treaties. The interviewee also highlighted that this was due to the agreement not legally being an international agreement, to which the EP does have a right to consent. I will go further into this discussion in the next sections.

For one of the interviewees, the reason the EU-Turkey Statement was made in the way it was, was not a crisis decision at all. According to her, it was a decision of the German Chancellor Angela Merkel who decided she wanted to find a solution to the refugee crisis, found a solution and told the Commission what this solution was. "I think that is why the Parliament was not involved. If you involve the Parliament, it would be a long process, so it takes time and maybe it will not work in the end. It is easier to call the Commission and tell them 'do that'" (Interview #2). Den Heijer and Spijkerboer make an important observation on that note: "[T]he agreement was not concluded with Turkey overnight and there would at least seem to have been opportunity to ask consent from European Parliament" (2016). They also

note that Article 218 TFEU makes this possible by allowing the EP and Council to agree on a time-limit for approving an agreement when there is an urgent situation (Article 218 TFEU 2008).

The fact that the EP was not consulted or got to exercise their right to consent to the EU-Turkey deal creates the impression of an intergovernmental deal, because this supranational institution was left out. The Commission, on the other hand, seems to be more involved in this deal, as I will come back to. All traces of supranationality are thus not lost. The fact that the EP was apparently completely left out of the creation of the deal might also mean that the European Council considered the deal completely within the realm of foreign policy. Article 218 TFEU states that in these cases, the EP does not need to consent to the deal. However, as Reslow notes, migration deals fall in between foreign and migration policies, and in the latter one the EP undoubtedly should have co-decision powers. But what the EU-Turkey deal then might suggest is that migration deals with third countries may fall completely into the realm of foreign policy – leaving the EP completely out of it, with legal backing of Article 218 TFEU, because of the exceptions when it comes to foreign policy. Many have however reacted to the fact that the EP was left out of the EU-Turkey Statement, and that this was in breach of Article 218 TFEU.

## **4.2 A member states deal...**

### **The court confirms**

A General Court (hereafter ‘the Court’)<sup>1</sup> decision from 2017 supports the view that the EU-Turkey deal is a completely intergovernmental agreement. They found that no EU institution has any responsibility for the deal (Carrera, den Hertog, and Stefan 2017).

This decision came when three asylum seekers in Greece challenged the legality of the EU-Turkey Statement. The three men applied for asylum in Greece after having entered through Turkey. They claimed that the Statement “violated the principle of non-refoulement and the prohibition of collective expulsion” and challenged the fact that Turkey is considered a safe third country (Carrera, den Hertog, and Stefan 2017, 3). Furthermore, they argued that the Statement was invalid because it did not comply with Article 218 TFEU on international agreements or Article 78 TFEU on EU asylum policy. As noted, Article 218 provides the EP

<sup>1</sup> The case was brought to the Court of Justice of the European Union (CJEU). The General Court is the first instance court of the CJEU and treats cases from individuals. The case was also appealed to the CJEU, but was rejected (European Council on Refugees and Exiles 2018).

with equal power over international agreements as the other law-making institutions. This was thus part of what was challenged in court.

However, the Court ruled that it had no jurisdiction to determine the legality of the EU-Turkey Statement. The Court found that it is not the EU as an organisation that is behind the EU-Turkey Statement, but rather the 28 member states. It is thus not the European Council that has made an international agreement with Turkey, but each of the member states' governments – despite the European Council publishing the Statement. Had the European Council itself been responsible for the EU-Turkey Statement, the CJEU would have had jurisdiction to assess its legality. This is a function of the court that came after the Lisbon Treaty determined the European Council an EU institution in 2009.

The European Council argued that no treaty had been concluded, and that it was only the member states that had had the dialogue with Turkey. The Council also held that “no agreement or treaty had been concluded between the European Union and the Republic of Turkey in connection with the migration crisis”. The Commission shares this view and that the EU-Turkey Statement is a “political arrangement” between governments (Carrera, den Hertog, and Stefan 2017, 6). What is problematic about this is that the Statement itself says that “the EU” has agreed with Turkey. But the use of words such as the “EU” in the press release was not meant to “bind the European Union in any way”, according to the European Council (Carrera, den Hertog, and Stefan 2017, 5). The European Council also argued that it had no role in the negotiations between member states and the Turkish Prime Minister which led to the EU-Turkey Statement, which I will discuss in more detail below.

The Court agreed with these explanations and specified that the involvement of the European Council in the negotiations with Turkey were separate meetings from the meeting where the EU-Turkey Statement was decided on by the member states. The Court although highlighted that it could not draw a conclusion on the European Council's involvement in the press release and said the use of terms such as “the EU” were ambivalent (Carrera, den Hertog, and Stefan 2017, 6).

The court decision, that came a year after the EU-Turkey Statement was published, confirmed that the EP should not have had a role in its creation. It was, however, not clear from the beginning that this was only a deal between the member states and Turkey. One interviewee had the impression that the EU institutions' position on their responsibility changed after the deal was made:

“Normally you have to implement a deal with the Parliament, but [the EU institutions] decided to do differently. The problem was that first they told us that it is a deal between the European Union and Turkey. So the Parliament was supposed to be involved. But after that they decided that ‘no, it is not a deal between the European Union and Turkey, it is a deal between each member state and Turkey’. So the Parliament does not need to be involved. But it is not true, they decided it after, so – it is difficult to say that it is a lie – but kind of.” (Interview #2).

When the EP tried to raise issues with the deal towards the Commission, the latter answered that it was a deal between the member states and Turkey, and that it could not do anything, according to interviewee #2. Thus, the legal status of the EU-Turkey Statement has real implications for the influence of the EP on this matter. For the interviewee this was however normal for migration issues:

“It is not only for the EU-Turkey deal, it’s every topic on migration. For me it is always the Commission discussing a lot with the Council, with the member states, but they do not care about the opinion of the Parliament. It is really difficult to be listened to. Especially on the question of migration.” (interview #2).

Taking only the court case into account then, the EU-Turkey deal is purely intergovernmental – so much so that not even the institutions representing the member states in the EU had a say in its creation, according to what they testified before the court.

### **The member state leaders’ account**

To go further into the creation of the EU-Turkey Statement, the state leaders involved in creating the EU-Turkey Statement seem clear that it was them that made the deal.

A documentary series created for the BBC has interviewed EU and state leaders about the EU’s response to the refugee crisis in 2015 and 2016. This series follows the process that lead to the EU-Turkey Statement being concluded in March 2016. In the beginning of 2016, the Netherlands, with Mark Rutte as its Prime Minister, took over the presidency of the European

Council – a position each member state hold for six months at a rotating basis (European Council 2020). He was determined to stop people travelling across the Mediterranean – and the solution: “to kill the business model behind the boat smugglers” (Rutte in BBC Two 2019). To do this he wanted to make a deal with Turkey (BBC Two 2019). The perfect deal for Rutte would allow the EU to send all migrants coming from Turkey back.

At the World Economic Forum in January 2016, Rutte had a meeting with the then Turkish Prime Minister Ahmet Davutoğlu.

“I told him that it was my absolute conviction that together we had to solve this. And that would involve for [Davutoğlu] to be willing to take back Syrian refugees coming into Europe by sending everybody who came to Europe back to Turkey” (Rutte in an interview in BBC Two 2019).

Davutoğlu said Turkey could not take in more refugees and that the EU had to cooperate by also taking refugees. Rutte said that would be “impossible”. The two Prime Ministers did not agree on anything but said they would work on finding a compromise. They should come back to a solution in March, at a summit between the EU and Turkey in Brussels.

At the same time as these state representatives were going back to the drawing board, Eastern European countries were physically closing their borders by building fences. Migrants were increasingly trapped in Greece and prevented from moving through the Balkans. This would create less incentive for people to travel to Greece from Turkey, and is believed to have given Europe a stronger hand in negotiations with Turkey. The president of the European Council at the time, Donald Tusk, wanted to convey the message to refugees that they should not attempt to go to Greece, he said in an interview in the documentary series. He held a speech in Athens just days before the EU-Turkey Summit were to take place in March 2016: “Do not come to Europe (...) Greece will no longer be a transit country” (Tusk in BBC Two 2019). In an interview in the documentary Tusk said: “My hope was that the Turks would get this message”. When Tusk the next day went to Ankara to meet with Davutoğlu, the message had been received. “That statement in Athens did not make us happy”, Davutoğlu said in an interview with the documentary makers. Tusk said in his recount of the meeting with Davutoğlu that even if Turkey did not want to cooperate with the EU “we will anyway close the border between Macedonia and Greece” (Tusk in BBC Two 2019). In that meeting Davutoğlu and Tusk agreed that Turkey would take back anyone who was not a refugee. EU on their side would resettle migrants directly from camps in Turkey (BBC Two 2019).

After the meeting with Tusk, Davutoğlu met with his team to discuss what more they could ask for in return from the EU, in the plane on the way to the Summit in Brussels. He wanted to do more for the relationship between Turkey and the EU. He told his team to call Germany and the Netherlands from the plane, to set up a meeting before the Summit. The night before the EU-Turkey Summit in Brussels in March 2016, Davutoğlu invited Rutte and Merkel to the Turkish embassy in Brussels. The meeting was only between the three people, and no EU officials were invited. According to an interview with Rutte, Davutoğlu presented to Rutte and Merkel that he was willing to move towards making an agreement, but he wanted something in return. Davutoğlu presented a list of demands that, as Rutte said, the EU could not give Turkey all of. But the demands also included talks of EU reopening negotiation of Turkish EU-membership, visa liberalisation and 6 billion euros to help refugees - double the amount of what the EU had previously offered Turkey to help with the refugee situation. These demands were all included in the final EU-Turkey Statement.

“The money was basically the easiest thing. Because everybody understood that if Turkey would have to deal with this, we also had to support them financially. I had to consider all these other wishes” (Rutte in BBC Two 2019).

Merkel and Rutte, in that meeting, agreed to almost all of Davutoğlu’s demands.

German and Dutch Heads of States went back to the European Council the next day to say that they had made a deal with Turkey, without anyone knowing. “My reaction was: ‘Are you kidding? That’s impossible!’”, Tusk said in an interview in the documentary. He said he was not disappointed, but could not believe it was true. He had been meeting with Davutoğlu only days before. Rutte defended the move by Merkel and himself in an interview:

“We did not expect this breakthrough. It was there. And we could never have come to you guys, the other 26, and say ‘well [Davutoğlu] was willing to deliver on our main issue, but because of the logistics of the meeting were not right, we had to decline’. That would have been silly” (Rutte in BBC Two 2019).

Other European leaders did not think it was acceptable that the two leaders had negotiated a deal with Turkey without Tusk present. In the Summit meeting, the day after Rutte and Merkel’s meeting with Davutoğlu, Tusk asked the Turkish Prime Minister to drop parts of the demand of Turkish EU membership. Cyprus, having a complicated relationship with Turkey already,

was especially against some parts of the deal. But as Tusk stated himself in the documentary series, he was particularly good at listening in an equal manner to the smaller and the bigger member states of the EU. This might then be the reason the countries decided to conclude a deal with Turkey. Despite the objections from member states, the deal seemed like the best opportunity to improve the situation of the high number of refugees coming to Greece and Italy, and the EU Heads of State agreed on the deal.

So, it seems the EU-Turkey Statement released in March 2016 was a result of a meeting between two European Heads of State, and the Turkish Prime Minister. But the negotiations with Turkey were already ongoing, with heavy involvement of the president of the European Council. Tusk was determined to make the Turkish authorities agree to keep migrants out of Europe, which is clear from his thoughts on the effect of his speech in Athens when he used the closing of European borders as leverage to make Turkey comply with EU's demands. The EU-Turkey Statement is an intergovernmental statement, but it might not have happened without EU institutions on board, as will be discussed in further detail in the next section.

One interviewee also pointed out that there was very little information flowing about the creation of a deal with Turkey. She confirmed that it was Rutte and Merkel that were the “architects of the deal” (interview #3).

“At that time, I was working for Dutch MEPs and they were not even informed much about this deal. It was negotiated behind closed doors between the member states. The fact that it was conceived as a press statement, rather than a treaty with a legal basis, it makes it difficult to address any concerns regarding alleged human rights issues” (Interview #3).

She said very little information was shared with the EP. “It was essentially a member states deal. Some Members of the European Parliament referred to the deal as the ‘deal of shame’” (interview #3)

Carrera, den Hertog and Stefan argue that when the member states avoided including the EP in the decision-making, they circumvented the intentions of the Lisbon Treaty of 2009. This should have ensured greater supranationality and checks and balances – by scrutiny and vote of the EP and by making it possible for the CJEU to evaluate the legality of the EU-Turkey deal (2017). Neither of this was done. The authors call this a “serious challenge to the transparency, accountability and quality of EU decision-making” (Carrera, den Hertog, and Stefan 2017, 7). It shows, according to Carrera, den Hertog and Stefan, that the EU member

states can make extra-treaty decisions, and avoid the EP and court's powers that was laid down in the Lisbon Treaty.

The decision by the CJEU can be seen as a move towards full intergovernmentalism, and away from the elements of supranationalism that should be present in migration deals. The involvement of the supranational institutions, the EP, Commission and the CJEU is clearly laid out in article 218 TFEU, protecting this policy area that combines migration and foreign policy from being only member states led. The CJEU decision thus places migration deals in the intergovernmental camp. This may be seen as problematic for a number of reasons: the already existing treaties of the EU can apparently be overturned, which is what happened with Article 218 TFEU; and the separation of the member states of the EU as 28 single entities completely separated from the EU as an intergovernmental cooperation, is not in line with the language used in the Statement, such as “the EU” and “the members of the European Council” creating a false image of who is really behind the deal. This makes it difficult for individuals and institutions to challenge the legality of the deal.

One of my interviewees sums it up nicely: “This was an intergovernmental agreement, not an EU one. It is a piece of paper, a press statement, without a legal basis and this is what makes it so problematic» (Interview #3).

### **4.3 ... with institutional involvement**

Taking only the CJEU decision into account, the EU-Turkey Statement is solely a member states deal – thus a purely intergovernmental deal. If it is not a treaty between the EU and a country outside the Union, then Article 218 TFEU securing the involvement of the EP no longer applies. Then the role of the EP diminishes completely, and it is to be expected that this institution should not be consulted or vote on the deal. But this court decision does not provide the full picture of the actual involvement of the different institutions.

As Carrera, Den Hertog and Stefan note, and as explored, no institution that may have seemed to be involved in the creation of the EU-Turkey Statement, namely the European Council, the Council of the EU and the Commission, took responsibility for the deal before the court. But as the authors put it: “Ever since the release of the EU-Turkey Statement, these EU institutions have publicly claimed ownership of the refugee deal and actively committed to its implementation” (Carrera, den Hertog, and Stefan 2017, 2). The deal itself also mentions several times how the Commission will follow up the implementation, and that the EU will

fund the costs of the actions promised in the Statement (European Council 2016). As with all funding coming from the EU budget, the Commission and the EP have to be involved in the process. The CJEU decision that alleviates the EU from all responsibility thus does not reflect the reality of how the deal works. Taking the formulations of the deal into account, it is also predicted that the EP will have a role in the implementation process.

As previously explored, European Council leader Donald Tusk took steps to get Turkey to sign a deal with the EU. However, he did not seem to expect the deal to be made in the way it was – by Merkel and Rutte in a private meeting with Davutoğlu. The EU had already made a Joint Action Plan with Turkey in October 2015, and the plans that paved the way for the EU-Turkey Statement were already made in September 2015. President of the Commission, Jean Claude Juncker’s deputy head of cabinet, Richard Szostak, was also meeting with Turkish ambassador Selim Yenel on 28 September 2015. They already then agreed on important elements of the EU-Turkey deal: visa liberalization, accession talks, financial aid and resettlement. The blueprint of the EU-Turkey deal was thus created by EU institutions already in 2015. The Commission’s Vice-President Frans Timmermans was also working on cooperating with Turkey on migration. There is no doubt that although state leaders made the deal that came to be the EU-Turkey Statement, and that really started the implementation process, the EU institutions created the groundwork for it the year before (Smeets and Beach 2019).

The president of the Commission, Jean Claude Juncker, and the president of the European Council, Donald Tusk, also met with the Turkish president Recep Tayyip Erdogan at the G20 meeting in November 2015. The EU leaders wanted to discuss migration, but according to Tusk’s chief of staff Piotr Serafin, Turkey also wanted to talk about accession to the EU. According to Tusk himself, Erdogan was not happy with the EU not progressing on accession talks, and he threatened to let thousands of migrants come to Europe (BBC Two 2019). Juncker, on his side, said in an interview with the documentary that he “was offering [Erdogan] billions. Not for the Turkish government, but for the refugees”. This is to show that the EU institution leaders were already moving on promises to Turkey and in the autumn of 2015 wanted to find a solution to the refugee crisis with the help of Turkey.

Taken together with Tusk’s meetings with the Turkish Prime Minister in March 2016, it seems like the EU institutions – not just the member states – wanted this deal to happen. It is unclear if they ideally wanted it in the form Merkel and Rutte negotiated. But Tusk seemingly worked to get Turkey and the member states to sign the agreement the two Heads of State and Prime Minister made. And the EU institutions have worked on the implementation ever since.

The unconventional form of concluding the deal might have led to the EP not being included, and one could assume that had the European Council and the Commission made a deal with Turkey, they might have passed it by the EP. However, the lack of information coming to the EP in the leading up to the EU-Turkey deal shows that it might not have been the European Council's intentions to pass the deal by the EP no matter how the deal was made. The Commission and the European Council were thus both very involved in the negotiations with Turkey, especially in the creation of the Joint Action Plan in 2015.

And the Commission is also heavily involved in the implementation process of the EU-Turkey deal. The members of the European Council, i.e. Heads of State and Government, decided on a meeting in March 2016 that “the Commission will coordinate and organise together with member states and Agencies the necessary support structures to implement it effectively” (European Commission 2016a). Additionally, the Commission has on several occasions praised the efficiency and success of the EU-Turkey deal. It has also used language that would suggest the EU supports, and take active part in implementing, the deal. For example, in August of 2019, the Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos, held a speech at a Conference for Ambassadors in Ankara. The following is an excerpt of his speech:

“The EU-Turkey Statement is a clear proof that when two sides wish to work together, tangible results can be achieved. *Together*, we have delivered on what is most important: curbing criminal smuggling networks and saving lives. I would like to commend Turkey for hosting more than 3,6 million refugees fulfilling its humanitarian endeavour. I know this is a huge challenge for your country. I can assure you that the *European Union stands by* Turkey to manage it and will continue to do so” (Delegation of the European Union to Turkey 2019, my italics).

By stating that “the European Union stands by Turkey”, the Commissioner expresses that the EU-Turkey Statement is a European statement, not one of the member states alone. At least, it shows the commitment of the EU as a whole to help Turkey hosting the large number of refugees. If in fact the member states alone are responsible for this deal, the EU institution have at least taken responsibility for following up on the promises made to Turkey in the deal. Thus, even the most intergovernmental deal on paper, entails the inclusion of supranational institutions. And the Commission also seems happy with the deal, as “tangible results can be

achieved” – giving them little reason to fight the deal. But they apparently do not want the legal responsibility for it.

#### **4.4 The EU-Turkey deal: A treaty?**

As explored, the CJEU concluded that the EU-Turkey deal is legally purely intergovernmental. But the practice shows that the Commission and the European Council, representing the Heads of States of the member states, were also crucial to getting the Statement in place and in allowing the implementation of the deal. The issue then remains what this has to say for the legal status of the deal and what role the EP should have had in all this. One interviewee was very clear about the fact that I could not call it a deal:

“Officially it is not a deal and you are not supposed to call it a deal because it is precisely not an agreement. Because international agreements require the EP’s consent, which is basically why they do not want to call it a deal or an agreement and it is just a statement. That already tells you a lot about the European Parliament’s involvement in this and of course this has been criticised by the European Parliament.” (Interview #1).

Den Heijer and Spijkerboer explore whether the EU-Turkey deal could be considered a treaty and international agreement. This analysis was done less than a month after the publication of the EU-Turkey Statement, so the authors’ reflections do not take into account the ruling of the CJEU, but rather the content, circumstances and language of the Statement itself.

First, they note that the language used by the European Council in the Statement gives some clues to its status. There is use of “will” as in “Turkey will”, and not the use of “shall” in the EU-Turkey Statement. This implies that there is no binding reason for Turkey to commit to the content of the deal, and that it is thus not a treaty. However, one might argue that there is an agreement in place. This implies that there is an understanding that each party to the Statement will deliver on what is promised. The EU-Turkey Statement reads:

“In order to break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk, the EU and Turkey today decided to end the irregular migration from Turkey to the EU. In order to achieve this goal, they *agreed* on the following additional action point” (European Council 2016, my italics).

Den Heijer and Spijkerboer argue that because the parties intended to bind themselves to it, the EU-Turkey deal has to be seen as a treaty – and then the EP should have had power. The EU and Turkey also, shortly after the Statement was published, started to deliver on the promises made in the deal (den Heijer and Spijkerboer 2016). For example, the EU had by November 2019 allocated almost all the money promised to help refugees in Turkey. As of that date 97 per cent of the promised total of 6 billion euros had been committed or disbursed (European Parliament 2019a). Turkey has also kept migrants from coming to Greece.<sup>2</sup> In June 2016, the effects of the EU-Turkey deal were already showing. Over 500 Syrian refugees had been resettled from Turkey to Europe, and 462 migrants had been sent back from Greece to Turkey since 20 March that year. The number of people crossing the Aegean Sea to Greece had dropped by 95 per cent to only 47 people each day in May 2016 (European Commission 2016a).

Furthermore, the Statement has to be seen as a binding agreement because Turkey had the understanding that it made a deal with the EU that it had to commit to. Turkey cannot be expected to know about the internal fights between the institutions of the EU. The fact that the EU broke its own previously existing treaties (Article 218) by not including the EP in its decision is not a well enough reason to not call the deal a treaty, according to den Heijer and Spijkerboer.

Similarly, when Qatar and Bahrain made an international agreement in 1990, it was considered an agreement even if it entailed a breach of the Qatari constitution (den Heijer and Spijkerboer 2016). So, the deal is then legal as den Heijer and Spijkerboer notes, because in the international setting, all treaties are equal. If the EU-Turkey deal thus breaches human rights treaties or EU treaties (such as article 218 TFEU), this does not automatically make it void. However, they argue that individuals may contest the legality of the actions that are a consequence of the EU-Turkey deal (den Heijer and Spijkerboer 2016). This is exactly what happened in the CJEU case of three asylum seekers asking for an evaluation of the legality of them being sent back to Turkey from Europe. One may say that the deal stands as a valid treaty

<sup>2</sup> Except for when Turkish officials in March 2020 said they would no longer stop refugees from entering Europe, but this might be seen as proof that Turkey were actively stopping migrants before that.

because the member states are behind it, even if the EU institutions insisted it was merely a political arrangement.

So, if the EU-Turkey deal is in fact a binding treaty, the most obvious consequence of this is that the EP *should* have been involved in its creation. It is hard to argue that the deal is one of pure foreign policy, considering the important emphasis on managing migration – a field within the power of the EP. Seeing the deal as a purely intergovernmental deal also creates the false impression that the member states are singlehandedly in charge of delivering on the promises made in the deal too. There are certain elements of the deal that are within the jurisdiction of each member state, in particular Greek law. It is up to Greece and Turkey to carry out the legal and operational work, and to implement certain elements of the Statement. However, the Commission is assisting Greece with “advice, expertise and support from the EU budget” (European Commission 2016a). Additionally, an exchange of migrants and refugees, and helping Greece, is not the only aspect of the deal. The EU also promised a substantial amount of money to help refugees in Turkey, promised to “re-energise” accession talks and create visa liberalisation for Turkish citizens. If the EU-Turkey Statement can be seen as a treaty, the EU also has to deliver on the promises made to Turkey. The Union must give the money promised and deliver on their part of the accession talks and visa liberalisation, especially if the EU expects Turkey to uphold their part of the deal.<sup>3</sup> But the EU cannot deliver on these parts of the deal without the involvement of the Council, the Commission and, as I will discuss in the next section, the EP in the process.

The EU-Turkey deal seems to be completely intergovernmental if one argues that the member states are the only ones behind the deal. And even if one acknowledges the participation of the Commission in the deal, the lack of involvement of the EP still makes the deal not comply with the expectations of how migration deals should be completed. The deal raises some issues with what one would expect to find about decision-making in the EU after the Lisbon Treaty of 2009. As discussed in the literature review, the EP has gained a substantial amount of power after the member states transferred competencies within a range of issue areas over the years to the EU. The EU-Turkey deal is in full opposition to that integration. If the member states legally stand alone behind the deal, the EU in the case of the EU-Turkey deal is backsliding into intergovernmentalism. This might make it relevant to look at the EU in a “new intergovernmentalism” view, where the EU institutions have power, but on the member states’

<sup>3</sup> The fact that Turkey seem to have deviated from their promise a few years after the deal does not change the fact that they upheld the promise to keep refugees out of Europe for a long time

terms. This may also place the EU-Turkey deal into a theoretical realm that would look more like foreign and security policy.

What the EU-Turkey deal also shows, is that there is still a clear presence of venue shopping in the EU. This is a term that is strongly associated with an intergovernmental view of the EU. The term venue shopping was created to explain that the EU member states can move issues to the EU agenda when it suits them. This is usually true for sensitive issues that are hard to sell to the electorate in each home country. Merkel and Rutte taking the deal with Turkey to all the member states, may be seen as such a move. However, it also has to be noted that these member states needed Greece to be on the team to send migrants out of Europe. Not least because the decision to name Turkey a safe third country is anchored in Greek national law, which enables Greek authorities to legally send refugees back to Turkey. It is not the EU as an organisation that has the power to send people out of a country – that is between Turkey and Greece (European Commission 2016a).<sup>4</sup> There might have been an element of venue shopping, but this apparently does not go only one way. The institutions that were clearly involved in the creation and publication of the EU-Turkey Statement, i.e. the Commission and the European Council, one year later refused any responsibility for the deal. The term venue shopping may thus serve to cover the actions of the EU moving responsibility “down” to the member states again.

Because the EP is left out of the deal, and member states took the lead, I draw on the literature on foreign policy in the next sections to explore what the EP does in these types of settings where it has been left out of a decision. This is to understand what the EP is expected to be involved in to implement the deal, how it has been involved in the implementation process, and what it can do informally to gain more influence.

<sup>4</sup> However, the Commission provided support to Greece in creating the principles of Turkey as a safe third country and a country of first asylum (European Commission 2016a).

## **5 The implementation: Limited formal powers**

I now turn to the points in the EU-Turkey Statement that clearly states that the EP will be involved, or where normal procedure requires they give consent: visa liberalisation, accession talks and funding over the EU budget. If the creation of the EU-Turkey deal is intergovernmental, the implementation process might move more towards supranationalism because it requires the involvement of the Commission and the EP. The implementation of the EU-Turkey deal is dependent on normal co-decision procedures. What is important to note is that the three processes in this section were already ongoing before the EU-Turkey Statement was published in March 2016, but were confirmed and “re-energised” as part of the deal (European Council 2016).

The implementation of the EU-Turkey deal seems to be what the focus of the EP is now, because all my interviewees said that it was not possible to change the deal after it was made. One interviewee called the EU-Turkey deal “legal fiction”, because as she put it, it was knowingly made not to look like an agreement, even if it entails obligations for the EU. She said: “The actions of the European Parliament have then focused on ensuring that we can at least try to monitor what is going on with the implementation” (interview #4).

### **5.1 Visa liberalisation and accession talks**

#### **Visa liberalisation**

The promise to speed up the processes of making Turkey a member of the EU and to give Turkish citizens visa free access to Europe, are among the processes in which the EP is expected to partake to implement the EU-Turkey Statement. First of all, the Statement reads that the “visa liberalisation roadmap will be accelerated” (European Council 2016). This was a process that was already ongoing before March 2016, and where the EP already had a role (Interview #1). The visa liberalisation dialogue was launched in 2013 (Delegation of the European Union to Turkey n.d.). The goal laid out in the EU-Turkey Statement was that visa requirements for Turkish citizens should be lifted by the end of June 2016.

“To this end Turkey will take the necessary steps to fulfil the remaining requirements to allow the Commission to make, following the required

assessment of compliance with the benchmarks, an appropriate proposal by the end of April on the basis of which the European Parliament and the Council can make a final decision.” (European Council 2016).

This shows that there are several steps and parties involved in making visa liberalisation happen, and passing a final decision by the EP is one of the necessary steps.

“The European Parliament has to give consent in the end to any agreement on visa liberalisation, and in the past, we have been in favour of visa liberalisation. The European Parliament is always very much in favour of strengthening people to people contact because many members believe that while the cooperation with the current government [in Turkey] is very difficult, and the regime is increasingly autocratic, we still need to remain in touch with the part of the population that is in favour of democracy and rule of law” (interview #1).

According to this interviewee, the EP is also in general in favour of intensifying its contact with the Turkish civil society, and visa liberalisation is therefore important.

The Commission asked of the Council and the EP to lift the visa requirements for Turkish citizens in May 2016. The Commission was “under the understanding that the Turkish authorities will fulfil, as a matter of urgency and as they committed to do so on 18 March 2016, the outstanding benchmarks of its Visa Liberalisation Roadmap.” (European Commission 2016c, 1). But there are conditions to granting visa liberalisation to citizens of a country outside of the EU. In the negotiations that led to the EU-Turkey Statement, Netherland’s Mark Rutte was very clear on this, and said to Davutoğlu: “We cannot compromise on the criteria” (Rutte in BBC Two 2019). In 2016, when the Commission proposed putting Turkey on the list of countries without visa requirements, there were still seven out of 72 benchmarks of the visa liberalisation roadmap remaining (European Commission 2016b). These include “fight against corruption, judicial cooperation in criminal matters, cooperation with Europol, data protection legislation, anti-terrorism legislation, EU-Turkey readmission agreement, and biometric passports” (European Commission 2018, 49). In the Commission’s Turkey report from 2019, there were still the same number of outstanding requirements. Additionally, Turkey applies a discriminatory visa regime towards 11 EU member states, which is not in harmony with the EU’s visa policy. Turkey has thus not delivered on their part of the deal by making the changes

to their laws required for the EU to grant them visa liberalisation. This makes it impossible for the EU to accept visa liberalisation, and deliver on their part of the deal with Turkey.

“The European Parliament is always very clear that there are conditions, there is a clear roadmap from the Commission, there are clear conditions for any country that wants visa liberalisation. And they have to be fulfilled. Before Turkey makes progress on the outstanding criteria, we cannot give consent to any kind of visa liberalisation. I think that is pretty consensual with the Council. These are technical requirements, and we do not move on that” (interview #1).

And even if, according to interviewee #1, the EP is quite open to visa liberalisation, another interviewee thought it was unrealistic that visa liberalisation would happen. “The Parliament was hardly going to vote in favour (...) unless the political situation in [Turkey] would have changed” (interview #3). But in 2016, Turkey “accelerated work on fulfilling the benchmarks of the visa liberalisation roadmap” (European Commission 2016b, 4). Although Turkey has started implementing reforms to fulfil the legislative requirements of the visa liberalisation roadmap, “several key pieces of legislation which were adopted regarding the rule of law and fundamental rights were not in line with European standards” (European Commission 2016b, 5). In the Commission’s report on Turkey in 2018, it noted that although Turkey made some progress on issuing biometric passports that match EU standards, it still lacked seven out of the 72 benchmarks (European Commission 2018).

### **Accession talks**

The second process that the EP is expected to participate in as part of the EU-Turkey deal is the accession process for Turkey. The EU opened one new chapter in December 2015, and promised to open another in the first half of 2016. The EU-Turkey Statement specified that the accession process would “re-energise” and the Commission promised to put forward a proposal for Turkish membership in April 2016 (European Council 2016).

Like for the visa liberalisation process, the EP’s formal involvement comes when a proposal is put to a vote. Together with the Council, the EP has to approve Turkey’s membership in the EU which is then ratified by the member states (Perchoc 2017). The right to vote on the accession of a third country into the Union, like visa liberalisation, is a clear formal power of the EP. But “it is a very blunt tool because you can only use it once, once the

negotiations are finished” (Interview #1). However, the interviewee pointed out that even though this power comes in the end, the EP can try to affect the negotiations too: “It is not just limited to saying ‘yes’ or ‘no’ at the end, but we can influence the public opinion, we can make public statements. Of course the Council and the Commission have to react to a certain extent.” (Interview #1).

However, in the case of accession, the EP did not manage to persuade the Council to listen to the EP. The EP on two occasions since 2016 has asked the Council to suspend the accession negotiations with Turkey, in November 2016 and March 2019 (European Parliament 2016, 2019c). As one interviewee said:

“The Parliament can only recommend [suspending accession talks], but the Council is not bound by these kind of EP positions. So we do have the possibility to make statements and to try to set the political agenda. But in the end, during the accession talks, the Council has a much more prominent role.” (interview #1)

He pointed out that because the EP can ask to suspend accession talks with a simple majority, this is a far easier decision to make than for the Council that needs unanimity to restart negotiations. This makes it harder for the Council to come to the conclusion that it should stop accession negotiations entirely: “When you close the door, it becomes very hard to open again” (interview #1).

What is particular is that the accession talks with Turkey have come to an end – but it is not necessarily because the EP asked for it. The Commission in a meeting with the Committee on Civil Liberties, Justice and Home Affairs (LIBE), Committee on Foreign Affairs (AFET) and Committee on Development (DEVE) of the EP, informed that the accession talks with Turkey had “de facto” ended. Deputy Director-General of the Commission’s Directorate-General for Neighbourhood and Enlargement Negotiations (DG Near), Maciej Popowski, in that meeting cited that it was because of tension between some member states and Turkey (European Parliament 2019a). So, it was after all a member states decision, or lack thereof, that might have ended accession negotiations.

Additionally, there was a lot of scepticism towards Turkish membership to the EU in 2016. Several member states opposed the idea that Turkey would join the Union and the promise to let Turkey in fuelled the ongoing Brexit debate in the UK. According to a survey, 52 per cent of the European population were against EU enlargement in general in May 2016

(Perchoc 2017). In the BBC documentary it came out that many of Europe's leaders also objected to Turkey's wish to become a member of the EU, because of human rights issues in the country (BBC Two 2019). For one interviewee, the promise of accession talks was just a concession to make Turkey accept the deal, but she said it is not likely the country will be able to become a member anytime soon: "It is impossible for the Commission to close the process because there are many problems in Turkey, it is really impossible" (interview #2). Lack of progress on visa liberalisation might also play a role in the accession negotiation progress, together with the Customs Union.

"Even if the three negotiation procedures are formally separate, they reinforce each other. Deeper cooperation through an upgraded CU [Customs Union] or visa-free regime is a step towards accession and negotiations on the chapters of the EU acquis" (Perchoc 2017, 4).

Accession is also heavily intertwined with the political situation in Turkey. As noted, there was a high level of scepticism toward EU-enlargement, and member states were increasingly opposing Turkish accession. Turkey has to deliver on requirements, like for visa liberalisation, for the EU to be able to grant them membership into the union. The country has not delivered on all the demands of the EU.

"No one expects Turkey to be able to join or be able to make progress on that. We came to a point where our relations in terms of accession cannot move forward because we need reforms, and those reforms are not being implemented" (interview #3).

This shows that the EP cannot exercise their right to vote on Turkish accession to the EU unless Turkey delivers on reforms. The EP's power over the process is respected, in that no other institution has granted accession to Turkey without passing it by the EP. However, this 'blunt tool' to grant accession can only be used once other institutions have negotiated and Turkey have fulfilled the necessary requirements.

The fact that the accession talks were linked to the migration deal was also problematic for one of the interviewees: "For us accession talks is really about other issues, including of course fundamental rights, and human rights respect in Turkey" (interview 4). This should, according to her, not have anything directly to do with Turkey cooperating with the EU on

migration control. Some MEPs were also sceptical about the deal because it included a promise to move forward with accession talks: “They were criticising the deal because it was linked to opening chapters and making promises that the EU could not deliver on, thus undermining the enlargement process” (interview #3). The migration deal and accession negotiations are two different things, the interviewee said. “And later on, as political developments worsened in Turkey, it became more difficult to deliver on the promises made to Turkey, especially after the coup attempt in 2016” (interview #3).

The accession talks and visa liberalisation processes are by definition supranational in nature, because they entail normal co-legislative procedures, including both the EP, the Commission and the Council. The EP has also been adamant that benchmarks have to be met from Turkey’s side to allow any of these processes to follow through. The fact that none of these processes have been pushed through without the EP’s will, might mean they still hold this power. However, it does not seem like any of the processes have entirely stopped because the EP asked for them to stop. They have ended it seems either because the member states were sceptical to Turkish accession to the EU, or because Turkey itself has not made progress on their end of the deal by approving legislation in line with EU requirements. So even if the EP has formal power, the power still lies heavily with the EU member states and a third country. The inability to actually use their voting power on these matters, means the EP holds power, but has not been able to exercise it. This also means the processes cannot be used as a tool to stop the implementation process of the EU-Turkey deal, if the EP wanted to do that.

## **5.2 The Facility for Refugees in Turkey and budget power**

### **Approving the money**

The third aspect of the EU-Turkey deal implementation in which the EP is supposed to have a say is in the Facility for Refugees in Turkey (FRT). This is a mechanism set up to provide EU support to Syrian refugees in Turkey and through which the 6 billion euros promised as part of the EU-Turkey Statement is managed. A part of the money allocated to the refugees through the facility comes from the EU budget – over which the EP has voting power. The monetary contribution of the EU to Turkey is an important one, because it is a clear sign that the EU is

committed to the EU-Turkey deal and its implementation (Carrera, den Hertog, and Stefan 2017). The EU-Turkey Statement reads:

“The EU, in close cooperation with Turkey, will further speed up the disbursement of the initially allocated 3 billion euros under the Facility for Refugees in Turkey and ensure funding of further projects for persons under temporary protection identified with swift input from Turkey before the end of March. (...) Once these resources are about to be used to the full, and provided the above commitments are met, the EU will mobilise additional funding for the Facility of an additional 3 billion euro up to the end of 2018.” (European Council 2016).

The FRT was set up in 2015, when the EU was already creating a Joint Action Plan with Turkey. Then, 3 billion euros were promised to help refugees in Turkey. The EU-Turkey Statement confirmed EU’s monetary support and increased the amount. A doubling of the amount was part of the Turkish Prime Minister Ahmet Davutoglu’s demands to Rutte and Merkel in their conversation in March 2016 (BBC Two 2019). The final amount promised by the EU then ended up at a total amount of 6 billion euros. As of the end of 2019, the entirety of that sum has been committed or disbursed to projects in Turkey. Turkey receiving money is thus not directly linked to the EU-Turkey Statement. But the important emphasis on the money in the Statement, and the EU’s compliance with delivering funding as part of the implementation, must be seen as an important reason for Turkey to uphold their part of the deal: “The FRT played a major role in bringing about the Statement, as Turkey clearly was going to agree to any mechanism if EU funding was mobilised” (Vosyliūtė et al. 2018, 36). The 6 billion euros is meant to cover “health, education, infrastructure, food and other living costs” for refugees in Turkey (European Council 2016).

What is particular about the FRT is the way it is set up. It is not set up like a traditional trust fund, like the EU Trust Fund for Africa, where member states’ contributions are set up in a separate bank account. Rather it is a coordination mechanism where member states’ contributions are directly included in the EU budget (Vosyliūtė et al. 2018). The member states and the Commission had decided on this structure in February 2016, which made it possible for the member states to promise funding when negotiating the EU-Turkey deal in March (Vosyliūtė et al. 2018). The money coming directly from the existing EU budget is taken from the budget posts on humanitarian aid, the European Neighbourhood Instrument, the

Development Cooperation Instrument and the Instrument for Pre-accession Assistance (IPA) (European Commission 2020). As one interviewee said:

“The European Parliament has accepted as part of the annual budgetary procedures this contribution from the EU – a total of 3bn by now. (...) We have control over the money insofar as we have to authorise the allocation under the EU budget. But then this money goes into this facility which is managed by the Commission. It is part of the budget but it is also not, it does not follow the regular procedures” (Interview #1).

Interviewee #4 pointed out that the FRT is shaped as an emergency mechanism, which “means that the EP does not have a role in shaping it, but it has a role in controlling it” (interview #4). I come back to how the Steering Committee governs the money in the next section.

The funding from the EU budget that goes into the FRT is thus coming from different parts of the budget, among them, the humanitarian budget. On the question of why the EP could not work to help Turkey solely through aid money, one interviewee said “the negotiations on the budget are just crazy” (interview #2). She explained that it was very difficult to move money around in the budget, but that without the deal, it would have been better to fund projects in Turkey through humanitarian aid. The issue with increasing the humanitarian aid post to help Turkey is also that that would mean convincing all committees in the EP that they should work to help refugees. The different committees working on different issues do not necessarily want to compromise on the issues they are working on getting funding for, for example for projects in Europe or spending money on the environment and climate, as the interviewee raised as an example (interview #2).

Even though there was a lot of opposition to the EU-Turkey deal in general, the EP still accepted to give money to Turkey through the FRT. “There was a consensus for – at least the big majority – in favour of supporting the refugees in Turkey because, even though we may not like the deal itself, the members still agree that the refugees need assistance” (interview #1). Another interviewee confirmed this:

“The problem was that we have the Turkey deal, we cannot do nothing anymore, it exists and we have to deal with it. But the facility really helps people on the ground. If we cut the facility, the EU-Turkey deal will continue in a way or another. So it was really difficult politically to say ‘Ok, we cut the facility, we

do not care about people in camps in Turkey so it is not our problem’. That is why we decided to approve it. But we had a lot of talks and discussions between members on that. Because it was a question: do we accept it or not?” (Interview #2)

## **Getting information**

Some MEPs in the autumn of 2015, when there was talk of helping Turkey financially, wanted to make sure the money was going where they thought it should be going. “MEPs wanted to impose conditionality on the funds to make sure the money was going to those in need, rather than a blank check to the [Turkish] government” (interview #3). MEPs sent a letter to the Commission asking for more information about the FRT. According to the interviewee, it was agreed that Turkey needed support to host the large number of refugees, but the EP wanted to know in which way this support would be given. (interview #3).

The way the FRT ended up being set up is that the money allocated to projects in Turkey is decided by a Steering Committee. This is comprised of the Commission, representatives from each member state, and Turkey with an advisory role. Turkey is consulted on how to allocate the money, but this is only in the second half of each Committee meeting. In the first part, the EU discusses how Turkey is complying with the conditions that are set for receiving the money – namely how they are complying with the Joint Action Plan of November 2015, confirmed in the EU-Turkey Statement in 2016 (Vosyliūtė et al. 2018). The EP are present in these sessions, but only as an observer (Interview #3). So, the EP, having budgetary power, with the way the FRT is set up, do not have power to consult on how the money is spent. They do however get access to the same information as the Commission and member states through the meetings. Turkey then seemingly enjoys a stronger position than the EP in deciding how money coming over the EU budget is spent.

So, the EP gets access to the same information as the Commission and the member states through these committee meetings. Additionally, the Commission comes to the committees of the EP on a regular basis to update the EP on how money is spent through the FRT. “[The Commission has] an interest of course in explaining to us, especially when they need more money, they have an interest in explaining why they need it. More often it is the other way around: that we ask them to come and explain” (interview #1). It thus seems like the

EP does get access to more information about the EU-Turkey Statement through its budgetary powers. This is in line with the theory on how the EP can use budgetary power also in foreign policy where they are not decision makers. Because money from the EU budget that goes into the FRT, has to go past the EP in the budget negotiations, “the Commission cannot completely do what it wants, it needs to keep us on board” (Interview #1).

In these types of meetings where the Commission comes to inform, it seems like the EP does in fact get the answers they are looking for, and are able to raise their issues with how money is spent. For example, on one occasion, on November 6 2019, the Commission came to the LIBE, AFET and DEVE Committees to inform on the progress of the allocations through the Facility for Refugees. A central issue for MEPs at that time was Turkey’s recent military involvement in Northern Syria. MEPs were concerned that money meant for refugees through the FRT were going to fund Turkish military operations, and called on the Commission “to ensure that no EU funds are used to finance the ongoing military operation or to facilitate any forced returns of Syrian refugees to the so-called ‘safe zone’” (European Parliament 2019b). The Deputy Director-General of DG Near, Maciej Popowski, said in the meeting on 6 November that:

“We take good note of course of the recent EP resolution condemning the Turkish operation, and we are of course determined to ensure that no EU funds are used to finance the ongoing military operation and to facilitate forced returns into what the Turkish government calls the ‘safe zone’ [in Syria]” (European Parliament 2019a).

The previous president of the EU Commission, Jean Claude Juncker, had also been outspoken about the fact that the EU should not help finance repatriation of Syrian refugees, Popowski noted in the meeting. One interviewee confirmed that this particular issue of funding the Turkish military operation was an “example where the EP has kind of made its voice heard on a specific issue of the refugee facility” (Interview #1).

It seems then that the Commission does in fact listen to the EP’s position on issues, especially regarding the FRT. The way the FRT is set up, it is not supposed to fund the Turkish government or Turkish authorities in any other way than to help the refugees. As the Deputy Director-General of the Directorate-General for European Civil Protection and Humanitarian Aid Operations (DG Echo), Michael Köhler, said in a statement following Popowski’s statement in the meeting on 6 November: “not to fund military operations or repatriation of

people to Syria is not a political decision, it is a legal decision because the money should be spent on refugees in Turkey” (European Parliament 2019a) . But the fact that the EP gets confirmation that the Commission is in fact aware of the EP’s concerns, and a promise to ensure that no money is going to fund activities the EP is sceptical towards must be seen as a way for the EP to monitor and scrutinise the use of money coming from the EU budget. In addition to the limited role of the EP in the Steering Committee of the FRT, the EP can in fact perform some scrutiny through its contact with the Commission. And these types of meetings seem important for the EP: “There are many concerns about money going to the military, or money going to the Turkish government, so it is important to have this input from the Commission who can explain what it is doing and to reassure the members [of the European Parliament] about what they are doing” (interview #1).

But the information the EP gets is not just dependent on the Commission cooperating. It is also dependent on cooperation from Turkey, and it is a continuous challenge for the EU to get the information they need from Turkish authorities. “Access to statistical data has been and continues to be a challenge limiting the Facility's ability to assess needs, to identify baselines and measure performance in some cases” (Vosyliūtė et al. 2018, 54). So even if the EP does get information about how the FRT money is spent through formal channels of the EU, their information is also dependent on what comes from Turkey. In the next section, I discuss how the EP can overcome this challenge of lack of information through parliamentary diplomacy.

On the question of whether the EP had managed to get something changed on the EU-Turkey deal, one interviewee answered: “I think the pressure on the facility and how the funds are being managed and where are they going, had an impact. There was indeed a working group on financial instruments that was meeting regularly, where the IPA and the facility were being discussed. There, members could address their concerns, where the money is going, how they are being used, what the impact achieved is”. So here there is an effective oversight of the funds” (interview #3). However, when it comes to the EP’s concerns about human rights, deportation and the situation in Greece it has been more difficult to monitor (interview #3). One interviewee said that “all we can do now is we insist on the money because we have budgetary control powers, and on the implementation to make sure that the public oversight is still maintained” (interview #4).

The theory suggests that the EP can ask for information from the other EU institutions to approve money coming from the EU budget. It might be said that the EP did get its voice heard when they wanted to make sure no money from the FRT was going to the Turkish

military. It might also be that the EP's strong opposition to Turkish EU membership has contributed to the *de facto* ending of the accession negotiations. The EP did also manage to get a seat at the table in the Steering Committee for the FRT – albeit with a limited role. The Commission has to go to the EP to give information about the FRT for the EP to want to approve the money coming from the EU budget: “the Commission has been very adamant that the money is not going to the Turkish government, but that it is going to the refugees. This has been very important in convincing the members to accept the transfers” (Interview #1).

### **5.3 The use of informal practice**

The EP does in fact have some formal power over the implementation of the EU-Turkey deal, as laid down in the Statement of March 2016, this is still limited. I now turn to exploring what the EP does to overcome this limited influence, and see whether there are other ways of influence outside of the formal avenues of power.

#### **Parliamentary diplomacy**

An important part of the EP's ability to exercise its limited power is to have access to information. This can be done in a way that the EP gets regular access to information from the other EU institutions, which seems to be the case for the FRT. But it can also be done by the EP seeking the information themselves. This information can be used for the EP to gain influence and be able to scrutinise decisions made by the executive, as discussed in the literature review.

One way to get information about the EU-Turkey deal implementation without having to go through the Commission or the member states, is for the EP to engage directly with Turkey. And it seems the EP is using this alternative to its potential: “The Parliament is quite active in foreign relations and parliamentary diplomacy. We have regular committee delegation visits to the countries concerned.” (interview #1). This is done for a number of reasons, according to the interviewee:

“First of all [it is done to] increase the knowledge of our members. It is good that they see the situation on the ground, for example regarding refugees, but also the situation in the civil society. And then it is also important for them to

talk to their counterparts in the Turkish Parliament and the government, to pass messages. Because it is often easier and it has an added value if you have politicians talking to each other, rather than having bureaucrats from the Commission, who are very qualified of course, but politicians have a tendency to listen more to other politicians. So, I think it is quite valuable to have these talks between the European Parliament and the Turkish Parliament.” (interview #1).

For example, the rapporteur for Turkey in the EP, Nacho Sanchez Amor, travelled to Turkey in January 2020. There he met with “leaders of the political parties, mayors, academics and business representatives, journalists and with several civil society actors” (Delegation of the European Union to Turkey 2020).

“He had a one-week trip and he travelled to three different cities and passed very strong messages in favour of keeping the relationship alive and keeping the accession process alive. And this was a visit that was widely reported in Turkish media, he was on TV, in the newspapers every day so this was perceived quite well – they were happy to have this very positive message. I think the EP definitely does get a lot of attention in Turkey” (interview #1)

Parliamentary diplomacy can be both a way to influence the other EU institutions and Turkey itself. It is Turkey that has to deliver on the requirements for accession talks and visa liberalisation to go forward. It is also important for the EP to show it has knowledge about the situation in Turkey to other EU institutions: “It helps build credibility if you show you have been there and you engaged directly with the Turks” (interview #1).

The travels to Turkey are also a way for the EP to get further knowledge about how the money coming from the EU budget is spent. In addition to the information they get from the Commission, which is also dependent on Turkish authorities reporting to the EU executive, the EP travels to Turkey to get the information directly:

“There have been delegations of members of the European Parliament’s budget committee to Turkey to see *in situ* how the money is being spent and how the EU projects that are being funded work and what the results delivered are. So now there is more oversight” (interview #3).

As the interviewee shows, this is dependent on a will from committees and certain MEPs to travel to Turkey and get the information. It is not as simple as the Commission giving regular access to information. But the interviewee was also clear that the EP had a good relationship with Turkey:

“MEPs have been to Gaziantep to meet with the mayor, to see how the money is being spent. They have visited EU funded projects in Ankara, in Istanbul, in other regions of Turkey. Both the Turkish authorities and EU officials work very closely and efficiently on the facility. It is the only positive thing of the deal. It is the main success story.” (interview #3).

For example, in March 2020 the AFET Committee visited Ankara and a migrant health centre in Mardin, which is funded through a grant to the Turkish Ministry of Health under the FRT (European Parliament 2020). It seems then like, as far as parliamentary diplomacy goes, the EP is quite involved in this. This seems especially relevant to fill the information gap in the allocation of FRT money. Even if the EP does get a lot of information from the Commission on how the money is spent, as shown, it is a problem to get accurate information from Turkish authorities that is passed via the Commission. The EP is taking large steps on its own to increase its own pool of information about how European citizens’ tax money is spent.

### **Open discussions and transparency**

Another way for the EP to get influence is to have informal contact with the other EU institutions. This is, as discussed in the literature review, contact that goes outside of the formal avenues of influence. In my interviews, I have found that it is unlikely that there has been much of this type of contact going on. As one interviewee said clearly: “On the Turkey deal we only had formal contact” (Interview #2). This is in the form of written and oral questions and by inviting the Commission to the relevant committees in the EP, according to the interviewee. The formal contact is for example shown in the meetings on the FRT, discussed in chapter 5.2. On the question of why the EP had not used more informal contact, interviewee #2 said:

“I think we knew that it was useless, because the deal was already decided. It is better to have formal meetings just to show that we formally tried to do

something, but it was not possible. If it is informal meetings you cannot do it publicly, so it is more difficult to say that we have done something” (interviewee #2).

The reasons for criticising the EU-Turkey deal openly and through formal channels was to show that they are “not ok” with the deal (Interview #2). This interviewee, who is working for an MEP, said that she did not feel like they were able to have any influence in the creation or in the implementation process of the EU-Turkey deal. But it was important to show to the Commission that the EP hope the Commission acts differently in the future (interview #2).

“And just to show to the citizens that even if it is useless, we say it, because it is important to show to people and to show refugees that the European Union is not only the Commission and the policy from Germany. It is also people who are in favour, it is also people supporting them, it is not only people against them. So even if it is useless, for the symbolic aspect it is important.” (interview #2)

Another interviewee highlighted the importance of getting information and ensuring transparency. That is why, she said, the committees of the EP ask the Commission to come and inform, because people can follow the online streamings of the meetings to see what is going on. “It is not a way of saying we legitimise [the EU-Turkey deal], but the truth is, it is there, it is being used as a basis for carrying out returns from the Greek islands and because of this we want to know what is going on” (interview #4).

As for the criticism of the EU-Turkey deal, it seems it to some extent resonates when the other EU institutions want to create similar deals. In the example of making a similar deal with Libya, the EU started “thinking about a deal (...) and the MEPs were just crazy. So [the Commission] decided to stop talking about that. I think it had an influence at this moment. But if the Commission would decide to do it, it will be terrible for the Parliament and even for the citizens. Because it will show that the Commission just does what it wants” (interview #2). However, interviewee #4 pointed out that “there are numerous other agreements that have been concluded since the agreement and for which the Turkey Statement has served as a model. But mostly for the part of return, because the other elements were not there. So, no, I do not think

that the European Parliament has managed to succeed in stopping this from happening” (interview #4). It seems like the EP’s criticism towards similar deals is not a conclusive success.

One interviewee was clear about the value of transparency in democratic processes. She said the EP in their communication with the Commission was trying to show the citizens what was going on with the EU-Turkey deal:

“We can always have informal contact with the Commission, that can be done. The issue is, what is our aim? If our aim is to make sure that we have public scrutiny, then we want to minimise the informal, behind closed doors, contact because we want more transparency” (interview #4).

She said the EP is continuing to bring the Commission to public meetings or ask questions in written. This means the EP might not get as much detail as in a “closed door meeting”, but she highlighted the importance of making use of the information the EP gets and making it available for the public (interview #4). It is important for her to have transparent communication, because European citizens should have access to information about the EU’s activities. “Especially when it comes to money. (...) Money comes from the member states, and it is citizens’, tax payers’, money that is used. It should matter a lot how we use it” (interview #4).

Informal contact is a real option for the EP in cases where they are pushed out of a decision, or do not take part in the decision making, like in foreign policy. However, they seemingly were unwilling to engage in much informal contact to get more information about the EU-Turkey deal and its implementation. One reason, it seems, is because they did not think they could change it. But they could contribute to making a more informed public, and could try to stop the Commission and European Council to strike similar deals with other countries than Turkey. This has been done with varied success. The EP did on the other hand, get information on their own by travelling to Turkey and seeing for themselves how money was spent. This is also an important form of public scrutiny. It seems that the EP is then upholding their ideal as the democratic guarantor in the EU. The EP was not given their right to vote on an international agreement, which was granted in a supranationalising advancement of the EU through the Lisbon Treaty. But at least, the EP can do all that is in its power to scrutinise and supervise the decisions and implementation process, even after the deal is already made. The EP still then to some extent lives up to its democratic mandate by bringing information to the public when they have limited impact in other ways. That is a clear win for democratic

processes surrounding the EU-Turkey deal, which in its nature does not comply with EU democracy.

## 6 Conclusion

### 6.1 Summary of findings

This thesis set out to answer what can explain the limited role of the European Parliament (EP) in the EU-Turkey deal. In this case study I found that although the EP has some power over the implementation process of the EU-Turkey deal, the overall role of the EP is limited – and even more limited than one might expect based on EU treaties and EU integration in the past decade.

The EP has gained a right to consent to or reject any agreement with a country outside of the EU. I have shown that in the creation of the EU-Turkey deal, and especially in what ended up being the EU-Turkey Statement, the member states took the lead. The EP thus did not only have a limited role in the creation of the EU-Turkey deal, it had *no* role. The EU institutions bear no legal responsibility for the deal, according to the General Court of the Court of Justice of the European Union (CJEU). However, the Commission and the European Council were invaluable to concluding the deal and providing the tools that became the concessions for the member states in the negotiations with Turkey. The EP was therefore, it can be argued, wrongfully pushed out of an agreement that should have been passed by this institution.

The ambiguous legal status of the EU-Turkey deal might have made it possible to not pass the deal by the EP. Although there is evidence that show that the EU-Turkey Statement should be considered an international treaty, it is not clear from the legal status. The will by the EU and Turkey to implement the content of the EU-Turkey Statement could suggest it should be treated as a binding agreement – in which the EP *should* have had a role. , the EP's prerogative to consent to an international agreement is clearly laid out in EU treaties, and it even includes options for passing decisions with a time-limit. There seems then to have been options for including the EP in the decision-making process without compromising on the need for passing the deal quickly.

As for the implementation process, the EP has not been pushed out of the processes where it needs to give consent. This goes for the accession talks and visa liberalisation promised in the EU-Turkey Statement. However, Turkey has not delivered on the requirements necessary for the EU to conclude any of these processes, and the EP has not been able to exercise their given right to vote on these decisions. The money promised from the EU budget to refugees in Turkey through a facility is also subject to EP consent. But the way the Facility for Refugees in Turkey (FRT) is set up limits the ability of the EP to decide where the money is going – even the money coming from the EU. Once the money leaves the EU budget and goes into the

Facility, the allocation to projects in Turkey is controlled by a Steering Committee. The EP only has an observer role in this, and not a deciding role like the Commission and the member states. Turkey is an advisor to this Committee, and thus is somewhat more powerful in the allocation of money than the EP. The EP has however, managed to get a lot of information about how money is spent by its regular contact with the Commission.

Information about the FRT for the EP is also found through parliamentary diplomacy. My findings show that the EP has engaged quite extensively in contact with Turkish authorities and civil society. Members and Committees of the EP have visited refugee camps and projects in Turkey to see how the money given from the EU and its member states is being spent on site. One interviewee also pointed out that it was effective to show the other EU institutions that the EP has first-hand knowledge about Turkey. Because I have not included an in-depth analysis of how the EP's activities are perceived by other EU institutions, the real effect in terms of EP power is inconclusive based on this thesis alone. Further research could take a closer look into whether parliamentary diplomacy alone strengthens the EP's influence over the EU-Turkey deal. My findings, nevertheless, serve to show that the EP is applying a range of tools to get more information and is thus supplementing the knowledge it gets from the Commission on the FRT with its own observations on the ground.

Finally, I show that the EP has chosen to keep its communication about the EU-Turkey deal out in the open. Its members and employees are then, according to my interviewees, largely not trying to influence the EU-Turkey deal through informal means of communication, i.e. contact with the other institutions that goes outside of what is publicly available. My interviewees value transparency in the communication. I found three main reasons for this. First, that it seemed impossible to change the deal and that the main objective was to make it politically harder for the EU to strike similar deals in the future. Second, that some members of the EP wanted to show to the European public and the refugees that they had done *something* despite its exclusion from the creation of the deal, and was fighting for them. And third, to uphold the principle of transparency and democracy as a value in itself. This was, according to one interviewee, especially important in communication regarding the funding given to refugees in Turkey, because it is ultimately European tax payers' money that is spent. The EP's seemingly exclusively open communication in the implementation phase of the EU-Turkey deal stands in stark opposition to the closed door meetings that led to the Statement in March 2016. I do however acknowledge that I have a limited number of interviewees, and that MEPs and other employees might have different stories to tell about the contact with the other EU institutions. My findings do however point to the fact that the EP is working to uphold its

mandate as a democratic institution representing the citizens and scrutinising the decisions of the executive and the member states.

## 6.2 Broader insights

Going back to my expectations based on the theory presented, discussed in Chapter 2.3, I find some inconsistencies between my findings and the theories. First, the findings that are in line with the theoretical framework. Most obviously, and perhaps most expectedly, I found that the member states did in fact take the lead in creating the EU-Turkey Statement, and that the EP did not have a formal role in the creation of the EU-Turkey deal, as it is guaranteed by Article 218 TFEU. I also found that the EP has been able to get a lot of information about the Facility for Refugees in Turkey (FRT) through its budgetary powers. Here, the information flow between the Commission and the EP seems quite large. What is not in line with my expectations is that I have not found that the EP uses extensive informal powers, with the exception of parliamentary diplomacy.

As for the refugee crisis as an explanation for the choice to go outside of the normal avenues for creating third party agreements, this only partially holds. Most strikingly because Article 218 securing the EP's right to consent to international treaties includes options for passing decisions quickly. Four years on, the EU has not found a lasting solution to replace the EU-Turkey deal as a mechanism for managing migration, and it thus cannot be argued that the EU-Turkey deal was a quick and temporary fix to an urgent situation. At some point the EU-Turkey deal could have, and probably *should* have, passed through formal channels, increasing its democratic legitimacy and given the CJEU power to assess the legality of the deal.

One interviewee pointed out that the EU-Turkey deal was there to stay: "I think, if the situation in Syria does not change in the near future, it will continue for sure. The member states absolutely do not want to open the borders. For the member states, it is perfect. It is not their problem, everything is in Turkey and they do not care. People are not in Europe. That is the main important thing" (interview #2). This interview however was done only a few weeks before Turkey said they would no longer stop migrants from going to Europe. This is not part of my main analysis because it happened after the interviews were conducted. The Greek Prime Minister Kyriakos Mitsotakis said in an interview with the CNN in March 2020 that the "agreement is dead" and "it is dead because Turkey has decided to completely violate the agreement" (CNN 2020). This however, does not mean that the deal has not been implemented

for the past three years, the most obvious sign, that the EU has committed all the money meant for refugees in Turkey. What this although can show is that the EP has even less power over the deal, and that Turkey has the power to break the deal – a deal the EP has criticised for years, but was never able to change.

What this thesis shines a light on is a persistent powerful role of the member states in the EU. One interviewee pointed out that the member states are the most powerful when it comes to the EU-Turkey deal. The EP for example tried to push the Commission to be more ambitious on resettlement and relocation, but some member states were against this (Interview #3). The transfer of power to the EU level for certain issue areas apparently did not apply in the EU-Turkey deal. This shows that even when laid down in EU treaties that the EP should have more power, the member states can still take the lead in some cases. And they can do it without it having legal consequences, after the CJEU ruled it had no jurisdiction to treat a case related to the EU-Turkey deal.

The theory on intergovernmentalism provides a framework for this case study and makes a backdrop compared to which the EU-Turkey deal is set. It provides a clear picture of the paradox that it is that the EU could make a, legally, solely member states deal despite the EU-integration that has been going on the past decades. This case study provides a fuller picture about how supranational the EU really is. Many in the field of EU research have moved away from seeing the EU as a purely intergovernmental organisation. The EU-Turkey deal does not show that the EU is in fact only member states driven, but it shows a larger presence of intergovernmentalism than one would expect. Despite the treaties showing an EU where the EP has gained substantial powers since the Lisbon Treaty in 2009, the practice tells otherwise. The theories included in this thesis do not sufficiently take into account the fact that member states and EU institutions can seemingly breach already existing treaties when it suits them. However, the theory of venue shopping provides some explanation of the mechanisms. This is a theory that is seen to belong to the intergovernmentalism ‘era’ of EU research. It might then be time to resurface intergovernmentalism and venue shopping as valid theories for understanding how the EU works, also in post-Lisbon Treaty Europe. However, the substantial role of the Commission in the creation and implementation of the EU-Turkey deal suggests that the deal had elements of supranationality, but without the democratic oversight that the EP represents. There are still reasons to fear that the EU on some level is backsliding into intergovernmentalism and that the EP can be circumvented, despite the protection of its powers

in the EU treaties. That is dangerous for EU democracy, if European citizens are democratically represented on paper, but lose this privilege in practice.

The theory on foreign policy has given good insight into decision-making and influence outside of the “normal” legislative and scrutiny path. The theory explains well the immense power the EP holds over the budget, and also how parliamentary diplomacy can help to increase the EP’s knowledge about topics and influence abroad. The consent to provide money over the EU budget is perhaps the most important and visible power of the EP over the EU-Turkey deal. The set of theories on EP foreign policy influence, however, shows that the EP can engage in more informal meetings and communication with for example the Commission. This way, it can get more information and possibly change policies. However, in the case of the EU-Turkey deal, the EP has been more adamant to have open discussions to provide democratic scrutiny. This fits more into the realm of using its formal powers to “name and shame” and prevent similar decisions in the future, rather than using informal powers to change the deal at hand.

Further research into this topic could look more specifically into how the EP uses the budget negotiations to get power over policy areas and specific deals they have little formal power in otherwise. A dive into the real influence of parliamentary diplomacy, either on Turkish politics or on EU decisions, is also a possible further path for research. This case study can also serve as a basis for further comparative studies, comparing parliaments in general, comparing the EU with other regional organisations or comparing the process surrounding the EU-Turkey deal with similar migration deals with other EU neighbouring countries.

## Bibliography

- Amnesty International. 2016. 'Greece: Refugees Stranded on the Islands Crushed by Fear and Uncertainty over Their Fate'.  
<https://www.amnesty.org/en/latest/campaigns/2016/06/greece-refugees-stranded-on-islands-crushed-fear-uncertainty-over-fate/> (June 11, 2020).
- Article 218 TFEU. 2008. 'Consolidated Version of the Treaty on the Functioning of the European Union - Part Five: External Action by the Union - Title IV: Restrictive Measures - Article 218'. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E218> (April 3, 2020).
- Bajtaj, Péter. 2015. *Democratic and Efficient Foreign Policy? Parliamentary Diplomacy and Oversight in the 21st Century and the Post-Lisbon Role of the European Parliament in Shaping and Controlling EU Foreign Policy*. Rochester, NY: Social Science Research Network. SSRN Scholarly Paper. <https://papers.ssrn.com/abstract=2567249> (June 11, 2020).
- 'BBC Two'. 2019. *Inside Europe: Ten Years of Turmoil*.  
<https://www.bbc.co.uk/programmes/m0002jn8> (May 27, 2020).
- Bickerton, Christopher J., Dermot Hodson, and Uwe Puetter. 2015. 'The New Intergovernmentalism: European Integration in the Post-Maastricht Era'. *JCMS: Journal of Common Market Studies* 53(4): 703–22.
- Bonjour, Saskia, Ariadna Ripoll Servent, and Eiko Thielemann. 2018. 'Beyond Venue Shopping and Liberal Constraint: A New Research Agenda for EU Migration Policies and Politics'. *Journal of European Public Policy* 25(3): 409–21.
- Bryman, Alan. 2012. *Social Research Methods*. 4th ed. Oxford ; New York: Oxford University Press.
- Carrera, Sergio, Leonhard den Hertog, and Marco Stefan. 2017. 'It Wasn't Me! The Luxembourg Court Orders on the EU-Turkey Refugee Deal. CEPS Policy Insights No. 2017-15/April 2017'. <https://www.ceps.eu/publications/it-wasn%E2%80%99t-me-luxembourg-court-orders-eu-turkey-refugee-deal> (September 12, 2019).
- CNN. 2020. *Interview with Righard Quest on CNN*.  
[https://www.facebook.com/watch/live/?v=186501816102425&ref=watch\\_permalink](https://www.facebook.com/watch/live/?v=186501816102425&ref=watch_permalink) (June 11, 2020).
- Crum, Ben, and John E. Fossum. 2009. 'The Multilevel Parliamentary Field: A Framework for Theorizing Representative Democracy in the EU'. *European Political Science Review* 1(2): 249–71.
- Delegation of the European Union to Turkey. 2019. 'The Keynote Speech by Dimitris Avramopoulos, Commissioner for Migration, Internal Affairs and Citizenship, at the Ambassadors' Conference in Ankara.' *EU Delegation to Turkey*.  
<https://www.avrupa.info.tr/en/news/keynote-speech-dimitris-avramopoulos-commissioner-migration-internal-affairs-and-citizenship> (September 5, 2019).

- . 2020. ‘New European Parliament Turkey Rapporteur on His First Official Visit to the Country’. *EU Delegation to Turkey*. <https://www.avrupa.info.tr/en/pr/new-european-parliament-turkey-rapporteur-his-first-official-visit-country-10086> (June 11, 2020).
- . ‘Visa Liberalisation Dialogue’. *EU Delegation to Turkey*. <https://www.avrupa.info.tr/en/visa-liberalisation-dialogue-6896> (June 11, 2020).
- European Commission. 2016a. ‘Implementing the EU-Turkey Statement – Questions and Answers’. *European Commission - European Commission*. [https://ec.europa.eu/commission/presscorner/detail/it/MEMO\\_16\\_1664](https://ec.europa.eu/commission/presscorner/detail/it/MEMO_16_1664) (June 11, 2020).
- . 2016b. *Turkey 2016 Report*. Brussels. [https://www.avrupa.info.tr/sites/default/files/2016-12/20161109\\_report\\_turkey.pdf](https://www.avrupa.info.tr/sites/default/files/2016-12/20161109_report_turkey.pdf).
- . 2016c. *Turkey’s Progress on the Visa Liberalisation Roadmap*. <https://www.avrupa.info.tr/en/node/229> (May 27, 2020).
- . 2018. *Turkey 2018 Report*. Strasbourg. <https://www.avrupa.info.tr/sites/default/files/2018-06/20180417-turkey-report.pdf>.
- . 2020. ‘Communication from the Commission to the European Parliament and the Council: Fourth Annual Report on the Facility for Refugees in Turkey’. <https://primarysources.brillonline.com/browse/human-rights-documents-online/communication-from-the-commission-to-the-european-parliament-and-the-council;hrdhrd46790058> (June 12, 2020).
- European Council. 2016. ‘EU-Turkey Statement, 18 March 2016’. *European Council*. <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>.
- . 2020. ‘The Presidency of the Council of the EU’. <http://www.consilium.europa.eu/en/council-eu/presidency-council-eu/> (May 30, 2020).
- European Council on Refugees and Exiles. 2018. ‘CJEU Finds Appeal in Joint Cases C-208/17 P to C-210/17 P (EU-Turkey Statement Cases) Inadmissible | European Database of Asylum Law’. *European Database on Asylum Law*. /en/content/cjeu-finds-appeal-joint-cases-c%E2%80%9120817-p-c%E2%80%9121017-p-eu-turkey-statement-cases-inadmissible (June 11, 2020).
- European Parliament. 2016. ‘Freeze EU Accession Talks with Turkey until It Halts Repression, Urge MEPs’. <https://www.europarl.europa.eu/news/en/press-room/20161117IPR51549/freeze-eu-accession-talks-with-turkey-until-it-halts-repression-urge-meps> (June 11, 2020).
- . 2019a. *Committee on Civil Liberties, Justice and Home Affairs Ordinary Meeting*. <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20191106-0900-COMMITTEE-LIBE> (November 15, 2019).

- . 2019b. ‘European Parliament Resolution of 24 October 2019 on the Turkish Military Operation in Northeast Syria and Its Consequences’. [https://www.europarl.europa.eu/doceo/document/TA-9-2019-0049\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2019-0049_EN.html) (June 11, 2020).
- . 2019c. ‘Parliament Wants to Suspend EU Accession Negotiations with Turkey’. <https://www.europarl.europa.eu/news/en/press-room/20190307IPR30746/parliament-wants-to-suspend-eu-accession-negotiations-with-turkey> (June 11, 2020).
- . 2020b. ‘The Treaty of Lisbon | Fact Sheets on the European Union | European Parliament’. <https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon> (June 10, 2020).
- . 2020. “‘Turkey and the EU Must Intensify Dialogue”, Says AFET Chairman McAllister’. <https://www.europarl.europa.eu/news/en/press-room/20200227IPR73503/turkey-and-the-eu-must-intensify-dialogue-says-afet-chairman-mcallister> (June 11, 2020).
- . ‘The Lisbon Treaty’. *The Lisbon Treaty*. <https://europarl.europa.eu/about-parliament/en/powers-and-procedures/the-lisbon-treaty> (June 12, 2020a).
- European Union. 2016. ‘Institutions and Bodies’. *European Union*. [https://europa.eu/european-union/about-eu/institutions-bodies\\_en](https://europa.eu/european-union/about-eu/institutions-bodies_en) (June 12, 2020).
- . 2019. ‘EU Treaties’. *European Union*. [https://europa.eu/european-union/law/treaties\\_en](https://europa.eu/european-union/law/treaties_en) (June 12, 2020).
- Gatti, Mauro. 2016. ‘The EU-Turkey Statement: A Treaty That Violates Democracy (Part 1 of 2)’. *EJIL: Talk*. <https://www.ejiltalk.org/the-eu-turkey-statement-a-treaty-that-violates-democracy-part-1-of-2/> (June 11, 2020).
- Gerring, John. 2017. *Case Study Research: Principles and Practices*. Second edition. Cambridge, United Kingdom New York, NY: Cambridge University Press.
- Golafshani, Nahid. 2003. ‘Understanding Reliability and Validity in Qualitative Research’. *The Qualitative Report* 8(4): 597–606.
- den Heijer, Maarten, and Thomas Spijkerboer. 2016. ‘Is the EU-Turkey Refugee and Migration Deal a Treaty?’ *EU Law Analysis*. <http://eulawanalysis.blogspot.com/2016/04/is-eu-turkey-refugee-and-migration-deal.html>.
- Kvale, Steinar. 1996. *Interviews: An Introduction to Qualitative Research Interviewing*. Thousand Oaks, Calif: Sage Publications.
- Lavenex, Sandra. 2018. “‘Failing Forward” Towards Which Europe? Organized Hypocrisy in the Common European Asylum System’. *JCMS: Journal of Common Market Studies* 56(5): 1195–1212.
- Lehner, Roman. 2019. ‘The EU-Turkey-’deal’: Legal Challenges and Pitfalls’. *International Migration* 57(2): 176–85.

- Lord, Christopher. 2011. 'The Political Theory and Practice of Parliamentary Participation in the Common Security and Defence Policy'. *Journal of European Public Policy* 18(8): 1133–50.
- Oltean, Priscilla, and Claudia Anamaria Iov. 2017. 'EU-Turkey Negotiations in the Context of Securitizing Migration after the 2015 Refugee Crisis: Joint Action Plan and the Readmission Agreement'. *Research and Science Today* 13: 101.
- Peers, Steve. 2016. 'EU Law Analysis: Is the EU-Turkey Refugee and Migration Deal a Treaty?' *EU Law Analysis*. <http://eulawanalysis.blogspot.com/2016/04/is-eu-turkey-refugee-and-migration-deal.html> (November 12, 2019).
- Perchoc, Philippe. 2017. *Mapping EU-Turkey Relations: State of Play and Options for the Future*. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599388/EPRS\\_BRI\(2017\)599388\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599388/EPRS_BRI(2017)599388_EN.pdf) (June 15, 2020).
- Reslow, Natasja. 2018. 'Crisis, Change and Continuity: The Role of the European Parliament in EU External Migration Policy'. : 14.
- . 2019. 'The Politics of EU External Migration Policy'. In *The Routledge Handbook of the Politics of Migration in Europe*, eds. Agnieszka Weinar, Saskia Bonjour, and Lyubov Zhyznomirska. London ; New York: Routledge, Taylor & Francis Group.
- Riddervold, Marianne, and Guri Rosen. 2015. 'Beyond Intergovernmental Cooperation: The Influence of the European Parliament and the Commission on EU Foreign and Security Policies'. *European Foreign Affairs Review* 20(3): 399–418.
- Ripoll Servent, Ariadna. 2019. 'Failing under the “Shadow of Hierarchy”': Explaining the Role of the European Parliament in the EU's “Asylum Crisis”'. *Journal of European Integration* 41(3): 293–310.
- Rosén, Guri, and Kolja Raube. 2018. 'Influence beyond Formal Powers: The Parliamentarisation of European Union Security Policy'. *The British Journal of Politics and International Relations* 20(1): 69–83.
- Schimmelfennig, Frank. 2015. 'What's the News in “New Intergovernmentalism”'? A Critique of Bickerton, Hodson and Puetter”. *JCMS: Journal of Common Market Studies* 53(4): 723–30.
- Smeets, Sandrino, and Derek Beach. 2019. 'When Success Is an Orphan: Informal Institutional Governance and the EU–Turkey Deal'. *West European Politics* 0(0): 1–28.
- Thielemann, Eiko, and Natascha Zaun. 2018. *Escaping Populism – Safeguarding Minority Rights: Non-Majoritarian Dynamics in European Policy-Making*. Rochester, NY: Social Science Research Network. SSRN Scholarly Paper. <https://papers.ssrn.com/abstract=3176267> (November 5, 2019).
- United Nations High Commissioner for Refugees. 2017. 'UNHCR Statistical Yearbook 2016, 16th Edition'. *UNHCR*. <https://www.unhcr.org/statistics/country/5a8ee0387/unhcr-statistical-yearbook-2016-16th-edition.html> (June 11, 2020).

Vosyliūtė, Lina et al. 2018. *Oversight and Management of the EU Trust Funds Democratic Accountability Challenges and Promising Practices*. <https://www.ceps.eu/ceps-publications/oversight-and-management-eu-trust-funds-democratic-accountability-challenges-and/>.

# Appendix

## Appendix I: Interviews

#1 Official from the European Parliament secretariat, working on issues relating to Turkey (Brussels 12/02/20)

#2 Assistant to an MEP who has worked closely with the EU-Turkey deal (Brussels 14/02/20)

#3 Laura Batalla Adam, Secretary General of the European Parliament Turkey Forum, speaking on her own behalf on the topic of this thesis (Brussels 20/02/20)

#4 Maria Giovanna Manieri, Advisor on Civil Liberties, Justice and Home Affairs for the Greens (Brussels 20/02/20)

## **Appendix II: Consent form**

### **Are you interested in taking part in the research project ”The European Parliament’s role in the EU-Turkey deal”?**

This is an inquiry about participation in a research project where the main purpose is to examine the influence of the European Parliament in the implementation of the EU-Turkey deal of March 2016. In this letter we will give you information about the purpose of the project and what your participation will involve.

#### **Purpose of the project**

The project is a master’s thesis about the EU-Turkey deal and the European Parliament’s role in it. I am interested to see if the European Parliament has any power to influence during the implementation process of the EU-Turkey deal. The project aims to explain which formal and informal mechanisms are available to the European Parliament, and how it may have used these to shape the implementation of the EU-Turkey deal.

The research question is “What is the influence of the European Parliament on the EU-Turkey deal?”, with the sub-questions “Why has the European Parliament gained or not gained influence in the implementation process?” and “Has the European Parliament gained power over the implementation through formal or informal channels?”.

#### **Who is responsible for the research project?**

The University of Oslo is the institution responsible for the project.

#### **Why are you being asked to participate?**

You are being asked to participate because of your knowledge of the European Parliament and the EU- Turkey deal.

In addition to document analysis, I aim to interview experts and people with knowledge of the implementation of the EU-Turkey deal.

I aim to interview between 5 and 10 people to get more in-depth knowledge of my findings in the documents I analyse.

## **What does participation involve for you?**

If you choose to participate in the project that will involve an interview of approximately 45 minutes, or adapted to your availability. The interview will involve questions about how the European Parliament works on the implementation of the European Parliament, about the Facility for refugees in Turkey or about formal and informal contact with other EU institutions.

If the interview is conducted in person, I will record the interview with the participant's consent and transcribe it. If the interview is conducted via Skype, I will record the sound from the interview, but not the video. If it is conducted via e-mail, I will keep the written answers separated from the name of the person interviewed. Please be aware that the use of Skype requires the use of a third party data provider.

All participants will be anonymised if the interviewee wishes.

## **Participation is voluntary**

Participation in the project is voluntary. If you chose to participate, you can withdraw your consent at any time without giving a reason. All information about you will then be made anonymous. There will be no negative consequences for you if you chose not to participate or later decide to withdraw.

## **Your personal privacy – how we will store and use your personal data**

We will only use your personal data for the purpose(s) specified in this information letter. We will process your personal data confidentially and in accordance with data protection legislation (the General Data Protection Regulation and Personal Data Act).

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I will replace your name and contact details with a code if you wish to be anonymous. The list of names, contact details and respective codes will be stored separately from the rest of the collected data.

Only myself and my supervisor will have knowledge of your identity. Only quotes with a code will be included in the final thesis. The final thesis will be publicly available online when it is finished.

The information about your occupation or role may be included in the thesis, but I will ensure full anonymity if desired. I will inform you about what information will be provided in the thesis.

### **What will happen to your personal data at the end of the research project?**

The project is scheduled to end 01.01.2022. After the project has ended, all data that include personal information will be deleted. This includes sound recordings. All data stored after this date will be anonymised.

### **Your rights**

So long as you can be identified in the collected data, you have the right to:

- - access the personal data that is being processed about you
- - request that your personal data is deleted
- - request that incorrect personal data about you is corrected/rectified
- - receive a copy of your personal data (data portability), and
- - send a complaint to the Data Protection Officer or The Norwegian Data Protection Authority regarding the processing of your personal data

### **What gives us the right to process your personal data?**

We will process your personal data based on your consent.

Based on an agreement with the University of Oslo, NSD – The Norwegian Centre for Research Data AS has assessed that the processing of personal data in this project is in accordance with data protection legislation.

### **Where can I find out more?**

If you have questions about the project, or want to exercise your rights, contact:

- The University of Oslo via Karin Dokken, supervisor for the project. Email: karin.dokken@stv.uio.no
- Or Tyra Kristiansen Stave, master's student. Email: tyrastave@gmail.com
- Our Data Protection Officer: Roger Markgraf-Bye (personvernombud@uio.no)
- NSD – The Norwegian Centre for Research Data AS, by email: (personverntjenester@nsd.no)

or by telephone: +47 55 58 21 17. Yours sincerely,

Project Leader

Student

Karin Dokken

Tyra Kristiansen Stave

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### **Consent form**

I have received and understood information about the project “The European Parliament’s role in the EU-Turkey deal” and have been given the opportunity to ask questions. I give consent:

- to participate in an interview
- if I wish so and if applicable, for information about me/myself to be published in a way that I

can be recognised by name and profession

I give consent for my personal data to be processed until the end date of the project, approx. 01.01.2022

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(Signed by participant, date)

## **Appendix III: Interview guide**

*I used the same interview guide for all my interviewees.*

### **Creation of the deal:**

- Was the EP involved at all in the creation of the EU-Turkey deal?
- Did they know it would happen and with that content before it was released as a press release?
  - o Should you normally have known?
- Was the EP able to ask to be included in the implementation?

### **Implementation process: information sharing**

- Can the EP influence how the EU-Turkey deal is implemented in any way?
- Does the EP *want* to influence/ change the EU-Turkey deal?
- How is the information sharing about the implementation of the deal between the other institutions and the EP?
  - o Can the EP say their opinion? And are they heard?
  - o Does the Commission or others inform about the implementation? (meeting of November 6 2019 for example)
- Can you think of something the EP was successful in changing about the deal or implementation process/ demand information about?
  - o Have they tried and not been successful?
  - o How did they do it?
- What is your opinion on the involvement of the EP in the EU-Turkey deal implementation? (and creation)

### **Facility for refugees in Turkey**

- Has the EP had any formal role in deciding how to spend the 6 billion euros promised to Turkey through the FRT?
- Why was it placed outside of the normal budget/ external funds?
- Why did the Commission inform the EP about how the money was spent (on November 6 2019)? – did the EP ask for it? Was it part of a deal?

- Has the Commission (or other institutions) continuously informed the EP about the spending of the FRT?