

# **The 'Political' Role(s) of the European Commission**

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**ABSTRACT:** The ‘political’ roles of the European Commission are very much up for debate. On the one hand, most recent academic analysis of the Commission has assumed that its political roles are in decline. On the other hand, the current President of the Commission, Jean-Claude Juncker, was appointed in 2014 by a much more politicised process than had been used previously and his College has since sought to present itself as being guided by a political mission and as offering political leadership to the EU.

In this paper we aim to show that in the debate about the political roles of the Commission, ‘political’ has too often been poorly defined and operationalised. Revisiting Coombes’ (1970) pathbreaking but largely misinterpreted thesis on the relationship between the political and the managerial roles of the Commission, and by supplementing it with subsequent writings, we offer a more refined and specified framework for measuring the Commission’s political roles and offer empirical illustration of how the Commission exercises them. The framework suggests that, even amongst the Commission’s many ‘managerial’ tasks, opportunities arise for the exercise of political drive and leadership.

## Introduction

Few issues in EU Studies have been debated as frequently as the political roles of the European Commission. At the heart of the debate has been whether, and if so to what extent, the Commission acts in a political fashion to shape policy outcomes independently from national governments.

The prevailing academic view is that the political roles of the Commission have been in decline for a number of years, with the Commission generally seen as having taken something of a back seat in politically driving integration and with its focus increasingly concentrated on the ‘merely’ managerial functions of a secretariat. This decline in the political roles exercised by the Commission is seen as having been a consequence of a number of factors, including most notably: increasing policy activism and assertiveness by the European Council; an increased desire by member state governments – sensitive to the domestic challenges posed by rising euroscepticism – to control the Commission’s activities; and an increasingly overburdened Commission administration having to deal with mounting managerial tasks.

But, has the Commission really withdrawn – by choice or force – from its political roles? If so, how would we measure that? At one level – that of perception – the Commission seems far from withdrawing, for a number of recent developments have resulted in the political nature of the Commission being seen to have been strengthened. The most important of these developments have been: the use in 2014 of the highly-politicised *Spitzenkandidat* process for appointing Jean-Claude Juncker as Commission President; the subsequent reorganisation of the internal structuring of the College of Commissioners, which has given the College not only a more hierarchical structure but also a more ‘government-like’ appearance; and the constant emphasis by Juncker that his College has a political drive that rests on a political mandate.

However, it is not only in terms of perceptions and appearances that the Commission is political, but also in the roles it exercises. In suggesting that the Commission exercises political roles much depends on how one defines and measures ‘political’ in the context of Commission behaviour. Academic debates are hamstrung by varying – and often unstated – assumptions of what political roles for the Commission look like, and few frameworks exist for measuring the roles in a systematic fashion. We suggest that arguing the Commission is more or less ‘political’ or more or less ‘managerial’, as much of the literature does, is overly simplistic since the two are difficult to disentangle. Instead, we put forth a four-part analytical framework for defining and measuring the Commission’s various political roles in European integration. We offer empirical examples that suggest preliminary support for the utility of the approach.

The paper thus focuses primarily on the Commission’s political roles rather than, as two recent articles in *Journal of Common Market Studies* have mainly done, its political composition and structure (Dinan, 2016; Peterson, 2017). Of course, there is considerable overlap between the Commission’s political roles on the one hand and its political composition and structure on the other, so the latter, whilst not our main focus in this paper, will be considered in so far as they impinge on the political roles.

The paper is structured as follows. First, we review key points in the literature on the Commission’s political versus managerial roles. Second, we present a more refined, multi-category framework to help improve our understanding of the Commission’s political roles. Third, we offer empirical evidence to illustrate the framework’s utility and to demonstrate the different ways in which the Commission’s political roles are best measured.

A key point running through our analysis is that the Commission still undertakes a wide variety of highly political roles. Looking, for example, specifically at ‘managerial’ tasks, we note that even in these ‘hard cases’ (methodologically speaking), opportunities still arise for political tasks to be undertaken and even for political leadership to be exercised.

## **The Literature on the Commission's Political and Managerial Roles**

One of the most consistently observed features of the EU is the co-existence of both a 'political' function and a 'managerial' function in the tasks required of the European Commission. The former is generally associated with the Commission's treaty-based mandate to drive forward the cause of European integration by developing and shaping, if not formally making, EU policies. The latter is seen as involving carrying out the kinds of administrative tasks typically undertaken by high-level public bureaucracies, such as creating and seeing to the enforcement of regulatory requirements.

### **Early and 'classical' perspectives in the literature on the Commission**

As early as 1956, Edgard Pisani contrasted two parts of the Commission's predecessor, the High Authority of the ECSC: the *administration de mission*, which was dedicated to and organised around the pursuit of a central political goal, namely the advancement of European integration, and the *administration de gestion*, which was focused on traditional management functions (1956: 324-325). It was argued by Pisani that the High Authority carried out functions and tasks which could be associated with either type of *administration* (for similar arguments on the Commission, see Michelmann, 1978; and Morgan, 1992).

By contrast, David Coombes, in his classic book on the Commission, argued that the Commission's two functions may be at odds within one another (Coombes, 1970). According to Coombes, the Commission's 'political leadership' role was constituted by two central tasks: an *initiative* function, which involved 'inventing and "selling" means of extending the scope and level of integration' and a normative function, defined as '*legitimizing* measures by its uniquely European character and defining the common interest' (*ibid*: 297). Its managerial role

also involved two tasks. One of these was *'mediative'*, which required the Commission 'to put forward objective proposals and to attempt to find a compromise between the different national points of view', whilst the other was *administrative*, which was defined as the routine processing of implementative and regulatory tasks according to set protocols. Coombes argued that the two sets of tasks – political and managerial – were essentially at odds with one another.

The political leadership role, and especially the initiative aspect of this, requires, Coombes suggested, an organic organisation in which tasks are not broken into compartments, in which there is no strong hierarchical command structure, and in which control is not externally imposed on the members of the organisation but is internally generated from a commitment to the enterprise. Such an organisation requires dynamic leadership to hold it together, must be adaptive to changing circumstances, must be good at generating ideas, and is unlikely to be particularly efficient in matters of routine administration. By contrast, the Commission's managerial role, Coombes suggested, requires a mechanistic organisation resembling Weber's classical bureaucracy. Such an organisation is marked by a high degree of internal specialisation and fragmentation of tasks, by a clear definition of the rights and obligations of each section and of each individual, and by a rigidly hierarchical system of control, authority and communication. While this kind of organisation is unsuited to innovative tasks, it is well adapted to the efficient performance of routine administration. For Coombes, the Commission's political role would inevitably decline as the institution became ever more bureaucratised.

### **More recent perspectives in the literature on the Commission**

As the EU's policy competences have grown, many authors have followed Coombes in arguing that the increasing size and inevitable bureaucratisation of the Commission has led to decline of its political capacity (see, for example, Schön-Quinlivan, 2011: 4). Indeed, studies dating

back to the early 1970s argued that, because of a growing workload, the Commission's *administration de mission* was giving way to an *administration de gestion* (see, for instance, Neunreither, 1972; Berlin, 1987). A brief respite in the argument took place during the years of Jacques Delors' presidency of the Commission, when a number of high-profile agreements seemed to mark a dynamic rebirth of the organisation (Ross, 1995). Following Delors' departure from the Commission, however, academic research has mostly returned to the theme of a decline in the political nature of the Commission, with a common assumption being that – using the Delors years as a benchmark for assessing the Commission's 'political' capacities – that if the Commission is not high-profile and forging agreements on flagship legislation, it is no longer exercising significant political leadership (see, for instance: Caremier, 1997; Bauer, 2008: 691; Ponzano *et al*, 2012: 37;).

### **Perspectives from the broader literature on the EU**

The debate has not been limited to scholars focused on the Commission. The question of whether and how the Commission plays a political role in integration pervades much of the theorising literature on the EU. Supranational approaches to the study of the EU – such as those based on neofunctionalism, multilevel governance, and federalism – give special recognition to the Commission's 'political' role in European integration, with it being seen as acting as a catalyst for the transfer of sovereignty to the supranational level (see, for instance, Pollack, 2003). This kind of expansionist and pioneering role is contrasted with a perspective of the Commission as an administrative entity akin to an international secretariat which, theoretically speaking, wields no overtly 'political' influence – but perhaps shapes a few policy outcomes here and there.

Indeed, approaches that draw from the wider EU literature tend to adopt a strict dichotomy of the political vs. non-political Commission – a dichotomy that informs much of the 'grand

theorizing' on European integration and tends to view the political in a particular way. The evidence normally collected to substantiate arguments that the Commission's political roles remain strong includes the Commission's broad-scale agenda-setting powers, its ability to secure adoption of its main policy priorities, and its influence over high-profile, flagship legislation. This is a view of 'political' in fairly narrow terms, however; it is akin to pushing forward the 'cause' of integration. By contrast, studies that suggest only limited political roles for the Commission, whilst viewing the debate in broadly similar terms, argue that the Commission has lost the ability to provide political impetus to integration. So, for example, 'new intergovernmentalist' scholars argue the Commission has become introspective and self-absorbed which, along with a lack of virgin policy areas (no more 'low hanging fruit') and an unfavourable political context means it tends to prioritise its management rather than leadership roles (Bickerton *et al*, 2015).

Scholars less interested in grand debates and more in practical policy outcomes view the political role of the Commission somewhat differently. Here it is a question less of political leadership than policy leadership. These kinds of studies focus on the entrepreneurial qualities of the Commission that allow it to convey its preferences into policy outcomes. The Commission's right to initiate legislation is given pride of place in such studies, as are its rights to shepherd proposals through the policy process, to negotiate with multiple actors with diverging preferences, and to control the policy initiation process. These studies are informed by conceptual approaches that emphasize the ability of an actor – in any polity – to act as a 'policy entrepreneur', to exploit 'political opportunity structures', to "strategically frame" policy solutions, or to engage in 'venue-shifting' (Maltby, 2013; Schön-Quinlivan and Scipioni, 2016). The Commission's 'political' role is less related to EU-building and sovereignty-sharing and more related to policy entrepreneurship and goal achievement in policy outcomes. Empirical evidence gathered for these kinds of studies tend to focus on specific policy issues,



critical decision-making moments, and implementation processes in which the Commission can play an active role in shaping policy outcomes. The results from these studies suggests the Commission continues to play a role in shaping outcomes, although that role is declining owing to fewer policy initiatives from the Commission, more institutional competitors (most notably the European Council), and increasing mechanisms being created to control the Commission in sensitive fields such as internal security (Bossong and Rhinard, 2016).

### **An Analytical Framework**

The three different literatures reviewed above thus display different understandings of what ‘political’ means in terms of the Commission’s roles. This is, of course, because ‘political’ can be given so many meanings in this context. For example, it can mean that: Commission decision-making is ideologically shaped, or at least influenced (as, with a centre-right majority in the College, it unquestionably has been in recent years); Commission decision-making is inherently entrepreneurial and expansionist in spirit (as, with justification, eurosceptics allege in respect of the Commission’s many proposals to extend EU influence in policy areas as diverse as social policy and the AFSJ); and that Commission decision-making is influenced by institutional interests (as with the placement of itself at the centre of the eurozone’s ‘post-crisis’ stronger fiscal powers).

For its part, the Juncker Commission is presenting itself as a ‘political Commission’ on the basis that it provides a lead on highly salient, societal-wide ‘political’ issues. According to Martin Selmayr, Juncker’s influential *chef de cabinet*, being ‘political’ for the Juncker Commission means ‘being up to the political challenge of this time ... focusing on those issues that matter ... that overcome crisis ... this Commission will be remembered for whether it ... returns Europe back to growth ... from chaos to order ... we have to focus our energy on the

existential matters being up to the political challenges of this time.....and to focussing on the issues that matter’ (Selmayr, 2016).

All of these four, just described, definitions of ‘political’ are, however, somewhat general and only get us so far in understanding the many dimensions of the ways in which the Commission undertakes political roles. In an attempt to be more precise and to facilitate more systematic analyses of the Commission’s political roles, we advance below a four-fold framework of functions in which the Commission exercises important political roles. The framework draws heavily on Coombes’ work and also that of Ed Page (1997), the latter of whom distinguished between different kinds of Commission bureaucratic activities (or functions), three of which, he suggested have significant ‘political’ aspects: traditional politics, bureaucratic entrepreneurship, and political adjudication. Having outlined the analytical framework, as we now move to do, we then proceed to examine how it holds up in practice.

*Directional political leadership.* This function involves identifying broad system objectives and persuading people to support them. It involves defining the common interest, crafting long-term goals of cooperation, and mobilizing arguments and actors in support of a political vision of the future (see Lindberg and Scheingold, 1970). It is based largely on the Commission’s treaty-based competences to ‘promote the general interest of the Union and take appropriate initiatives to that end’ (Article 17(1) TEU). We would go farther than both Coombes and Page and argue that the Commission, although it lacks the electoral political authority of a national government, increasingly attempts to funnel societal preferences in carrying out its political leadership role – as the heavy marketing surrounding recent initiatives to cut mobile phone charges or to resist enforcing austerity rules on Spain and Portugal attest. Supporters of the *Spitzenkandidat* procedure for selecting the Commission President hoped that such a process would re-energize this kind of political role for the Commission, since it

ostensibly channels societal and ideological preferences and legitimises more traditional kinds of political leadership by the Commission.

*Policy Entrepreneurship.* This function refers to ‘the activity of officials playing a major role in policy initiation within a bureaucratic organization’ (Page 1997: 14). This is clearly related to the Commission’s legislative initiating role, which is described by Coombes as a major part of its political vocation. It involves drawing together different societal interests in formulating new policies, in order to further both its own interests and to maximise the chances of approval by the EU’s legislators (now usually the Council and the EP). This role is underpinned by the treaty provision that states that ‘Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise’ (Article 17(2) TEU). This role is narrower than the political leadership role in that it speaks less to societal interests and broad integrationist outcomes and more to specific policy questions. Those questions, however, often have very ‘political’ answers.

*Process Adjudication.* This function is listed by Page as one of the Commission’s main tasks with a political element to it. It refers to the decisions that have to be made by the Commission as a key participant in the EU legislative process, within a ‘context where intergovernmental-interinstitutional negotiation as well as, possibly even more than, technical criteria shape the decision’ (Page 1997: 149). As the Commission accompanies proposed legislation through the legislative process, which it is formally entitled to do at every stage, it must operate in a ‘political’ fashion by either shutting other actors out of the process (when possible), making concessions (when desirable to

secure an outcome), and wielding normative arguments about Union obligations (Nugent and Rhinard, 2015).

*Policy Management.* The last main function of the Commission with a political element is not usually considered as being ‘political’ as such. The Commission must administer adopted policy programmes and oversee routine implementation of decisions made elsewhere. To be sure, this category of activities is the most difficult in which to discern a political role for the Commission, as Page intimates when he states that this category – which he calls ‘routine administration’ (1997: 150) – involves ‘obeying orders, following instructions, enforcing regulations; reacting to events and changes in the world outside on the basis of written rules’. Yet it should not be forgotten that the ‘power of bureaucracy’ stems partly from the expertise of its members and the exclusivity of its process (Weber, 1922). Even in highly complex policy questions, political solutions may be present and put forward, even though they may be based on technocratic logics.

The four categories that have just been outlined help to overcome several shortcomings in our ability to examine the extent of the Commission’s political role. The following sections offer illustrative empirical examples which not only demonstrate the utility of the framework but also suggest that arguments regarding the decline of the Commission’s role deserve to be re-examined.

## **Empirical Discussion**

This section applies our framework to (mainly recent) activities undertaken by the European Commission.

### **Directional political leadership**

This category is the most overtly political, but it is typically viewed, as discussed above, as being in decline. We point to five factors that suggest the Commission offers very considerable, and in some respects even overt, directional political leadership to the EU.

First, it is important to emphasise the sometimes overlooked fact that the various rounds of treaty reform since the Single European Act have contained no direct reductions of the powers bestowed on the Commission by the founding treaties. So, there are today, as there always have been, a number of treaty articles that give the Commission a general responsibility to seek to shape the terms of the ongoing debate about EU policies and to launch broad policy initiatives. For, example, Article 17(1) TEU states: ‘the Commission shall promote the general interest of the Union and take appropriate initiatives to that end’. This article, which is deliberately phrased in a very vague manner, permits the Commission to move on a broad front if it so wishes – by, for example, issuing position or discussion papers which are designed to set or shape the agenda. If the ideas expressed in such papers are then endorsed by other institutions, especially by the European Council and/or the Council, or if they lead to requests for the Commission to develop its thinking further, perhaps in the form of a Green or White Paper, they can then become a source of legitimacy and a framework in which more specific proposals are advanced. Such, for example, is the case with the *White Paper on the Future of Europe* that was issued in March 2017 (Commission, 2017).

Second, the composition and selection of the highest levels of the Commission – the President, the College of Commissioners, *cabinet* members and high ranking officials – all contain a strong political element. It is beyond the scope of this paper to examine the different appointment processes, but all are based – in one way or another – on political sentiments and perspectives (see Nugent and Rhinard, 2015). For example, and most notably, Jean-Claude

Juncker, was (s)elected to be the President of the Commission for the very reason that after the 2014 EP elections he was the nominee of the largest political group and commanded majority support in the EP. As for the other Commissioners, it has long been the case that they are, for the most part ‘political heavyweights’ (Egeberg, 2006; Nugent and Rhinard, 2015; Peterson, 2017).

Third, in so far as the EU has an overall set of priorities, they are currently those set out by Jean-Claude Juncker at the time he assumed the Commission Presidency in 2014. Included in the ten identified priorities are: boosting jobs, growth and investment; creating a connected digital single market; making EMU deeper and fairer; developing a new policy on migration; and making the EU a stronger global actor (Commission, 2014). Significantly in terms of the ‘politicisation’ of the Commission:

- Initially, there were only five priorities, but they were gradually expanded to ten after Juncker, conscious that to be confirmed in office he and his incoming College needed as broad support as possible in the EP (especially given the increased strength of ‘anti-system parties’) participated in extensive exchanges and discussions with ‘the mainstream’ EP groups on what they were looking for.
- The priorities were thus fixed very much in a political context and in a predominantly top-down manner (by Juncker as part of his selection campaign).
- The priorities and actions on them are kept under constant political review, both in the Commission itself and in other EU institutional forums (see, for example, European Parliament, 2017).
- The priorities are not explicitly ideological as such (except in so far as they reflect the broadly ‘centrist’/centre-right majority in EU circles), but rest more on what commands support.

Fourth, the unmistakable process of the presidentialisation of the Commission is leading to a stronger platform upon which to exercise directional leadership. While a few early Presidents were able to stamp their personal mark on the office through strong personalities and/or favourable circumstances, only in the past twenty years has the President gained, through sequential treaty revisions, formal and institutional power to become more than simply *primus inter pares*. There are multiple reasons for this formalisation and institutionalisation of the President's position, most of which stem from a perceived need to enable the President to exercise greater discipline over a College that has grown substantially in size owing to EU enlargements. The President's increased powers include a greater ability to influence the nomination of Commissioners, to exercise political direction over the College, to determine Commissioners' portfolios, and to dismiss Commissioners if necessary. And none of these formal power resources take away from the President's additional ability to leverage his informal resources. Barroso did this by using the Secretariat-General to boost his position vis-à-vis other Commissioners and to provide stronger administrative discipline under his direction. Juncker has gone further, notably by using his claimed 'political mandate' to justify his restructuring of the relationships between Commissioners.

An example of Juncker using the Presidency to provide strongly politically-based and driven leadership is the way in which he was, and made sure he and the Commission were seen to be, the main driving force behind the 2015 *Five Presidents' Report* on the future of EMU, which set out plans for the building of a fiscal union in the eurozone (Juncker, 2015). (The preceding Four Presidents' Report of 2012 had been headed by the European Council President, Herman van Rompuy.) Another example is the way in which Juncker took advantage of a window of opportunity – created by the economic and financial crises – to considerably alter the Commission's capacity for financial investment when he persuaded EU decision-makers that there was an urgent need to generate a momentum behind increased investment. To this

end, he proposed, even before assuming office, the creation of a new investment fund capable of generating some €300 billion of ‘new money’. Soon after the new College assumed office in November 2014, a Commission Communication was issued detailing the nature and purpose of the fund (Commission, 2014), which was now called the European Fund for Strategic Investments (EFSI). The target figure was set at €315 billion and the fund was to be used primarily for investing in infrastructure projects related to transport, energy, information technology, and trading. The investment plan was approved in principle by the European Council at its December 2014 meeting.

Fifth, despite claims of a changed culture in the Commission, ostensibly accounted for largely by enlargements, Ellinas and Suleiman (2012: 165) report that senior Commission staff still believe, albeit with varying degrees of intensity, that the Commission has a duty to provide leadership for the EU. Most also believe that the leadership so provided should foster the process of European integration. They find that the great majority of their (almost 200) respondents ‘share a common culture of supranationalism’ and that this common Commission culture is grouped broadly around a widely-shared mission to ‘build Europe’, ‘advance the European project’ and ‘construct a new Europe’.

Related to this common culture, in a major study of the Commission’s internal policy-making routines, Hartlapp *et al* (2014: 299) found a greater appreciation amongst Commission officials of the importance of public opinion and the need to justify proposals not only using a technocratic rationality (a long-standing practice of the Commission) but also ‘political rationality’. The effort to rationalise new proposals in line with wider societal needs and narratives was reflected in the Political Guidelines President-elect Juncker presented to the EP in July 2014 (Juncker, 2014a) and even more so in the Mission Letters he sent in the following November to all incoming Commissioners (Juncker, 2014b), where he stressed that the



incoming College would concentrate its efforts only on areas in which joint action could indisputably produce better results.

There is, therefore, still much truth in Ludlow's observation of the Commission of over 20 years ago: 'the function of *animateur* permeates the whole structure and ethos of the institution' (Ludlow, 1991: 97).

### **Policy entrepreneurship**

Policy entrepreneurship refers to the strategic formulation and creative mobilisation of support of specific new initiatives, especially legislative initiatives.

In this regard, the Commission remains strongly positioned by the treaties in two particular ways. First, it enjoys considerable legislative powers. Article 17(2) TEU states: 'Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise'. The treaties do provide otherwise only in a very few AFSJ areas, so the Commission enjoys an almost exclusive right to propose and draft legislation. Furthermore, after it has issued legislative proposals the Commission is given by the TFEU a considerable control over them as they make their way through legislative processes – notably by making proposals difficult to amend without the Commission's agreement. Second, the lack of precision of the TFEU in many respects has provided opportunities for the Commission to take action and to advance proposals where it has felt it to be necessary and appropriate to do so. For example, it has taken advantage of Article 352 – the so-called 'flexibility' clause, whose remit was expanded by the Lisbon Treaty to include any of the objectives set out in the treaties and not simply, as formerly, single market objectives – to make in-roads into the sensitive area of tax harmonisation amongst member states (Commission, 2015a; but cf. Wasserfallen, 2014).

The Commission uses its policy- and legislative-initiating powers to launch a wide range of, variously focused and aimed, policies and policy programmes. To give just a handful of recent examples: the 2015 Communication *A Digital Single Market Strategy for Europe*, set out a sixteen point strategy for opening-up digital opportunities for people and businesses by removing regulatory barriers and creating a fully functional digital single market; the 2015 *Green Paper: Building a Capital Markets Union* and the 2015 follow-up *Action Plan on Building a Capital Markets Union* were focused on generating a more integrated approach to a policy area that the economic and financial crisis had shown to be too dispersed in its operation and direction; and three communications that were issued between 2010-2014 set out ideas for tightening and further integrating the many dimensions of industrial policy by attempting to strengthen existing policy frameworks.

Turning specifically to legislative proposals, the number of these has been in steady decline over the years as EU decision-makers have sought to lighten the EU's legal load, have increasingly used non legally binding policy instruments, and have become more cautious about adopting Commission legislative proposals in topic areas that are strongly contested. (Hence, the adoption of a number of the Commission's incrementalist policy proposals to deal with the migration crisis, but the rejection by several member states of its arguably most important initiative: the obligatory distribution of migrants between Schengen states.) However, notwithstanding the decline, which has been particularly considerable under the Juncker College, Commission proposals for legislation remain key to the further development of the integration process. This is no more clearly seen than in the Commission's Work Programme for 2017, with projected new legislation including proposals designed to advance such key medium- and long-term programmes and objectives as the youth initiative, fairer taxation of companies, the pillar of social rights, data protection, and the European Banking Union (Commission, 2016b).

Beyond legislative initiatives, the Commission has long sought to take advantage of the EU's growing interest in promoting inter-state cooperation (as opposed to integration) by seeking to bring particularly sensitive subject topics onto the policy agenda. Recently, this has even extended to defence, with it presenting in November 2016 a European Defence Action Plan that, amongst other things, includes plans for a defence research programme and for the funding of collaborative defence research projects (Commission, 2016a).

### **Process Adjudication**

The third category in which the Commission plays a political role is in shaping the process of decision adoption. Many EU observers claim that the rise of new institutional actors over the years has undermined the Commission's procedural adjudication powers but, in fact, by contributing to further fragmentation of the EU's institutional landscape, the rise of new institutional actors has not been to the complete detriment of the Commission. One reason for this relates to the long-standing fragmentation of leadership in the EU. As Ellinas and Suleiman (2012: 9) have noted about the operating independence of appointed officials in all types of democratic systems, 'the more fragmented a political system is, the larger the scope for bureaucratic autonomy'.

Focusing here just on legislative decision-making, the Council and the EP share the formal power to adopt most legislation and have the greatest claims to democratic legitimacy. However, they are both constrained in what they can do, which provides considerable opportunities for the Commission to advance legislative proceedings in its preferred directions. The Council is constrained by, amongst other factors, its internal divisions, its very nature as rolling series of negotiations between national governments, and, for all formations of the Council other than the Foreign Ministers, its rotating presidency. When considering Commission legislative proposals, Council meetings (at all levels) tend to be more reactive

rather than proactive. They are not usually self-starting forums in which national representatives identify and agree on principles designed to provide a reference framework for immediate or future legislative action. Similarly, the EP too is constrained, in its case by the size and heterogeneity of its membership and also by the restricted nature of its powers which, as with legislatures everywhere, favour it too being a reactive rather than a proactive body. The Parliament is certainly improving its capacities for leadership (as the growing use of ‘own initiatives’ suggests) but it still lags behind the Commission with its institutional powers of agenda setting.

The Commission is thus greatly advantaged in respect of the making of legislation. It is so by virtue of its initiating, amending, and withdrawing powers, its detailed understanding of the nature and policy implications of legislative proposals, and its advanced understanding – which comes from extensive formal and informal deliberations – of what measures are likely to be acceptable to the Council and the EP. However, it cannot drive proposals through against the wishes of the Council or the EP: as was clearly shown in the mid-2000s when the contents of its much-vaunted Services Directive and REACH Regulation were emasculated. Similarly, it cannot, or at least does not, usually attempt to stop proposals whose contents have been agreed by the Council and EP – at any point from first reading to conciliation stage.

### **Policy Management**

The Commission’s policy management responsibilities might appear to be a ‘hard case’ in the search for a ‘political’ component of Commission activity. Yet in at least three respects such a component is not only present, but is actually prominent.

The first respect concerns the Commission’s strong position, both legally and in terms of its subject expertise, in the process of secondary rule-making in the EU. Most EU law consists

of secondary rule-making and is issued in the name of the Commission. Of the approximately 2,000-2,500 legal instruments issued by the EU each year, over 70 per cent take the form of Commission rules or, in legal terminology, ‘non-legislative legal acts’, which consist of regulations and decisions plus a handful of directives. In addition, the Commission issues non-binding instruments, such as recommendations and opinions, which are designed to be advisory or exhortive in nature, but which have sometimes been interpreted by the CJEU as having legal effect.

The Commission’s legal acts mainly involve implementing measures or administrative rules, akin to what executives and agencies produce at national levels. Such acts tend to be highly specific and technical in character. For instance, in the course of managing the EU’s CAP, the Commission may need to alter agriculture prices or adjust market support measures because of changes in the global market. However, although Commission acts are usually highly technical and/or ‘non-political’ in nature, there is a grey area in which supposedly technical and subordinate legal acts can raise questions of political judgement. So, for example, the Commission adopts implementation rules on sensitive issues such as contaminants in food (requiring member states to embargo products), toxic chemicals in children’s toys (banning companies from using certain chemicals), and carbon emission allowances (benefitting some industrial interests over others). The Commission is also allowed to make legally binding rules in the highly politically-sensitive area of the CCP, where it can, amongst other things, impose anti-dumping duties on foreign countries.

The second respect in which a political component is present in Commission policy management functions relates to the powerful decision-making responsibilities of the Commission as a direct implementer of laws. Most EU policies and laws are directly implemented by agencies of various sorts in the member states. The Commission does have some direct implementation responsibilities – in respect of, for example, aspects of

development policy and disaster relief – but its role in these areas is primarily supportive of work undertaken by others.

However, in two very important policy areas it has key, politically-loaded, implementation roles. In one of these – macroeconomic policy (where the Commission’s powers have been greatly enhanced during the financial and economic crises) – it is highly dependent on its proposed actions receiving Council support – but this is usually given. So, the Council normally backs Commission recommendations to grant ‘amnesties’ to states hamstrung by austerity measures: as it did in July 2016 when the Commission recommended to the Council not to apply financial penalties to Spain and Portugal for being in breach of Stability and Growth Pact rules.

In the other policy area where the Commission has important implementation responsibilities – competition policy – Council authorisation is not normally legally required, though it may be sought to give ‘political cover’. The Commission’s strong direct implementation responsibilities in respect of competition policy stem back to the origins of the EU, which was based on the logic that the creation of an internal market requires a ‘level playing field’ amongst firms and state-owned utilities in which anti-competitive practices are not permitted. According to that logic, and in-line with what are now called functionalist theories of delegation (Pollack, 2003), an independent body was required to enforce competition rules. The Commission was given that role and has – making use of favourable Court judgements and the increasingly liberal economic climate – acted as something of an institutional entrepreneur to exercise influence in five main subfields of competition policy: prohibiting agreements between firms that limit competition (Article 101 TFEU); prohibiting abuse of a dominant position by one or more large firms (Article 102 TFEU); prohibiting industrial mergers that may give one firm a dominant position (EU Merger Regulation 139/2004); requiring the liberalization of public utilities and infrastructure industries (Article 106 TFEU);

and prohibiting most forms of state aid from a member state to a firm or category of firms (Article 107 TFEU). The first three of these subfields target private companies while the latter two focus on the actions of member state governments. In all cases, the accumulation of principles and powers related to these subfields places the Commission in a powerful position – arguably the most powerful of any EU policy field (Cini and McGowan, 2009: 1). They allow it to intervene and discipline governments and companies, and to do so in high-profile ways. Interventionist actions against companies include: the Commission’s finding in 2004 that Microsoft abused its market position by bundling software with its operating system, which initially resulted in a €497 million fine and was then followed by further very large fines for not having complied with the conditions of the 2004 fine; the rejection of proposed mergers between the air carriers Ryanair and Aer Lingus in 2007 and between the stock exchanges Deutsche Börse and NYSE Euronext in 2012; and a record fine of €3 billion imposed on truck makers in July 2016 following a five year investigation which revealed a 14 year old cartel to fix prices and pass on the cost of compliance with stricter EU emissions controls (significantly, one of the truck makers – MAN – was not fined as the company had revealed the existence of the cartel) .

When the Commission takes decisions regarding whether to allow states to subsidise key industries, to take member states to court, or to withhold regional funding based on violations of the rule of law, such decisions are, almost by definition, intensely political. Indeed, state aid is in some respects the most politically sensitive subfield of competition policy. One reason for this is that the Commission must target – and often prohibit the actions of – member state governments directly, including, for instance, efforts to assist firms or industries that provide much-needed jobs. Another reason is that until recently many of the newer member states (and some of the older ones, too) used large subsidies as a major tool of industrial policy. Two recent

examples show how high-profile, politically sensitive, and varied in nature the state aid issues with which the Commission deals can be:

- Repeated decisions have been taken against Greece for providing unfair state aid to Olympic Airways (most recently in 2014).
- In June 2014, the Commission initiated actions against the Irish, Dutch and Luxembourg governments for offering market-distorting tax breaks for three major firms: Apple, Starbucks and Fiat, respectively. As part of this, in October 2015 Fiat and Starbucks were each required to pay back between €20 million and €30 million to the Luxembourg and Netherlands tax authorities for receiving tax breaks that amounted to state aid.

The political sensitivity of state aid became particularly acute during the recent banking crisis when governments offered state guarantees and preferential loans to banks in order to keep them solvent. Clearly, the Commission would have found itself in a very politically challenging situation if it had chosen to reject all such efforts. In response, politically-sensitive guidelines on what was permissible as ‘emergency state aids’ were issued (Commission, 2008) with a more ‘constructive approach’ including: a focus on only the largest cases which had major impacts on the internal market; a relaxation of some prohibitions if they could be demonstrated as temporary measures; and a 24-hour decision response if state aids met the terms set out in the guidelines. Those guidelines were replaced in 2013 with a new ‘Banking Communication’ that preserved many of the previous exemptions but emphasised bank restructuring requirements as a condition for state aid (Commission, 2013).

The third respect in which the Commission exercises an important political role in policy management is macro-financial management, which has grown in importance in recent years. The economic and financial crises that hit Europe, and more specifically the eurozone, from 2007-08 had institutional implications, with EU institutions vying for influence while



attempting to manage the crises. While some commentators note the intergovernmental nature of many of the arrangements put in place to help stabilise the eurozone (see, for instance, Puetter, 2012), others have indicated that this has not been to the detriment of the Commission, which has indeed actually strengthened its hand in a policy area – economic governance – where it previously had a only limited role (see, for example: Bauer and Becker, 2014; Savage and Verdun, 2016). Of the four aspects of the eurozone crisis response examined by Bauer and Becker – financial stability support, economic policy surveillance, coordination of national policies and supervision of the financial sector – all, but especially the first, have seen the Commission wielding significantly increased influence. Bauer and Becker note that as the EU and international responses to debt-ridden eurozone members took shape, they were based on a decision-making model prominently featuring the Commission: it was given powers to assess the systemic risk posed to and by a country, to conduct a needs assessment, to check for compliance with other internal market rules, and then to make a proposal to the Council. It is true that the EU’s main funding scheme to help save indebted countries – the European Stability Mechanism (ESM) since 2012 – has been moved outside of the EU’s decision-making and legal frameworks, with the ESM being governed by a new legal organisation registered in Luxemburg. But, as Bauer and Becker point out, the Commission-centred model of decision-making still features in that it continues to make assessments, to issue recommendations to decision-takers, to negotiate with stricken states, and to monitor compliance, even though some of these activities are now undertaken in conjunction with the ECB and the IMF.

## **Conclusion**

This paper stemmed from a dissatisfaction with the fact that for all the recent attention given to the supposedly more political nature of the Commission, little focus has been given to the precise nature of the politicisation. How has it manifested itself and been displayed?

Drawing on other writings in EU Studies, especially on classic works on the Commission, we have advanced a four-fold framework for furthering our understanding of the ways in which the Commission acts ‘politically’. The framework is based on roles long-recognised as being key functions of the Commission. We showed that in three of the four roles – providing political leadership, policy entrepreneurship and policy management – the Commission does indeed act and exercise influence in a highly political way. In the fourth role – process adjudication – the Commission’s political role certainly features, but seems to be less important, though further research is necessary here.

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