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1. Introduction

In his 1966 timeless masterpiece ‘The Good, the Bad and the Ugly’, director Sergio Leone tells the story of three men who ruthlessly pursue a mythical buried treasure. The film is a morality play which shows how wrong can triumph over right, at least in the short term, and how sometimes good acts do go unrewarded.

The construction of a common migration law for the European Union contains some parallels. As in the film, there are three different actors: the European Parliament (‘the good’), the Council (‘the bad’) and the Commission (‘the ugly’). Again as in the film, there are different evolving alliances between the actors and different events change the balance of power among the players.

First, the Council could be depicted as ‘the bad’. This has been a consequence of the majority of the Member States being reluctant to give up power in this area, as they have considered it a core part of their sovereignty. This reluctance resulted in the lack of a European Community competence in the area for many years. The environment changed substantially with the introduction of the Single European Act and the obligation to remove all internal frontiers by 1992. Certainly, the incapacity to agree about the exact meaning of Article 8 marked the beginning of a struggle between, on the one hand,

* Diego Acosta was involved in the drafting of the amendments to the Commission proposal in the Committee on Development of the European Parliament.
1 It is acknowledged that the Council is an actor with different layers or faces in which Member States play the predominant role. See G. Papagianni, Institutional and Policy Dynamics of EU Migration Law, Leiden: Martinus Nijhoff 2006, p. 199–220.
3 Article 8 defined the Single European Market as an area without frontiers in which free movement of good, services, people and capital was ensured. This is currently Article 26.
the Council and, on the other, the Parliament and the Commission. This dichotomy in the positions of the different actors was confirmed with the adoption of the Maastricht Treaty and with the following Amsterdam Treaty (despite the introduction of a new Title IV of Part III of the EC Treaty).

Secondly, the Commission could be labelled as ‘the ugly’, depicted as such because its proposals have never been appealing enough for the Council. Put simply, as one Commissioner expressed, the Commission is not sexy enough. In fact, when a Commission proposal in the area has not been completely dismissed, it has usually been watered down. However, the reasons why the Commission has had a more friendly approach towards immigration do not necessarily have to do with noble motives. The fact that Commission staff or Commissioners do not have to face re-election and the importance that the Commission gives to the enhancement of its own position have played a significant role in the Commission’s attitude towards immigration.

Finally, the Parliament could be viewed as ‘the good’. Historically, the Parliament “consistently argued for a comprehensive and migrant-friendly approach”. There is however an important point to be emphasised here,

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6 See on this, K. Hailbronner, *Immigration and Asylum Law and Policy of the European Union*, The Hague: Kluwer Law International 2000. In fact, it could be argued that the Council can be depicted as the ‘bad’ because, when Member States agreed to share competence with the Community over immigration matters with the Amsterdam Treaty, it pursued from the outset a very restrictive immigration policy.