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**The international role of the European Parliament:
The SWIFT Affair and the ‘re-assessed’ European
institutional balance of power**

by

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Abstract

Dominated since its early beginning by the Member States, the Common Foreign and Security policy (CFSP) has long been criticized for its lack of democratic legitimacy. The entering into force of the Lisbon Treaty enhanced the European Parliament's role in that field and although it cannot act as a full legislator, it nonetheless acquired new powers for acting internationally. One of the most important achievements regards the EP's role in the conclusion of international agreements. The new Art. 218, para. 6 TFEU finally provides for the EP's mandatory approval before the conclusion of all EU international agreements for which the internal co-decision procedure is required.

The international role of EP is thus gradually accepted in the academic literature.

In this line, the aim of the paper is to provide empirical evidence and to identify the most significant aspects that have emerged in parliamentary practice. The paper focuses on the SWIFT affair and, by looking at the novelties introduced by the Lisbon Treaty, investigates the EP's international role and the extent to which the new powers impact on both the internal inter-institutional balance and EU external relations.

Key-words

European Parliament, institutional balance of power, European Union, international relations, SWIFT affair, data protection, human rights, counterterrorism cooperation, USA



Introduction

Set up as an unelected institution, the European Parliament (EP) has always fought a battle to extend its powers over those areas with limited legislative capacity. Hence, by using non-legislative means of contestation for interfering with the decision-making process, it has been able not only to extend its area of influence, but the informal practices have even found their realisation in the formal recognition by the Treaties (Crum 2006).

From this perspective, identified as a constant in the European institutional architecture (Fasone Lupo 2012), the gradual and increasing parliamentarisation of the European Union (Maurer *et. al.* 2005; Costa 2009) fits particularly well with the field of foreign affairs.

The EP, in spite of having few formal powers, has always attempted to play an active role in the formulation of EU foreign and external policies (Piening 1997; Maurer *et al.* 2005) and, by extensively using “the inter-institutional agreements and its budgetary powers” (Jacqué 2004: 388), mostly managed to influence the Council’s decisions.

The Lisbon Treaty has further expanded the parliamentarisation of the European Union and formally recognised the EP’s enhanced role. Even in the field of foreign affairs, although it cannot act as a full legislator, it nonetheless acquired new oversight functions on the international ground. One of the most important achievements regards the EP’s role in the conclusion of international agreements. The new Art. 218, para. 6 TFEU finally provides for the EP’s mandatory approval before the conclusion of all EU international agreements for which the internal co-decision procedure is required. Although exceptions still persist in the area of CFSP, the EP can thus exercise a veto over the conclusion of the abovementioned international agreements.

Having set the background, the purpose of this paper is to investigate which changes have been brought about by the Lisbon Treaty. Specifically, it scrutinizes the empowered EP capacity to act internationally and, it examines the potential impact of the new functions on the internal institutional balance of power and on the EU external relations.



Following these premises, the paper investigates, on both legal and political grounds, the case of the SWIFT affair (EU-US agreement on the sharing of financial data). The choice of the case is related to two main reasons. First, the SWIFT affair represents the first case that sees the EP directly and formally involved in the international affairs. Second, the affair illustrates particularly well the *passage* from the pre- to the post-Lisbon era.

Moreover, the SWIFT affair deals with highly salient issues and it is worth noting from the outset that the EP has always been active in the area of human rights and data protection within Europe (Servent and Mackenzie 2011). In this line, the paper – set in a historical perspective – provides evidences that the reaction of the EP in the SWIFT affair was coherent with its past attitude with regard to that issue.

The paper is structured as follow. At the outset, in the first section a brief overview over the concept of institutional balance is provided. In the second section, the paper sets out the background to the Lisbon Treaty provisions, mainly with regard to international agreements. In the third section, the paper underlines the role of the EP in areas dealing with data protection. In the fourth section, the paper examines the implementation of the Lisbon provisions and specifically investigates the SWIFT affair. Finally, the last section explores the impact of the entering into force of the Lisbon Treaty as regards the internal inter-institutional balance as well as EU external relations.

1. The Institutional balance of power

Before entering into the core of the paper, this section introduces the concept of institutional balance, which can be deemed as the quintessential concept of the EU framework.

The concept involves two different lectures of the inter-institutional relations among EU institutions: the first legal, the second political.

Speaking in legal terms, the concept of institutional balance is conceived as the constitutional principle according to which the EU institutions and the Member States have to act within the limits of their respective spheres of competence as provided for by the Treaty. The concept was introduced by the Court of Justice of the European Union



(CJEU) in the famous *Meroni case* in 1958 and the concept has been used by the Court itself as an alternative to the principle of the separation of powers (Jacqué 2004: 384). In this line, based on the principle of conferral, as stated in Art. 13(2) TEU, the concept is essentially conceived of in a static way, aimed at protecting the legal prerogatives and safeguarding the interests of institutions and the rights of individuals.

Speaking in political terms, the concept is understood as the relative power position of European institutions. In this sense, and contrary to the legal approach, from a political point of view the concept has always had a positive and dynamic application, which refers not only to the distribution of competences and the changes brought about by the recent Treaty reforms but, rather, scrutinises the institutional behaviour of as well as the power relationship between the institutions.

According to the political approach, the balance has thus significantly evolved over time not only because of the Treaty reforms but also through the practical exercise of powers and procedures defined in the Treaties.

In 1988 the Court, reconciling for once the legal to the political approach, acknowledged for the first time the dynamic application of the concept. In this case, the Court – recognizing the active right of the EP to bring an action of annulment in defence of its own prerogatives – stated:

“Those prerogatives are one of the elements of the institutional balance created by the Treaties set up a system for distributing powers among the different Community institutions, assigning to each institution its own role in the institutional structure of the Community and the accomplishment of the tasks entrusted to the Community. Observance of the institutional balance means that each of the institutions must exercise its powers with due regard for the powers of the other institutions. It also requires that it should be possible to penalize any breach of that rule which may occur.”¹

Having in mind this statement, it is undeniable that both the legal and political concepts become fundamental for understanding the European institutional balance. Because, despite the lack of a unique definition of what exactly that balance is, it is nonetheless clear that for any inter-institutional quarrel the institutions involved have



always used their own capacity and all the means available to them in order to change the institutional balance to their own advantage. Changes which are fostered either through legal means within the formal rules of the Treaty or through more informal mechanisms outside Treaty procedures. On the same point, Prof. Craig summed up the two understandings and confirmed that the concept of institutional balance “presumes by its very nature a normative and political judgment as to which institutions should be able to partake of legislative and executive power, and it presumes also a view as to what constitutes the appropriate balance between them” (Craig 2011: 42).

Following this premise and applying the concept to the role played by the EP over time, studies have shown that, in legal terms, the “EP power over political outcomes has increased dramatically with the successive Treaty reforms” (Hix 1999) and, in political terms, also “confirm[ed] that the EP’s legislative impact has increased [and] that the EP has used its power of scrutiny, investiture and censure to influence the executive actions of the Commission” (Hix 1999).

This process has been more evident on issues subject to the so-called intergovernmental method. In most of the cases, the EP has successfully sought to extend its own power of consultation. One example is the 1983 “Solemn Declaration on European Union”, where the Council, without any formal provisions in the Treaties, accepted to answer all parliamentary questions. Moreover, the EP has extensively used “the inter-institutional agreements to develop its power [...] and it made full use of its budgetary powers in order to influence the legislative action of the Community” (Jacqué 2004: 388). This is also what happened in foreign affairs, where the EP lengthily resorted to its power to oversee the expenditure of the Common Foreign and Security Policy (CFSP) in order to influence the Council’s decisions in that field (Keukeleire and Macnaughtan 2008: 120; Thym 2008: 223)¹¹. A power today further reinforced by the post-Lisbon provisions which extend the EP’s oversight functions over the Union’s non-compulsory expenditure (Art. 314 TFEU).

The constant attempt of the EP “to extend its powers, using the means of pressures it had on other institutions”(Jacqué 2004: 284) clearly rests on its own vision of its role inside the institutional architecture. The EP never considered itself as part of a “finished



institutional system” but as of one “requiring evolution or even transformation into something different, based on more parliamentary principles” (Corbett *et al.* 2003: 294); thus it had to “fight hard to take its place in the system of decision making” (Krauss 2000: 218).

Obviously, all of this has had a profound impact on the European institutional balance of power and the Lisbon Treaty represents the legal recognition of the increasing EP involvement in EU foreign affairs, which has relevant consequences for the entire European constitutional settlement (Koutrakos 2011).

2. The Lisbon Treaty and International Agreements

The constant dialectic over the dynamic and static concept of institutional balance finds in the momentum of Treaty revisions a potential *de facto* equilibrium, where the debate over the legal framework combines with an in-depth analysis of the evolving practice.

The constant attempt of the EP to extend its powers over the other institutions reflects what has been identified in the literature as a constant in the evolution of the European institutional architecture: the progressive formal extension of the EP’s powers (Fasone and Lupo 2012: 329).

In this way, the Lisbon Treaty abolishes the pillar structure and expands the co-decision procedure – today simply labelled the ordinary legislative procedure – over forty new legislative areas over which the EP and the Council act as a “bicameral legislative authority” (Corbett *et al.* 2007: 215).

The EP’s powers are thus extended into areas previously reserved for intergovernmental methods and, as far as foreign affairs are concerned, one of the main novelties brought about by the Lisbon Treaty regards the new provisions on the conclusion of international agreements.

The former Art. 300 TEC has been replaced by the new provisions established in Art. 218, para. 6 TFEU which enlarge the EP’s competences from a simple consultative role to the recognition of a real veto power over the conclusion of international agreements.

Thus, with the exception of CFSP, the new setting has established “a sort of ‘parallelism’ between the internal and external competences” (Fasone and Longo 2012: 6;



see also Thym 2008). In this perspective, the EP has to consent to all international agreements negotiated on matters which internally are subject to the ordinary legislative procedure or where the consent of the EP is needed.

This reform has undeniably increased the role of the EP in the international arena; all the more so if one scrutinizes the practice of the consent procedure in the EU framework. Apparently because of only a minor impact with respect to the ordinary legislative procedure, it should instead be wondered how much the consent procedure differs from it (Chamlers *et. al* 2010: 112).

In fact, the procedure “grants Parliament an infinite power of delay and an absolute power of rejection” (Westlake 1994: 96), which obliges the other institutions to collaborate with it and take into account the EP’s position.

Of the same opinion, in 1988 the CJEU, referring to the consent procedure, used the term ‘joint decision’ that, translated into French, corresponds to “co-decision” (Passos 2011: 50). In this way, as already argued by legal scholars, the use of the word ‘consent’ should in reality be understood as a ‘co-decision’ procedure because one institution cannot adopt an act without the consent of the other (Isaac 1999: 70).

Extending this interpretation to international agreements, a direct involvement of the EP from the outset of negotiations should be expected. And in fact, the EP already and extensively used this power^{III} (Corbett *et al.* 2011: 253; Zanon 2005), which endorses the thesis that it “must not merely passively take note of the actions of the other institutions, but it may also bring some influence to bear on the Commission and the Council, in order to facilitate its consent on the final text” (Passos 2011: 53).

Today, with the entering into force of the Lisbon Treaty, this interpretation is further supported by the provision laid down in paragraph 10 of Article 218 TFEU, stating that “the EP shall be immediately and fully informed at all stages of the procedure”. This to some extent reflects the already mentioned 1983 Solemn Declaration on European Union, where the Council had already agreed to keep the European Parliament informed about negotiations with third countries.

The EP thus has new powers for making its voice heard and it is the duty of the other institutions to take that into account and to respect the obligation to inform the Parliament. In this line, listening to the Parliament becomes fundamental not only in the



name of loyal cooperation, but rather it forms the core of EU credibility on the international ground. Because, if not respected, the Parliament can use the threat of suspending or refusing to give its assent in order to influence negotiations.

In the next section, the paper gives an overview of the EP's role in the field of data protection. The section is relevant for two reasons. Firstly, it represents a highly salient issue and the EP has always been concerned with assuring its citizens an adequate level of protection; therefore, in a historical perspective, it will be easier to understand the EP's attitude in the SWIFT affair. Secondly, in terms of institutional balance and EU external relations, the section outlines how the EP has always tried to make its voice heard on the international ground, also when no formal powers were in place.

3. Data Protection

In the field of data protection, the EP has always been concerned in assuring its citizens an adequate level of protection. In fact, contrary to the passive Council and Commission attitude, since the 1970s the EP has been attentive to that issue (de Hert et al. 2008; de Hert and de Shutter, 2008) and, in 1974 already, called for a directive on data processing and freedom.

Two years later, the EP adopted a resolution which, on the one side, invited the Commission to take early action for collecting data “as a basis for the preparation of a Community legislative proposal” and, on the other side, requested its Committee on Legal Affairs to define a catalogue of actions to be taken in order to safeguard “the rights of the individual in the face of developing technical progress in the field of automatic data-processing”^{IV}.

In the 1979, the EP adopted a new resolution which called ‘*once again*’ upon the Commission to take its recommendations into account and to “prepare a proposal for a Directive on the harmonization of legislation on data protection to provide citizens of the Community with the maximum protection”^V.

Despite the EP's resolutions, the Commission and the Council remained inactive until the 1990s. Finally, in 1995 – strongly supported by the EP – the first European regulation



on data protection for community matters was approved and a high level of protection of the privacy of personal data was successfully established^{VI} (Pearce and Platten 1998; Fromholz 2000). However, the Data Protection Directive – further complemented by Regulation 45/2001^{VII} – was not extended to the third pillar; and although the EP stressed the need “for an all-embracing framework that would also cover the third-pillar measures” (Servent and Mackenzie 2011: 393), the two separate legal regimes persisted and the EP continued to be largely excluded from the decision making process in the public security framework. Moreover, even after the coming into force of the Lisbon Treaty and the subsequent disappearance of the pillar structure, exceptions still persist in the field of Common Foreign and Security Policy (CFSP), which now has its own data protection provisions under Art. 39 TEU (O’Neill 2010).

Despite all of this, the EP’s requests^{VIII} did not remain unheard. On January 2012, the Commission finally published two legislative proposals^{IX}, which also include a directive on the processing of personal data in the field of police and judicial co-operation in criminal matters. The aim is “to build a stronger a more coherent data protection framework in the EU”^X which could solve the existing legal fragmentation. These proposals are currently scrutinized by the Parliamentary Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) and some of the parliamentary amendments aim at broadening the concept of personal data and strengthening the consent requirements for its processing. Moreover, in order to assure a higher citizens’ protection with regard to third countries, the EP stresses the need to take a strict approach regarding data transfer.

On this point, the EP’s position has always been clear. After the tragic event of 11 September 2001 and the enhanced EU-US counter-terrorism cooperation, the EP adopted several resolutions against the extended practice of data-sharing with the US.

Moreover, the lack of any clear idea of what should be the right balance between the adequate level of data protection and public security made this “grey area” a place of disagreement between the Council and the Parliament, with the latter continuously trying to extend its own authority over the issue and “to develop strategies of contestation that did not involve legislative influence” (Ripoll Servent and Mackenzie 2011: 39).

The EP thus became “one of the major actors in the transatlantic debate over the data



protection” (Pawlak 2009: 39) and the international and European ideological conflict over data protection turned out to be strictly intertwined with “a more down-to-earth debate about the institutional power” (Pawlak 2009: 38).

One of the first important cases where the EP tried to make its voice heard on the international ground was in the Passenger Name Records case (PNR) on the transfer of passenger’s personal data to the US^{XI}. At that time, the EP had no power to influence the content of the agreement but – as established by art. 300 TEC – only the right to be consulted.

For this reason, the only way for contesting the agreement was to make use of other means of contestation. As such, the EP – considering the level of data protection insufficient – decided to start proceedings before the CJEU. However, the EP did not dispute the fact of not having been consulted, but instead focused on the legal bases of the agreement. The EP claimed the application of the 1995 European Data Directive to the agreement, which would have implied the extension of the co-decision procedure to that issue and thus its full involvement in and authority over the agreement.

In May 2006, the CJEU annulled the agreement, however not based on the reasons claimed by the EP. Specifically, the Court concluded that the transfer of data for public security reasons does not benefit from the protection of the 1995 Data Protection Directive but instead falls under the legal framework of the third pillar.

Although a victory in terms of obtaining the annulment of the EU-US agreement, the EP nonetheless had lost all competences over any subsequent agreement on the issue and, obviously, was not the outcome that the Parliament had been aiming for. However, the EP’s contestation did not remain unheard. On the opening up of the negotiations for a new PNR agreement, the EP was involved in the process and, for the first time in history, on 14 May 2007 the Homeland Security Secretary Chertoff held a speech before the EP Civil Liberties committee^{XII}.

Thus, the EP had made its voice heard on the international ground and – despite lacking formal powers – was able to interfere with the decision making process. Moreover, by entering into opposition with both the Council and the Commission, as well as with the US, it coherently tried to guarantee an adequate level of data protection.



The next section stresses this point through an analysis of the SWIFT affair. As already underlined, the affair illustrates particularly well the *passage* from the pre- to the post-Lisbon *era*, thereby giving evidence as to how “significantly the Lisbon Treaty has changed the internal balance of power between the EU institutions” (Monar 2010: 145).

4. The SWIFT Saga

Set up in Belgium in 1973, the Society for Worldwide Interbank Financial Telecommunication (SWIFT) was created by the collaboration of 239 banks from fifteen different countries. The aim was to establish “a shared worldwide data processing and communications link and a common language for financial transaction”^{xiii}. Today, the cooperative is responsible for more than 80 per cent of the world’s financial messages (Servent and MacKenzie 2011; Kaunert *et al.* 2012), which includes personal data, “ranging from the names of the payer and payee to, in some cases, communications in text form that can accompany transaction” (Fuster *et al.* 2008: 192).

After the terrorist attacks of 11 September 2001, the United States made “tracking terrorist financing a top priority” (Connorton 2007: 283) and the SWIFT cooperative became the centre of the US Security Plan. The US Department of Treasury launched the Terrorist Finance Tracking Program (TFTP) and started to issue administrative subpoenas^{xiv} to SWIFT.

At that time, SWIFT had two operations centres, one in Belgium and the other in Virginia and was thus – being under double jurisdiction – obliged to cooperate with the US authorities, while violating the more stringent Belgian and EU privacy law which expressly forbade the transfer of personal data to nations that do not ensure an adequate level of protection^{xv}, such as the United States (Connorton 2007; VanWasshova 2007-2008).

Kept in the dark, the existence of the TFTP system came to be known on the side of the European institutions and the Belgian authorities only in late 2006. On 23 June that year, the *New York Times*, *Los Angeles Times* and *The Wall Street Journal* all disclosed the secret programme which immediately caused a strong reaction in the EU. Both data protection



authorities and EU institutions were deeply concerned about the potential threats caused by the TFTP program to privacy and data protection.

The issue, already one of the most contentious in transatlantic relations, lay also one in of the EP's most sensitive areas. The EP – already strongly disappointed by the just concluded CJEU decision on the PNR agreement – was among the first to denounce the system. Moreover, the fact of having just been relieved of competence further increased the EP's concerns about data protection and fostered its strong reaction to the issue.

Lacking formal legislative powers, the EP “worked hard to claim competence over the issue and to shape the political discussions and decisions” (de Goede 2012: 218). Relying on the strength of public opinion and non-governmental organisations, it tried to influence the Council and the Commission's position through the organization of parliamentary hearings and the mobilisation of the media.

In this line, on 6 July 2006 the EP adopted a resolution expressing “its serious concern at the fact that a climate of deteriorating respect for privacy and data protection [was] being created”^{xvi}.

In October, after the report issued by the Belgian Privacy Commission had concluded that SWIFT violated Belgian Data Protection Law^{xvii}, the EP organised a public hearing. This gave a chance to Francis Vanbever – financial director of SWIFT – to present the company's position and investigated about the European Central Bank's (ECB) involvement in the SWIFT affair^{xviii}.

On the same opinion, in November 2006, the ‘Article 29 Working Party’^{xix} condemned the affair and concluded that the system violated “the fundamental European principles as regards data protection and [was] not in accordance with Belgian and European law”^{xx}.

Finally, in 2007 the EP adopted a new resolution, which stressed the existence of “a situation of legal uncertainty with regard to the necessary data protection guarantees for data sharing and transfer between the EU and the US for the purpose of ensuring public security and, in particular, preventing and fighting terrorism”^{xxi}. In this line, it called again for the conclusion of an international agreement on the matter and stressed the need for parliamentary involvement.



In all its resolutions, the EP explicitly demanded the respect for data protection and although its impact on the case was rather limited, the joint dissent coming from both the EP and other EU authorities forced the reaching of an EU-US compromise regarding the SWIFT Program. Agreed on 27 July 2007, the compromise assured that the data obtained through the SWIFT Program would be used exclusively for counter-terrorism purposes^{xxii}.

4.1. The SWIFT *interim* agreement and the entering into force of the Lisbon Treaty

This compromise was, however, merely a temporary solution and although the EP had always been calling for the conclusion of an EU-US agreement with its full involvement in the negotiations, it was not before the end of 2009 that the US sought to conclude an agreement with the EU on the transfer of financial messaging data. The need for an agreement arose after SWIFT had announced to change its operational architecture and to move its mirror from the US to Switzerland, which would have implied complete EU jurisdiction over the society.

Again, the role of the EP was very limited, as it was not even consulted and again the EP received notice of the actual negotiations only because revealed so by the press in July 2009.

Immediately, on 20 July 2009, Ms Sophie in 't Veld, member of the EP and Vice-Chair of the LIBE Committee, requested access to the opinion of the Council's Legal service concerning the 'recommendation from the Commission to the Council to authorise the opening of negotiations'^{xxiii}.

On 17 September 2009, a few days after the Council's refusal to give access to the document^{xxiv}, the EP passed a new resolution where it denounced that neither the negotiating directives nor the opinion of the Council's Legal Service on the choice of the legal basis were publicly available. Moreover, stressing 'the need to strike the right balance between security measures and the protection of civil liberties and fundamental rights', the EP listed a series of requirements that the agreement should "as a very minimum ensure [...] the utmost respect for privacy and data protection"^{xxv}.

However, despite the EP's resolution, "the negotiators did not appear to pay much attention to the opinion of the European Parliament" (Kaunert *et al.* 2012: 488).



With regard to the access to the document, on 28 September Ms Sophie in t’Veld sent a confirmatory application, asking the Council to reconsider its position. However, on 23 October 2009, the Council authorised only a partial access.

With regard to the content of the agreement, because of its limited powers, only few of the EP’s requests were taken into account.

The reaction of the EP was therefore not surprising: on 30 November 2009 – the day before the entry into force of the Lisbon Treaty – the Council authorised the Presidency to sign the interim agreement. The “decision sparked the fury of the EP” (Ripoll Servent and MacKenzie 2011: 395) and the attempts by the Commission and the Council to contain the opposition in the EP by stressing the *interim* nature of the agreement had no effect.

On 25 January 2010, just a few days before its provisional entering into force, the SWIFT *interim* agreement was formally forwarded to the EP.

Thus, with only a limited timeframe to come up with a report, the LIBE Committee – on the basis of its new (post-Lisbon) parliamentary prerogatives – recommended the rejection of the agreement. In its report, the committee outlined the importance of transatlantic cooperation for counter-terrorism purposes, but also stated the need to respect “the European legal requirements for fair proportionate and lawful processing of personal information”^{xxvi}. Moreover, focusing on inter-institutional relations, it strongly criticised the failure to give the Parliament full information, including the opinion of the Council Legal Service, and claimed a breach of the principle of sincere cooperation between institutions as set out in Article 13(2) TEU.

Alarmed by the risk of rejection, both EU and US authorities “launched an unprecedented lobbying effort” (Monar 2010: 145). However, all of this in vain as even the last attempt made by the Council with its Declaration issued the day before the parliamentary vote was ineffective^{xxvii}.

In this Declaration, the Council tried to assure the Parliament of the interim nature of the agreement and called upon the Commission to adopt draft negotiation guidelines for a longer term agreement that would be negotiated under the new Lisbon provisions where the EP would then be fully involved. Moreover, the Council recognized the need of the EP



to have easier access to classified information and committed itself to negotiate an inter-institutional agreement on that issue.

Despite all this the EP, already feeling deprived of its new powers, on 11 February 2010 made full use of them. Approving the resolution rejecting the agreement, it immediately proved how considerably the Lisbon Treaty had enhanced the EP's role.

4.2. The long-term SWIFT Agreement

The parliamentary refusal of the EU-US interim agreement fiercely showed the novelties introduced by the Lisbon Treaty.

The empowerment of the EP in foreign affairs implies that – as established in Art. 218 TFEU – the Commission and the Council have to take into account the parliamentary position in all international agreements. Moreover, through the rejection of the SWIFT agreement, the EP made clear that its involvement should be assured as early as in the opening negotiation phase.

This is actually what then happened in the negotiations of the long-term SWIFT agreement between the EU and the US. Since the opening phase, both European and US authorities made sure to consult and involve the EP in the process. On 24 March 2010, a new draft mandate was issued by the Commission and agreed upon by the Council on 11 May. This draft was then sent to the EP who, 5 May 2010, adopted a resolution on the Commission's draft negotiating mandate. The EP “welcome[d] the new spirit of cooperation demonstrated by the Commission and the Council and their willingness to engage with Parliament, taking into account their Treaty obligation to keep Parliament immediately and fully informed at all stages of the procedure”^{XXVIII}.

On the US side, several MEPs were invited to Washington. Moreover, on 6 May US Vice-President Joseph Biden held a speech before the plenary and, by making reference to the SWIFT agreement, underlined the need to work together for overcoming all parliamentary concerns on the issue^{XXIX}.

In this line, the new agreement was revisited taking into account most of the EP's requests and finally approved by the Parliament on 8 July 2010^{XXX}.



5. Assessing the new EP role

In the SWIFT case, the EP has showed fiercely how the consent procedure should actually be conceived: not just as a limited power to pronounce itself on the final proposal, but rather as a power to bring influence to bear also over the content of the agreement itself. In other words, as “the power to indicate to what it would say ‘yes’” (Nugent 2006: 413)^{xxxI}. Moreover, in order to guarantee the stability of international relations, the consent procedure should thus be considered as a continuous dialogue between the European institutions, with the Council and the Commission taking into account the EP’s position.

This interpretation of the procedure was already made clear in the EP internal Rules of procedures. Since 2004, the EP has always claimed full involvement in the procedure and, in Rule 83, called for its own right to (a) suspend the opening negotiations, (b) be kept “regularly and thoroughly” informed of the progress in the negotiations, and to (c) “to adopt recommendations and require that these be taken into account before the conclusion of the international agreement under consideration”^{xxxII}.

Obviously, this was the interpretation made by the EP and its Rules of Procedure are not binding upon other institutions. Nonetheless, this proves once again its distinctive ability to exploit the loopholes left by formal legal provisions and its capacity to use all the means available in order to change the institutional balance to its own advantage.

During the SWIFT case, the different positions with regard to how the EP should be involved into the procedure emerged and it became one of the main issues of dispute. Contrary to the narrow interpretation made by the Council, the Legal services of the EP stressed this point and argued precisely that “the *ratio legis* of the duty to inform is not to allow the Parliament passively to take note of the actions of the other institutions, but to afford it the opportunity of bringing some influence to bear on the Commission and the Council as regards the content of the agreement, in order to facilitate its consent on the final text”^{xxxIII}.

Finally, with the entering into force of the Lisbon Treaty, the political interpretation of the consent procedure, as fostered by the EP, was formally recognized in the Treaty. The full involvement of the EP since the opening negotiation phase is today supported by the



provision laid down in paragraph 10 of Article 218 TFEU, which states that “the EP shall be immediately and fully informed at all stages of the procedure”. Moreover, focusing on the precise wording of Article 218 TFEU paragraph 10, the duty to inform Parliament means that it must be promptly and completely informed, which implies the possibility to have access to all the relevant information and documents concerning a given issue.

The Lisbon Treaty thus represents the legal recognition of the new institutional balance of power; in the SWIFT affair, the constant dialogue between its political and legal concept emerged.

At the crossroads between the pre- and post-Lisbon settlement, the Council tried to exclude the EP from the negotiation of the agreement and, on 8 September 2009, when the Council refused to give complete access to its documents, thus instigated the reaction of the EP over the issue.

Against the Council’s decision, the EP – in all its resolutions – strongly criticised the failure to give Parliament full information about the agreement and argued for a breach of the principle of sincere cooperation between institutions set out in Article 13(2) TEU. The question was the brought before the CJEU by Ms Sophie in ‘t Veld.

However, it was not before the entering into force of the Lisbon Treaty that the Council, alarmed by the new powers conferred by it to the EP and by the risk of rejection, sought to use this as a means of leverage. The Council committed itself to negotiate an inter-institutional agreement to assure easier access to classified information. Despite this promise, the EP made full of use of the new powers and, by rejecting the agreement, immediately proved how considerably the Lisbon Treaty had enhanced its own role.

In this saga, on 16 November 2010 the Council finally submitted a proposal for an inter-institutional agreement. However, it took almost two years before both the CJEU’s decision and the inter-institutional agreement found their way ahead.

With regard to the Court’s decision, on 4 May 2012 the CJEU finally declared a partial annulment of the Council’s decision. On the basis of Art. 4(2) of Regulation No. 1049/2001, the CJEU declared that the Council had failed to establish the existence of an overriding public interest, such as the protection of personal data, which would have justified a fuller disclosure of the document. However, the CJEU only partly extended access to the undisclosed parts of the document to the EP. Specifically, those parts that



were not “related to the specific content of the agreement envisaged or the negotiating directives which could reveal the strategic objectives pursued by the European Union in the negotiations” were excluded^{xxxiv}.

The new inter-institutional agreement was established on 13 September 2012 and to some extent assures the proper application of Art. 218(10). However, the agreement only covers classified information which is not related to common foreign security policy, as this latter continues to be regulated by the inter-institutional agreement of 20 November 2002 until other provisions are settled.

6. Assessing the impact on the internal institutional balance of power and on the EU external relations

The growing importance of the EP in foreign affairs has thus increasingly been recognised. However, this has profound implications on (1) the internal institutional balance of power as well as on (2) EU external relations.

In terms of institutional balance, during the SWIFT affair the relationship between the political and legal concept became evident. The EP, despite having few formal powers, has always attempted to play an active role in the formulation of EU foreign and external policy (Piening 1997) and, by extensively using alternative means of contestation and through the support of civil society, managed not only to influence the Council’s decisions, but also to see its increased power of influence over the other institutions legally recognized. Today, the Lisbon Treaty represents the legal recognition of the EP’s new prerogatives. Hence, the EP now has formal powers for making its voice heard and it is a duty for the other institutions to take it into account and respect the obligation to inform the Parliament. In this line, listening to the Parliament becomes fundamental not only in the name of loyal cooperation, but rather forms the core of EU credibility on the international ground. Because, if not respected, the Parliament can use the threat of suspending or refusing its assent to influence negotiations

In terms of EU external relations, it is worth citing President Obama’s National Strategy for Counterterrorism. In June 2011, the President declared that in addition to working with European allies bilaterally, “the United States [would have continued] to partner with the European Parliament and European Union to maintain and advance CT



efforts that provide mutual security and protection to citizens of all nations while also upholding individual rights” (in Archick 2013). Examining the precise wording of this statement, the direct mention to the EP, as distinct from the European Union, immediately reveals the autonomous role attributed to the EP. However, it also entails both a positive and a negative assessment on how the US perceive the EP. On the one hand, the US finally recognise the EP and its role on the international ground; on the other, the fact of having been differentiated from the EU reveals a vision which considers the EP as an outsider to the EU framework.

This vision can be explained by looking at the SWIFT saga: “while the Council and the Commission shared largely similar normative views on how to negotiate with the US [...], the emergence of the European Parliament as an important actor has changed this dynamic. Building on different normative frames, particularly a stronger insistence on fundamental rights and data protection, the European Parliament has challenged the pre-existing EU political framework on counterterrorism.” (Kaunert et. al 2012: 477)

It follows that, in international affairs, the EP has emerged in opposition to the other EU institutions, as it not only fought an internal institutional struggle for power but also established its own peculiar position on the international ground.

Conclusion

Initiated as an issue with strong data protection implications where the EP has always been concerned in assuring its citizens an adequate level of protection,

“European Parliamentarians and (supra)national privacy bodies manifested themselves strongly in this debate, generating conflict between not just the EU and the United States, but also *within* the EU itself. This conflict involved more than the complex processes of decision-making that generally typify the EU, but entailed a fundamental struggle for authority concerning issues that cut across what used to be called the ‘first and third pillar’ amidst the shifting legal landscape of the Lisbon Treaty coming into force” (De Goede 2012: 217).

In the SWIFT case, the EP – by entering in opposition to both the Council and the Commission, as well as the US – not only coherently preserved its own role as “one of the major actors in the transatlantic debate over the data protection” (Pawlak 2009: 39) but



also once more proved its distinctive ability to exploit the loopholes left by formal provisions. In this way, the international and European ideological conflict over data protection turned into a more internal “down-to earth debate about the institutional power” (Pawlak 2009: 38).

It is worth mentioning that, also before the entering into force of Lisbon Treaty, the EP, in spite of having few formal powers, always attempted to play an active role in the formulation of EU foreign and external policy (Piening 1997) and, by extensively using “the inter-institutional agreements and its budgetary powers” (Jacqué 2004: 388), mostly managed to influence the Council’s decisions. In the same way, in the SWIFT case the EP, through alternative means of contestation and through the support of civil society, fiercely showed its position with regard to the issue. However, it was only with the entering into force of the Lisbon Treaty that it could finally impose its stance. In line with the new Art. 218 TFEU, the EP approved the resolution rejecting the agreement and thus immediately showed how considerably its powers had been enhanced.

The growing importance of the EP in foreign affairs has been thus increasingly recognised. However this does not come without consequences for both the internal institutional balance of power and the EU’s external relations.

In terms of institutional balance, during the SWIFT saga the relationship between the political and legal concept emerged and the EP, using non-legislative means of contestation for interfering with the decision-making process, was able not only to extend its area of influence but then even saw its new powers formally recognized by the Lisbon Treaty.

With regard to the interpretation of the consent procedure, the EP fiercely showed how the procedure should actually be conceived. Not just as a limited power to pronounce on the final proposal, but rather as a power to bring influence to bear over the content of the agreement itself. The full involvement of the EP since the opening negotiation phase is today supported by the legal provision laid down in paragraph 10 of Art. 218 TFEU. Moreover, focusing on the precise wording of Art. 218 TFEU paragraph 10, the duty to inform Parliament means that it must be promptly and completely informed, which implies the possibility to have access to all the relevant information and documents about a given issue. In order to guarantee the proper application of the Art. 218(10) and finally solve the dispute between the Council and the EP over classified information, on 13 September 2012



a new inter-institutional agreement was established. Hence, the informal practices have finally found their appeasement in the formal recognition by the Treaties and other legal documents.

In terms of EU external relations, the reform has undeniably increased the EP's international role. Today, the EP has acquired an autonomous recognition and its position is taken into account beyond the EU borders. Moreover, on the side of EU institutions, listening to the Parliament becomes fundamental not only in the name of loyal cooperation, but rather has come to form the core of EU credibility on the international ground.

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^I Case 70/88, *Parliament v. Council*, [1990] ECR I-2041, paras. 21-22

^{II} About EU foreign policy “For the Council, this has two implications. Firstly, the Council must always reach agreement with the EP to adopt the financial Framework and the yearly CFSP budget. Secondly, if appropriations in the CFSP budget are insufficient to finance Council decision... the EP's agreement is required to obtain a supplementary budget...” (Keukeleire and Macnaughtan 2008: 120).

^{III} See for example the case of the ECC/Israel Association Agreement in 1988 and the EU-Turkey customs union agreement in 1995.

^{IV} OJ C 100/27 3.5.1976, *Resolution on the Protection of the rights of the individual in the face of developing technical progress in the field of automatic data processing*, Minutes of Proceedings of the Sitting of Thursday, 8 April 1976.

^V OJ C 140/36 5.6.1979, *Resolution on the protection of the rights of the individual in the face of technical developments in data processing*, Minutes of Proceedings of the Sitting of Tuesday, 8 May 1979.

^{VI} Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to processing of personal data and on the free movement of such data, OL L 281/31.

^{VII} Regulation (EC) No. 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8/1.

^{VIII} See EP resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizens. Stockholm programme- Multi-annual programme 2010-2014 regarding the area of freedom, security and justice. Document P7_TA(2009)0090.

^{IX} Commission proposals COM(2012)10 Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM(2012)11 Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)

^X <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1188884&t=e&l=en>.



^{XI} Since 2003, European airlines flying to US have been obliged to provide the U.S. customs authorities with electronic access to the personal data contained in their system. Annulled by the Court in 2006, the Commission is currently negotiating the new proposal with the Council of Ministers and the European Parliament.

^{XII} http://useu.usmission.gov/may1407_chertoff_roundtable.html.

^{XIII} www.swift.com.

^{XIV} “An Administrative subpoena does not require prior judicial authorization and only needs to meet a reasonableness standard” (Kierkegaard 2011: 452).

^{XV} Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data OJ No. L 281/31

^{XVI} 6 July 2006 on the interception of bank transfer data from the SWIFT system by the US secret services (OJ C 303 E, 13.12.2006).

^{XVII} Royaume de Belgique Commission de la Protection de la Vie Privée, Opinion No. 37/2006, available at http://www.privacycommission.be/sites/privacycommission/files/documents/avis_37_2006_0.pdf.

^{XVIII} European Parliament, Public Hearing, ‘The interception of Bank Transfer Data from the SWIFT System by the Use of US Secret Service’. Available at http://www.europarl.europa.eu/hearings/20061004/libe/programme_en.pdf.

^{XIX} The European Commission’s independent advisory board on data protection and privacy

^{XX} Press Release, European Union Article 29 Working Party, Press Release on the SWIFT Case, available at http://ec.europa.eu/justice/policies/privacy/news/docs/PR_Swift_Affair_23_11_06_en.pdf.

^{XXI} Resolution of 14 February 2007 on SWIFT, the PNR agreement and the transatlantic dialogue on these issues (OJ C

287 E, 29.11.2007. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:287E:0349:0353:EN:PDF>.

^{XXII} The same EP declared in a later press release on 17 September 2009 that “*Following pressure by the European Parliament, guarantees regarding privacy were given to ensure that the data collected was used purely for anti-terrorist purposes*” <http://www.europarl.europa.eu/sides/getDoc.do?language=en&type=IM-PRESS&reference=20090915IPR60697>.

^{XXIII} Document 11897/09.

^{XXIV} 8 September 2009.

^{XXV} European Parliament Resolution of 17 September 2009 on the envisaged international agreement to make available to the United States Treasury Department financial messaging data to prevent and combat terrorism and terrorist financing (2010/C 224 E/02), SWIFT P7_TA(2006)0016, OJ C 224 E/8, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:224E:0008:0011:EN:PDF>.

^{XXVI} European Parliament, Recommendation on the proposal for a Council decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program (05305/1/2010REV – C7-0004/2010 – 2009/0190(NLE)), Committee on Civil Liberties, Justice and Home Affairs, doc. A7-0013/2010, 5 February 2010.

^{XXVII} Council of European Union, EU-US Agreement on the Transfer of Financial Messaging Data for purposes of the Terrorist Finance Tracking Programme, Brussels, 9 February 2010 doc. 6265/10 (Presse 23).

^{XXVIII} European Parliament resolution of 5 May 2010 on the Recommendation from the Commission to the Council to authorise the opening of negotiations for an agreement between the European Union and the United States of America to make available to the United States Treasury Department financial messaging data to prevent and combat terrorism and terrorist financing, doc P7_TA(2010)0143.

^{XXIX} Speech available at <http://www.whitehouse.gov/the-press-office/remarks-vice-president-biden-european-parliament>.

^{XXX} For an in-depth content analysis of the agreement see Pfisterer 2010.

^{XXXI} In this sense and before the entering into force of the Lisbon Treaty, the EP had already extensively used this power a Specifically “to take action on the human rights records of third countries that have signed association and cooperation agreements” (Nugent 2006, 413).

^{XXXII} Rules of Procedure of the European Parliament, 16th edition, July 2004 (OJ 2005 L44/1).

^{XXXIII} EP Legal Service <http://www.statewatch.org/news/2010/feb/ep-libe-cttee-opinion-legal-service-eu-usa-swift.pdf>.



xxxiv Point 60 of the case T-529/09 Judgment of the General Court (Fifth Chamber) 4 May 2012 “Access to document- Regulation (EC) No 1049/2001- Opinion of the Council’s Legal Service on a recommendation from the Commission to authorise the opening of negotiations for an international agreement- Partial refusal to grant access- Exception relating to the protection of the public interest in the field of international relations- Exception relating to the protection of legal advice- Specific and foreseeable threat to the interest in question- Overriding public interest”.

References

- Amicelle Anthony, 2011, ‘The Great (Data) Bank Robbery: Terrorist Finance Tracking Program and the “Swift Affair”’, Research Questions N. 36, Centre d’études et de recherches internationales, Science Po.
- Archick Kristin, 2013, ‘U.S. –EU cooperation against Terrorism’, *CSR Report for Congress*, Congressional Research Service.
- Chalmers Damian, Davies Gareth and Monti Giorgio, 2010, *European Union Law: Cases and Materials*, 2nd edition, Cambridge University Press, Cambridge.
- Connorton M. Patrick, 2007, ‘Tracking Terrorist Financing Through SWIFT: When U.S. Subpoenas and Foreign Privacy Law Collide’, in *Fordham Law Review*, LXXVI(1): 283-322.
- Corbett Richard, Jacobs Francis and Shackleton Michael, 2003, *The European Parliament*, 5th edition, Catermill, London.
- Corbett Richard, Jacobs Francis and Shackleton Michael, 2007, *The European Parliament*, 7th edition, John Harper Publishing.
- Corbett Richard, Jacobs Francis and Shackleton Michael, 2011, *The European Parliament*, 8th edition, John Harper Publishing.
- Costa Olivier, 2009, ‘Le Parlement Européen dans le système décisionnel de l’Union Européenne: La Puissance aux prix de l’illisibilité’, in *L’Harmattan Politique européenne*, II(28): 129-155.
- Craig Paul, 2011, ‘Institutions, Power and Institutional Balance’, in Paul Craig and Gráinne de Búrca (eds), *The evolution of EU law*, Oxford University Press, Oxford, 41-84.
- Crum Ben, 2006, ‘Parliamentarization of the CFSP through informal institutional making? The fifth European Parliament and the EU high representative’, in *Journal of European Public Policy*, XIII(2): 383-401.
- De Goede Marieke, 2012, ‘The SWIFT Affair and the Global Politics of European Security’, in *Journal of Common Market Studies*, L(2): 214-230.
- Fasone Cristina and Longo Fabio, 2012, ‘The international Role of the Standing Committees of the European Parliament’, revised version of the paper presented at the III European Union in International Affairs (EUIA), Conference organized by the Vrije Universiteit (IES-VUB), 3-5 May 2012.
- Fasone Cristina and Lupo Nicola, 2012, ‘Il Parlamento europeo alla luce delle novità introdotte nel Trattato di Lisbona e nel suo regolamento interno’, in *Studi Sull’integrazione europea*, VII: 329-357.
- Fromholz Julia M., 2000, ‘The European Union data privacy directive’, in *Berkeley technology law journal*, XV(2): 461-484.
- Fuster Gloria Gonzales, De Hert Paul and Gutwirth Serge, 2008, ‘Swift and the vulnerability of transatlantic data transfers’, in *International Review of Law Computers & Technology*, XXII(1-2): 191-202.
- De Hert Paul and de Shutter Bart, 2008, ‘International Transfer of Data in the field of JHA: The Lessons of Europol, PNR and SWIFT’, in Bernd Martenczuk and Servaas van Thiel (eds), *Justice, Liberty, Security: New Challenges for EU External Relations*, VUB Press, Brussels, 303-335.
- De Hert Paul. *et al.*, 2008, ‘Data Protection in the third pillar: cautious pessimism’, in Martin Maik (ed), *Crime, Rights and the EU: The Future of Police and Judicial Cooperation*, Justice, London, 121-194.
- Hix Simon, 1999, ‘An Institutional Theory of Behaviour in the European Parliament’, Paper presented for presentation at the Biennial Conference of the European Community Studies Association, 3-6 June 1999, Pittsburgh.
- Jacqué Jean-Paul, 2004, ‘The principle of Institutional Balance’, in *Common Market Law Review*, XLI(2): 383-391.
- Kaunert Christian, Léonard Sarah and MacKenzie Alex, 2012, ‘The Social Construction of an EU



interest in counter-terrorism: US influence and internal struggles in the cases of PNR and SWIFT', in *European Security*, XXI(4): 474-496.

- Keukeleire Stephan and MacNaughtan Jennifer, 2008, *The foreign policy of the European Union*, Palgrave Macmillan, Basingstoke.
- Kierkegaard Sylvia, 2011, 'US war on terror EU SWIFT(ly) signs blank cheque on EU data', *Computer Law and Security Review*, XXVII(5): 451-464.
- Koutrakos Panos (ed), 2011, *European Foreign Policy. Legal and Political Perspectives*, Edward Elgar, Cheltenham, and Northampton, MA.
- Krauss Stefan, 2000, 'The European Parliament in EU External Relations: The Custom Union with Turkey', in *European Foreign Affairs Review*, V(2): 215-237.
- Maurer Andreas *et al.*, 2005, 'Interinstitutional Agreements in the CFSP: Parliamentarization through the Back Door?', in *European Foreign Affairs Review*, X(2): 175-195.
- Monar Jörg, 2010, 'The Rejection of the EU-US SWIFT Interim Agreement by the European Parliament: A Historic Vote and Its Implications', in *European Foreign Affairs Review*, XV(2): 143-151.
- Nugent Neil, 2006, *The Government and Politics of the European Union*, 6th edition, Palgrave MacMillan.
- O'Neill Maria, 2010, 'The Issue of Data Protection and Data Security in the (Pre-Lisbon) EU Third Pillar', in *Journal of Contemporary European Research*, VI(2): 211-235.
- Passos Ricardo, 2010 'The European Union's External Relations a Yea After Lisbon: A First Evaluation from the European Parliament', in Panos Koutrakos (ed), *The European Union's External Relations a Year After Lisbon*, CLEER Work. University of Bristol: CLEER Centre for the Law of EU External Relations, 49-56.
- Pearce Graham and Platten Nicholas, 1998, 'Achieving Personal Data Protection in the European Union', in *Journal of Common Market Studies*, XXXVI(4): 529-547.
- Pfisterer Valentin, 2010, 'The Second SWIFT Agreement Between the European Union and the United States of America. An Overview', in *German Law Journal*, XI(10): 1173-1190.
- Piening Christopher, 1997, 'The European Parliament: Influencing the EU's external relations', paper presented at the 5th biennial ECSA Conference, Seattle, WA, 30 May 1997.
- Ripoll Servent Ariadna and MacKenzie Alex, 2011, 'Is the EP Still a Data Protection Champion? The Case of SWIFT', in *Perspective on European Politics and Society*, XII(4): 390-406.
- Thym Daniel, 2008, 'Parliamentary Involvement in European International Relations', in Marise Cremona and Bruno De Witte (eds), *EU foreign relations law. Constitutional fundamentals*, Hart Publishing, Oxford and Portland, 201-232.
- Van Wasshova Matthew R., 2007-2008, 'Data Protection Between the United States and the European Union in the War on Terror: Lessons Learned from the existing System of Financial Information Exchange', *Case Western Reserve Journal of International Law*, XXXIX(3): 827-865.
- Westlake Martin, 1994, *The Commission and the Parliament Partners and Rivals in the European Policy Making Process*, Butterworths, London.
- Zanon Flavia, 2005, 'The European Parliament: an autonomous foreign policy identity?', in Esther Barbé and Anna Herranz (eds), *The role of Parliaments in European foreign policy*, Office of the European Parliament, Barcelona.