Is the power of the European Commission underestimated?

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Introduction

According to many observers of EU politics, the Commission's powers and influence has been in decline over the past 20-30 years (Bocquillon and Dobbels 2014; Dinan 2010; Kassim et al. 2013; Wallace 2015). This decline thesis has figured especially prominently in the writings on "New Intergovernmentalism", which holds that since the Maastricht Treaty there has been integration without supranationalism. This development has allegedly been led by the member states who have preferred to initiate policies through the European Council and implementing them through new bodies, such as the European Central Bank, the European External Action Service, and European agencies (Bickerton, Hodson and Puetter 2015a; 2015b). As a result, the Commission has been sidelined and left as a bystander.

The "decline of the Commission" thesis is controversial and has been subjected to considerable scrutiny. It has been criticized for relying overly on time-specific events, especially the euro crisis (Bulmer 2015), and developments in selected policy areas (Schimmelfennig 2015). It has also been criticized for failing to take into account that the Commission adjusts to new political realities and takes a pragmatic view of new bodies, such as European agencies (Peterson 2015). Finally, it has been pointed out that the Commission is still an important contributor to agenda-setting in the EU, that its right of initiative to draft and propose legislation remains intact, and that delegation to EU agencies may actually strengthen the Commission because it relieves it of routine tasks (Nugent and Rhinard 2016).

These objections to the decline thesis notwithstanding, it needs to be acknowledged that the Commission's once commanding position in the EU political system has been challenged. This is especially the case after the Lisbon Treaty, which formalized the position of the European Council, created a semi-permanent European Council President and a High Representative in charge of a new European External Action Service. However, at the same time there is no doubt that the Commission retains an important position and exerts considerable influence in the EU.

The starting point for this paper is that the most important question about the Commission caused by the institutional innovations over the past decades is not the Commission's exact loss of influence, but understanding how the Commission functions in the EU's new institutional landscape.

The contribution of this paper is to theorize the Commission's behavioral logic in the present EU political system. This is done in two steps. First, it discusses whether the Commission is a neutral actor in EU politics. The argument is that this is not the case; on the contrary, the Commission is an actor with interests to protect, pursue and develop. Second, it discusses how the Commission can pursue its interests. The argument is that four informal strategies are open to the Commission. They require a creative and strategic approach but, if used cleverly, they may turn the Commission into an actor that is more influential that the formal institutional set-up would lead observers to think.

The Commission's behavioral rationale

From the extant literature it is possible to distill six images of the true nature of the Commission. With the exception of one, these images all portray the Commission as an actor with interests to pursue, protect and develop. In the following they are discussed in more detail.

The first image is "the technocratic machine". This is probably the most classic image of the Commission. It dates back to the works of Haas (1958) and Lindberg (1963), who argue that integration automatically generates pressures for further integration, a logic also applied to more recent developments in the EU (Tranholm-Mikkelsen 1991). According to this image, the Commission acts as an honest broker who listens carefully to knowledge presented by experts. Expert advice is deliberately institutionalized in technocratic entities such as working groups, standardization bodies, and expert committees, which as a consequence often play a large role in EU politics (Radaelli 1999). This image suggests that the Commission is best understood as a neutral clearing-house where actors engage in problem-solving searches for technically workable policies. It is the only image that portrays the Commission as an actor without particular policy preferences of its own. It may appear somewhat *altmodisch*, but in a detailed study of 48 policy files Hartlapp, Metz and Rauh (2014: 288-291) found that it was relevant in surprisingly many instances.

The second image of the Commission is the "engine of integration". According to this image, the Commission is a competence-maximizing preference outlier that seeks to push integration further than the member states want. This type of behavior may actually be said to constitute the Commission's official mandate. The Treaty of European Union states that "The Commission shall promote the general interest of the Union and take appropriate initiatives to that

end" (TEU, article 17). This view is almost a standard axiomatic behavioral assumption in rational-choice models of EU politics (König and Pöter 2001; Tsebelis 1994; Tsebelis and Garrett 2001). It may be considered a somewhat "heroic" assumption, but it is not without empirical backing. In an analysis of 125 controversial legislative proposals Thomson (2011: 51-78) found that the Commission took relatively radical policy positions compared to the member states. Similarly, in a detailed analysis of cases from six policy areas, Pollack (2003: 263-377) found that the Commission consistently shows a preference for greater European integration. Finally, several survey and interview studies of Commission officials show that many tend to be favorable towards deeper integration (Ellinas and Suleiman 2012; Hooghe 2001; Kassim et al. 2013)

The third image is "the partisan advocate". According to this image, the Commission is driven by party ideology. Two arguments are invoked to support this image. The first is based on the background of the individual commissioners. Studies show that over time commissioners have increasingly become persons with a prominent party-political background, typically ministers, even prime ministers (Döring 2007; Wonka 2007). The party-political background of the Commissioners can be used to calculate the partisan position of the Commission by identifying the orientation of the median commissioner, an approach taken by e.g. Franchino (2007: 133-143). The second argument for the party-ideology image of the Commission is based on the increasing powers of the European Parliament. Its role in the appointment of the Commission and its power to control it allegedly leads to parliamentarization of the Commission and forces it to toe the line of the European Parliament's majority (Majone 2002; Egeberg et al. 2014; Judge and Earnshaw 2002). Parliamentarization may have been given added force by the introduction of the *Spitzenkandidat* system in the 2014 elections to the European Parliament. According to this system, the *Spitzenkandidat* of the winning party in the European Parliament elections is appointed new president of the Commission (Hobolt 2014).

The fourth image is "the national agent". According to this image, the Commission is driven by national interests. This image is based on the fact that the member states ultimately control the appointment of the commissioners, even though the European Parliament has gained increasing influence. According to this view, the member states are likely to use their appointment power to select commissioners who will act as loyal agents (Crombez 1997; Hug 2003; Wonka 2007). The member states may also control the future careers of the commissioners if they want to return to national politics after their Commission term expires, or if they seek reappointment to the Commission. Supporting this view is also the fact that the member states care deeply about having a

seat at the Commission table. A dramatic example of this fact was the Irish "No" to the Lisbon Treaty in 2008, in which the potential loss of an Irish commissioner played a large role (Dinan 2009). However, commissioners in blatant pursuit of national interests is probably an unlikely sight. First, the Treaty explicitly forbids commissioners to take instructions from national governments (TEU, article 17). Second, there is a strong norm of collegiality in the College of Commissioners and a common understanding that the Commission would lose influence if the College developed into body of national representatives like the Council of Ministers or Coreper (Deckarm 2017; Egeberg 2006a; Nugent and Rhinard 2015: 140-142). Finally, since EU politics is more regulatory than distributive or re-distributive, it is not always clear exactly what national interests are. In sum, national cards may be played at the Commission table, but if so, they are likely to be played with some caution.

The fifth image is "the bureaucratic organization". According to this image, the Commission is best understood as a bureaucratic organization much like a national government apparatus. This image is based on the fact that the individual commissioners are in charge of specific portfolios that require most of their time and energy. They are therefore, according to this image, likely to assume a portfolio role in the Commission. Since portfolios are in most cases organized according to sector or function, portfolio interests are equivalent to sectoral or functional interests. Commission decisions are consequently likely to be compromises between sectoral interests (Egeberg 2006a; 2006b). Supporting this view is the finding of studies of administrative culture in the Commission's directorates-general. They document that the individual directorates-general have distinct cultures and identities that represent differing views on how to approach policy problems (Abeles, Bellier and McDonald 1993; Ban 2013; Cini 1997; McDonald 1997). Furthermore, the sectoral organization of the Commission attracts similarly structured interest groups and eases contact with sectoral ministries in the member states' national governments, which again allegedly underpins the sectorized nature of the Commission.

The final image is "the constrained executive". According to this image, the Commission is treading a fine balance between autonomous action and responsiveness to its environment. The starting point for this image is the allegedly limited nature of the Commission's autonomy. For example, the member states and the European Parliament control the appointment of the commissioners, decide the Commission's budget, modify and adopt its legislative proposals, and control its delegated powers to issue tertiary regulation. This image also makes a point of the fact that the Commission's autonomy has been challenged over the past two decades. First, since

Maastricht, the member states have been reluctant to continue the apparently ever-increasing responsibilities of the Commission. Second, successive functions have been carved out of the Commission's portfolio and entrusted to European agencies. Third, the Lisbon Treaty strengthened the EU's foreign policy capacity and carved out the main external functions of the Commission and transferred them to the new common EU foreign minister and foreign service. Fourth, the Commission has been under growing pressure from the European Parliament whose powers over the appointment of the Commission have been strengthened. Finally, with the increase in the EU's functions over time—not least to include sensitive issues like food safety, environmental protection, and financial regulation—the Commission's actions are also increasingly a matter of public concern (Hartlapp, Metz and Rauh 2014: 13-29; Kassim et al. 2013: 130-151; Wille 2013: 186-207).

According to this image the Commission is best understood as an actor that needs to devote considerable attention to organizational survival and maintenance. The image thus builds on the public administration literature that sees concerns for autonomy, reputation and legitimacy as basic drivers of organizational behavior (Carpenter 2001; 2010; Meyer and Rowan 1991; Wilson 1989). A key insight is that when these concerns are threatened, organizations can be expected to take measures to protect, maintain and enhance them. On the internal front, organizations may start focusing on high technical performance, high ethical standards and norms of procedural fairness, or seek to protect the organization's mission by avoiding tasks that differ significantly from those at the heart of the organization. On the external front, organizations may start to fight organizations that perform similar tasks, focus on tasks that are not performed by others, and avoid tasks that produce divided or hostile constituencies (Wilson 1989: 179-196; Carpenter 2010: 33-71). Examples of the Commission exhibiting such behavior include several instances of the Commission deliberately limiting its own power and actively seeking to return it to the member states, for instance the Commission's push to re-nationalize competition policy in 2002 (Wilks 2005; Cini and McGowan 2009: 35-39), its initiative to nationalize GMO authorizations in 2015 (Geelhoed 2016; Randour, Janssens and Delreux 2014; Skogstad 2011), and its attempt to reform the comitology system in 2017 to prevent decision-making power returning to the Commission in so-called no-opinion situations (Commission 2017).

In sum, several images exist of the Commission's true nature. They offer different interpretations of the Commission but, with the exception of the image of "the technocratic machine", they share the notion that the Commission is not a neutral actor in EU politics, but an actor with distinct interests. Much of the existing literature subscribes to only one of the six images,

but to understand the full complexity of the Commission it seems overly reductionist to assume that it is constantly motivated by just one set of goals. It seems plausible that all images have some merit, but may be empirically relevant to different extents. They can be considered alternative roles that can be evoked by the Commission depending on the characteristics of the individual decision situation. Several suggestions can be found as to what determines which image prevails in a given situation. These include saliency, policy uncertainty and policy type (Hartlapp, Metz and Rauh 2014 291-292; Egeberg 2006a). However, for the present, the important point is not the relative value of the different images, but rather the fact that all the images – with the exception of the technocratic image – imply that the Commission is an actor with interests to pursue, protect and develop.

One thing, however, is to have interests; quite another is to act on them. The question is whether the Commission is in a position to effectively pursue its interests in the EU political system. It often faces considerable resistance, even hostility, from the member states, the European Parliament and stakeholders. Pursuing interests is therefore not straight-forward, but requires a creative and strategic approach. In the remainder of the paper an analytical framework is built for understanding how the Commission may adopt such an approach. The framework stresses how informal strategies may be employed to pursue interests. It distinguishes between four types of strategies:

- *Strategy 1*: Getting the house in order – making the Commission's numerous directorates-general work together
- *Strategy 2*: Exploring the political room for maneuver – anticipating the preferences of the Council of Ministers and the European Parliament
- *Strategy 3*: Building coalitions – securing a strong alliance with stakeholders behind new initiatives
- *Strategy 4*: Manipulating institutions – using the intricacies of the EU's decision-procedures to influence the process and the outcome

Strategy I: Getting the house in order

With thousands of highly educated employees, the Commission is a resourceful organization that can muster considerable expertise when drafting new initiatives. However, it is also a fragmented

organization. Fragmentation is most evident at the top of the organization, the College of Commissioners. As noted by Coombes (1970) in the first major study of the Commission:

> The Commissioners […] differ from most national executive leaders in that they are not bound together by membership of the same political party or by adherence to the same mandate. Since each Commissioner is approved in practice by his own country's government it cannot truly be said that they are collectively responsible for their tenure of office. Indeed no one has yet found a satisfactory explanation of what holds them together (Coombes 1970: 252).

The difficulties identified by Coombes almost fifty years ago have intensified many-fold over the ensuing years. The Commission is now led by a college of 28 commissioners. They do not necessarily know each other upon taking office, are not tied together by any party organization or shared ideology, and do not have any common future once their time in office is completed.

However, fragmentation not only occurs at the political level; it is also evident at the administrative level. First, the Commission is divided into an increasing number of Directorates-General (DGs) and services. The number of DGs now exceeds the number of ministries in most national government systems. The DG structure has grown from the original nine to (so far) 31. To this number can be added 16 so-called services of a more technical nature, e.g. the European Anti-Fraud Office, the Commission's Internal Audit Service, and the Commission's Legal Service. Second, the growth in the number of member states has led to an increasingly fragmented work force. The multinational composition of the Commission now includes officials of 28 different nationalities. The Commission therefore also faces a host of challenges of socialization, communication, and cross-cultural (mis)understandings (Ban 2013).

Given this fragmented nature, the relevant resources and competences to draw upon when formulating new large initiatives are typically spread across a number of DGs and services. If the Commission is to fully utilize its resources when formulating new initiatives, the most immediate challenge is therefore internal coordination – that is, to get the house in order.

To understand this challenge we can draw upon the public administration literature, which for more than a century has studied coordination in large organizations. Two positions can be identified in this literature (Senninger et al. 2019). The first is an efficiency perspective. It holds that coordination makes organizations function better. Large organizations need to be divided into

separate units in order to specialize and concentrate expertise. The work of these units must then be coordinated for the organization to produce quality outcomes. A large organization which is divided into specialized, but coordinated units is therefore effective. However, to be effective, coordination has to be done by hierarchical means. Specialized units must be placed in a structure of authority so that their work can be coordinated by orders of superiors to subordinates (Christensen and Lægreid 2008; Gulick 1937; Peters 2015)

However, many real-world large organizational systems are not organized as a hierarchy, but as a set of parallel hierarchies. A prominent example is a modern government organized into a set of equal-ranking ministries. Such a set-up leaves coordination needs unsolved since some issues are likely to fall between the boundaries of the parallel hierarchies, while other issues may the co-responsibility of two or more parallel hierarchies. These situations can be referred to, respectively, as organizational underlap and overlap (Wegrich and Stimac 2014). To handle these situations, it is customary to establish interorganizational task forces, working groups, or coordination committees. However, in contrast to hierarchical coordination, these coordination mechanisms do not rely on authority, but are based on negotiation.

Considerable scholarly attention has been devoted to negotiated coordination. The general view is that is likely to be less efficient than hierarchical coordination. This is because negotiating actors can veto changes even though they are pareto-optimal (Scharpf 1994). Individual managers may have good reason to do so because changes, even though pareto-optimal, may have undesirable individual distributional consequences. Managers are likely to care about their own organization's autonomy (Wilson 1989: 179-196), budgets (Niskanen 1971) or slack (Migué and Belanger 1974). Their organizations may also develop distinct identifications and "selective perception" of given issues (Simon 1976 [1945]: 198-220; Dearborn and Simon 1958). For all these reasons, individual managers may be skeptical of organizational changes or joint ventures with neighboring organizations. Negotiated coordination may therefore turn into turf battles (Wilson 1989: 179-196). If so, coordination results in organizational inefficiency. This is the second perspective on coordination.

Scharpf (1994) has explored a potential reconciliation of the efficiency and inefficiency perspectives. He specifies more precisely the limits of both hierarchical and negotiated coordination. He argues that the former is vulnerable to less than idealistic motivations of the hierarchical coordinator and is, under all circumstances, likely to run into severe information shortages at the central level. The latter is vulnerable to conflicts over distributive aspects of

alternative coordinated solutions. These conflicts, according to Scharpf, become increasingly difficult to solve as the number of coordinating units grow. The way out of this dilemma is to find ways to embed self-coordination in the organization's structure, to establish "self-coordination in the shadow of hierarchy" (Scharpf 1994: 37). It appears to be negotiated coordination, but hierarchy defines the context within which negotiations take place. All actors can push negotiations onto higher levels for solution, and higher levels may intervene if they so desire. In formal terms, compared to purely voluntary negotiations, the default condition has changed. Due to the shadow of hierarchy, actors do not necessarily possess a veto since their negotiating partners can call upon their masters to intervene. According to Scharpf, this may increase the incentive to find common solutions and thus ease the daily interdepartmental coordination in organizations. In sum, if organizations can find a balance between hierarchical direction and negotiated solutions, coordination may be efficient. This position may be considered the modern version of the efficiency perspective.

If the Commission is not a neutral actor in EU politics, but an actor with interests to protect, pursue and develop in the EU political system, it is plausible that it will try to reduce the fragmented nature of its organization. There are, however, limits to what can be done about the basic organization. The collegial nature of decision-making in the College of Commissioners, the powers of the Commission President, and the number of commissioners and their appointment are structural features that are regulated in the treaties. The Commission's administrative organization – the number of DGs and services and the division of work among them – is, however, not regulated in the treaties. In fact, the Treaty on European Union explicitly leaves this question to the discretion of the Commission President (TEU, article 17). A new President typically uses this competence to reorganize the DGs and services. However, there are limits to how far such reorganizations can go. Much of the Commission's administrative organization follows from the growth in the EU's policy competences over time and from the need for a sufficient number of Commission portfolios for the 28 commissioners (Nugent and Rhinard 2015: 167–200). In sum, there are externally imposed limits to how much hierarchical coordination can be increased inside the Commission system.

It is therefore plausible that getting the house in order will be attempted by negotiated coordination. In practice this means securing that individual DGs and commissioners must allow other DGs and commissioners insight into what they do. Given the collegial nature of decision-making in the College of Commissioners such a requirement is very difficult for an individual DG or commissioner to refuse. In the public administration literature there are well-known means to

organize negotiated coordination. These include planning boards, interdepartmental committees, special coordinating units, central agencies, cabinet committees, and ministers with special coordinative portfolios (Gulick 1937: 36; Peters 2015: 74-103).

These instruments are all used by the Commission. The formal set-up signals high ambitions of negotiated coordination. The Commission's rules of procedure require that "the department responsible for preparing an initiative shall ensure from the beginning of the preparatory work that there is effective coordination between all the departments with a legitimate interest in the initiative" (Commission 2010: Article 23). This procedural rule is supported by a number of organizational arrangements at both the administrative and political level. At the administrative level, a number of units with special coordinating responsibilities exist. The most important is the Secretariat-General with a staff of about 600, which reports directly to the Commission president. It is comparable to the prime minister's office in national governments, but occupies a much more active coordinating role (Kassim 2006). Other special coordinating units at the administrative level include the Commission's Legal Service, DG Budget, and DG Human Resources and Security. Furthermore, there is a requirement to set up interservice steering groups to prepare major initiatives. At the political level, several coordination mechanisms exist. Each commissioner has a personal office, the *cabinet*, which is responsible for keeping the commissioner informed about the work of other commissioners (Spence 2006). Groups of commissioners are often formed to keep focus on important cases, a system which Commission President Juncker took to new heights in 2014 when he appointed vice-presidents as "super-commissioners" in charge of priority projects involving several portfolios. Finally, the entire College of Commissioners meets once a week to discuss important cases.

Without hierarchical direction, however, there are limits to how much can be accomplished with these structures. The may secure "negative" coordination – that is, ensure that new initiatives do not interfere with the established policies and interest of other units (Scharpf 1994: 38-39). It is more doubtful whether, without hierarchical direction, they can be used for "positive" coordination – that is, to maximize the overall effectiveness and efficiency of initiatives by exploring and utilizing the joint competences of several units (Scharpf 1994: 38-39).

To enable the efficient pursuit of its interests, it is therefore plausible that the Commission attempts to embed negotiated coordination in hierarchical structures to the extent possible. That is, to create negotiated coordination in the shadow of hierarchy (cf. Scharpf 1994). Traditionally, due to the Commission's fragmented nature, this has been difficult. However, over

the past decades, fragmentation has been reduced and power gradually centralized. In the literature, this phenomenon is known as "presidentialization" of the Commission. It is the result of four interacting factors (Dinan 2016; Kassim et al. 2017; Kurpas, Grøn and Kaczynski 2008; Peterson 2017). First, successive enlargements has increased the number of commissioners to 28. As with other groups that increase in size, this means that there is less room for informal deliberation, the relative importance of the individual group member declines, and attention shifts toward the group leader. Second, successive treaty changes have increased the formal powers of the Commission President: they have personalized the selection of the president; they have allocated powers to the President in the areas of appointment, portfolio assignment and dismissal of individual commissioner; and they have recognized the policy leadership role of the President. Although not a formal treaty change, the *Spitzenkandidat* system, according to which the candidate representing the party that received the most votes in the EP elections becomes Commission President, has further bolstered these formal powers. Third, internal reorganization of the Commission has strengthened its central administrative capacity. At the political level, the autonomy of the individual commissioners has been diminished by making vice-presidents responsible for thematic groups of commissioners; a system that Commission President Juncker further developed by appointing vice-presidents as "super-commissioners" in charge of priority projects involving several portfolios. At the administrative level, the most dramatic change is the empowerment of the Commission's Secretariat-General and its transformation into a personal service of the presidency. Finally, entrepreneurship has also added to the centralization of power in the Commission. Traditionally, Commission Presidents have acted like primi inter pares rather than political leaders, but less so over time. Especially presidents Barroso and Juncker have invested considerable personal prestige in more central control of the entire Commission.

In sum, while these changes have not turned the Commission into a full-fledged hierarchy, they have reduced its fragmented nature and increased central control. Over time, embedding negotiated coordination in hierarchical structures has therefore become more realistic. The Commission is therefore expected to actively try to follow this strategy as a means to pursuing its interests in the EU political system. However, this strategy is likely to be somewhat controversial and sometimes contested. Seen from the perspective of the individual commissioner and the individual DG, coordination represents a collective good. It is in the common interest of the Commission to coordinate in order to pursue interests more efficiently. However, it is not necessarily in the interest of the individual commissioner or DG because coordination may require

compromise. In short, coordination may resemble a prisoner's dilemma. Successful coordination therefore requires central control. As argued above, centralization in the Commission has increased, but has not turned it into a hierarchical structure. Coordination is therefore likely to be a sensitive issue in the Commission.

Strategy 2: Exploring the political room for manoeuvre
Jacques Delors is widely seen as one of the most successful Commission presidents in the history of the EU. During his presidency a decade of "euro-sclerosis" was replaced with renewed energy and a push for completion of the single market. Delors was undoubtedly a remarkable Commission president, but his presidency coincided with a constellation of member state preferences that made it possible, even welcome, to push integration forward. In a comparison of preference constellations among the member states in the Delors period (mid-1980s to mid-1990s) with the Prodi period (late 1990s to early 2000s) Hix (2006) finds that it was much more difficult for the EU to adopt legislation under Prodi. "In the earlier period, with a considerable distance between the pivotal member of the Council … and the status quo… the Commission could propose any policy in the [relevant] range, and it would be accepted by the Council… The situation was rather different in the late 1990s… the EU was gridlocked" (Hix 2006: 150-151). Part of Delors' success is thus arguably due to a political room for manoeuver that was unusually large.

More generally, since legislative proposals need to be enacted by the Council and the European Parliament to enter into effect, the Commission's political room for manoeuver depends on what is acceptable to these two institutions. If the Commission wants to use legislation to pursue its interests, it therefore has an incentive to sound out how much room for maneuver it has. It may then strategically formulate new initiatives so that they suit its interests to the extent possible while still being acceptable to the Council and the Parliament.

Many theories of EU politics, for example formal procedural models, assume that the Commission anticipates the preferences of the Council and the Parliament (Steunenberg and Selck 2006; Crombez and Vangerven 2014). However, identifying the room for manoeuver is not straightforward. It requires an intimate knowledge of the preferences of the Council and the European Parliament. This again demands an ongoing dialogue with the Council and the Parliament. In the case of the Council, there are well-institutionalized venues for such a dialogue, while interaction with the Parliament is much less institutionalized. It is therefore challenging for

the Commission to anticipate the preferences of the Parliament. In the following these two different situations are discussed in more detail.

The Commission's dialogue with the member states

As the regards the Council, the Commission has a comprehensive and multifaceted system for an ongoing detailed dialogue with the member states' national administrations. This system is the co-called European administrative space (Heidbreder 2008; Hofmann 2008; Trondal and Peters 2013). This denotes the increasingly integrated nature of administrations at the national and supranational level within the EU. It is an emerging common administrative order that develops in separate, but interconnected constellations and configurations. The most important building blocks in the European administrative space are the following four.

The first is the Commission's expert groups. These groups are consultative bodies set up by the Commission. Their operation is regulated by a Commission decision (Commission 2016). Their main task is to advise the Commission on the preparation of legislative proposals and policy initiatives as well as on the implementation of EU legislation. Expert groups have existed since the foundation of the EU, and their number has increased steadily over time in tandem with the EU's growing policy competences. They comprise a variety of actors ranging from independent individuals to representatives of NGOs. However, the vast majority of expert groups comprise a specific type of member, namely member state representatives from the relevant national ministries or agencies. Expert groups are created and managed at the level of the DGs and are therefore organized along the lines of the DGs' sectoral portfolios (Gornitzka and Sverdrup 2008; Hartlapp, Metz and Rauh 2014: 209-226).

The Commission's register of expert groups shows that approximately 700 expert groups exist. However, this number should be read with some caution, because counting is difficult due to the heterogeneous nature of expert groups. Some have a broad mandate. For example, the European Climate Policy Group, which is an expert group under DG Climate Action, is to "assist the Commission in the preparation of legislative proposals and policy initiatives" in the climate action area.[1] Other expert groups give advice on very specific issues. For example, the Decommissioning Funding Expert Group, which is an expert group under DG Energy, is to "advise the Commission on all questions related to the decommissioning of nuclear plants".[2] Some expert

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[1] Source: Register of Commission Expert Groups (http://ec.europa.eu/transparency/regexpert/index.cfm)
[2] Source: Register of Commission Expert Groups (http://ec.europa.eu/transparency/regexpert/index.cfm)

groups meet often, others rarely. Some expert groups are permanent, some are temporary. Finally, some expert groups are formally set up by a Commission decision, others are informally established by an individual DG. However, the sum of expert groups represents a considerable resource to draw upon by the Commission. They can provide their official function, namely to advise the Commission on technical matters. But they can also be used to send out trial balloons to relevant member state representatives to see how new ideas might be received.

The second building block in the European administrative space is the comitology system. This is also system of committees in which the Commission interacts with official representatives of the member states. But in contrast to the expert groups, which provide advice in the Commission's policy formulation phase, the comitology committees operate in the implementation phase (Bergström and Ritleng 2016; Blom-Hansen 2018; Brandsma and Blom-Hansen 2017). Their official task is to control and approve the implementation measures, which the Commission issues based on powers delegated by the Council and European Parliament. The first comitology committees were established in the 1960s, and today there are 200-300 comitology committees spread over all policy areas, which the EU regulates. Although third parties may take part in committee meetings, comitology is an exclusive arena for interactions between the Commission and the member states. Their primary function is to operate as a kind of miniature Council of Ministers. The member state representatives take formal and binding votes on the Commission's draft implementation measures. However, like the expert groups, comitology committees are created and managed at the level of the DGs and are therefore organized along the lines of the DGs' sectoral portfolios. For example, the Electricity Cross-Border Committee controls how DG Energy formulates implementation measures within the EU's internal market in electricity. The members of this particular committee are representatives of the member states' national energy authorities.[3] Like the expert groups, the comitology committees represent a considerable resource to draw upon by the Commission. Although their primary function is to control the Commission, they also constitute a forum for informal dialogue between the Commission and the member state administrations in which new ideas for regulation may be informally discussed.

The third building block in the European administrative space is the large number of regulatory and administrative networks that have been established over the course of the EU's entire history, but increasingly so over the last 20-25 years (Coen and Thatcher 2008; Levi-Faur 2011;

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[3] Source: Information available in the Commission's comitology register
(http://ec.europa.eu/transparency/regcomitology)

Mastenbroek and Martinsen 2018). These networks consist of institutional representatives of national executives, typically ministerial departments or agencies that are responsible for the implementation of EU policies. Their organization varies from relatively informal and horizontal to formalized networks established by EU legislation and operating with a budget and under firm Commission chairmanship. Their tasks vary from information sharing and informal coordination to soft law functions such as establishing norms and benchmarks for national administrations. The Commission is a member of almost all these networks, but its role varies. Mastenbroek and Martinsen's literature survey (2018) shows that the Commission behaves proactively and strategically in some networks, but more passively in others. The number of networks is difficult to specify because of their heterogeneous nature. But in one counting, Levi-Faur (2011) identified 57 different networks operating in 36 policy areas. One example of a network is the IMPEL network that was set up in the early 1990s to deal with insufficient national implementation of EU environmental law. It is composed of national environmental authorities and the Commission, which provides secretarial resources and co-chairmanship of the network. The role of the Commission was designed to be relative modest, but over time "it has taken on the role as 'the father of the family'. It steers the direction of the network's projects not only by its funding, but also through its expertise and knowledge and role as coordinator" (Martens 2006: 136). Like the expert groups and comitology committees, these networks represent a considerable resource for the Commission that can be used to gauge the reception of new ideas.

The final major building block in the European administrative space is the set of EU agencies that have been created over the past 20-30 years (Egeberg and Trondal 2017; Kelemen 2002; Thatcher 2011). These agencies are separate legal entities set up to perform tasks specified in a founding regulation. They are led by a director and a management board composed of representatives of the member states, the Commission and, in some cases, the European Parliament and interest groups. In total, there are 30-40 agencies. Examples include the European Environment Agency, the European Medicines Agency and the European Chemicals Agency. The functions of the agencies have traditionally been limited to the collection of information and provision of advice to the EU institutions, but lately agencies in the financial area, e.g. the European Banking Authority, have been given more regulatory functions (Craig 2016). From the formal set-up it is not clear whether the agencies lead to a more intergovernmental or more supranational EU administration. But in a review of research on this question, Egeberg and Trondal (2017) find that the agencies in practice lean towards the Commission, and that the Commission's DGs in practice function as

parent departments for the individual agencies – a relationship resembling ministry-agency relationship in the member states' national central administrations. In sum, again we identify an administrative order which represents a considerable resource for the Commission, in which the Commission interacts closely with member state representatives, and which can be used to informally discuss new ideas.

In conclusion, the European administrative space is a construction that in separate, but interconnected constellations enables close contact between administrations at the EU level and the member states. It is a web of different actors and organizational fora. The spider in the middle of this web is the Commission, which is a major actor in all areas of the web. If the Commission wants to test the limits of its political room for manoeuver vis-a-vis the member states, the European administrative space provides it with a giant sounding board.

The Commission's dialogue with the European Parliament

In contrast to the well-institutionalized structures for an ongoing dialogue with the member states, there are very few institutionalized venues for regular contacts between the Commission and the European Parliament.

However, indications are that relations are relatively close and take place at all levels of both institutions. At the top, the individual commissioners are increasingly expected to cultivate a relationship with "their" political group in the European Parliament. Liberal commissioners are thus to engage closely with the liberal group in the Parliament, socialist commissioners with the socialist group, and so on. A more explicit political element is thus gradually becoming part of the commissioner role (Wille 2013: 88-89). At the level of top civil servants, relations with the European Parliament also appears to be increasingly regularized. Based on interviews with 200 top Commission officials Ellinas and Suleiman (2012: 213) conclude that "[t]hroughout a normal year in office, the vast majority of our protagonists get to have some kind of contact with the EP". Their data show that about half of the interviewed 200 top officials have much more intense contacts and deal with the Parliament at least once or twice a month (ibid.: 213). These contacts take the form of attending committee meetings in the Parliament or talking with individual members of Parliament.

Below these high-level contacts between the Commission and the European Parliament, there seems to have developed an informal everyday relationship between lower-ranking officials in the Commission's DGs and the administrative staff of the Parliament. In a study of Parliament officials, Egeberg, Gornitzka and Trondal (2013; see also Kurpas, Grøn and

Kaczynski 2008: 27-33) find that about half of them have contacts by email, phone or physical meeting with officials in the Commission's DGs "very often" or "fairly often". Part of the background for these contacts is, according to the Parliament officials, that the Commission seeks to find out the views of the Parliament on forthcoming Commission proposals.

In sum, the relationship between the Commission and the European Parliament is gradually characterized by regularized contacts at all levels of both institutions. However, compared to the venues for contacts between the Commission and the member states, these contacts appear less institutionalized and more embryonic. Indeed, top Commission officials allegedly still feel some discomfort with the Parliament and appear more comfortable dealing the more "predictable" Council system (Ellinas and Suleiman 2012: 77). It is therefore reasonable to conclude that it is far from impossible for Commission's to test the limits of its political room for manoeuver vis-a-vis the European Parliament, but the opportunities for doing so are considerably less favorable than in the case of the Council.

Strategy 3: Building coalitions
A recent comprehensive study of lobbyism in the EU concluded that the preferences of the EU institutions can be influenced by interest groups if these groups provide policy-relevant information, if they represent large groups of voters, and if they represent considerable economic power (Klüver 2013). While this finding rested on an unusually solid empirical basis, the point that interest groups are important actors in EU politics confirmed insights from many years of research (e.g. Greenwood 2011; Bunea and Baumgartner 2014; Eising et al. 2017). This state of affairs shows that even though the Council of Ministers and the European Parliament make the ultimate decisions in the EU, neither institution is immune to pressure from outside coalitions. This fact is important for the Commission. Because if this institution is not a neutral actor in EU politics, but an actor with interests to protect, pursue and develop in the EU political system, it has an incentive to try and influence which coalitions develop around its policy initiatives.

For a number of reasons, the conditions for doing so seem relatively favorable. First, the European administrative space that was discussed in the preceding section provides the Commission with a ready supply of contacts to both member states and interest groups. As argued in that section, these contacts can be used to sound out member state preferences. However, they can also be used to identify potential allies that may help initiatives survive the EU policy proces.

Second, given its right of initiative in the EU legislative process, the Commission is a natural object of lobbyism by interest groups and stakeholders. Bruxelles is home to thousands of lobbying organizations – approximately 3,700 according to one careful counting (Wonka et al. 2010). They approach all EU institutions, but especially the Commission because they want to influence the policy formulation stage. However, this is not a one-way street. The involvement of interest groups in policy formulation is often welcomed by the Commission, because it often needs the technical expertise possessed by the interest groups. However, involving interest groups in policy drafting also provides the Commission with opportunities to seek out allies when dealing with the Council and the European Parliament in the next stage of the policy process.

Third, the Commission is embedded in an institutional environment that encourages a dialogue with affected interests and important stakeholders. Treaty provisions include a general obligation for the Commission to "carry out broad consultations with parties concerned" (TEU, article 11) as well as more specific consultation requirements in the various policy areas. For example, in the employment market area the Commission is obliged to "consult management and labour on the possible direction of Union action before submitting proposals" (TFEU, article 154). The Treaty has also established the Social and Economic Committee and the Committee of the Regions as special consultative bodies. Secondary legislation also includes a high number of provisions that require the Commission to consult before taking initiatives. One example is the Council decision that establishes the Advisory Committee on Safety and Health at Work composed of representatives of national governments, trade unions and employers' organisations with "the task of assisting the Commission in the preparation, implementation and evaluation of activities in the fields of safety and health at work" (Council 2003).

Finally, over the past 15-20 years the Commission has pursued a "better regulation" agenda. This originates in the dishonorable resignation of the Santer Commission in 1999 and the ensuing Prodi-Kinnock reforms of the Commission. But it is also a reaction to increasing demands for better regulation from the member states, the European Parliament and business organizations (Radaelli 2018; van Ballaert 2017). One building block in this agenda is improved consultation with stakeholders. Indeed, the Commission has sought to create a proper consultation regime that provides equal access for all types of stakeholders and explicitly tries to avoid bias in favor of business groups. Three instruments figure prominently in this consultation regime: open online consultations, stakeholder conferences, and consultation in more restricted fora like advisory groups and expert groups (Quittkat and Finke 2008; Quittkat and Kohler-Koch 2013). There is a scholarly

debate on the effectiveness of this consultation regime, but for the present the point is that – like the European administrative space, the lobbying efforts of interest groups, and the favorable institutional setting – the consultation regime provides the Commission with opportunities for seeking out allies that may be useful in its dealings with the Council and the European Parliament.

In sum, it seems plausible that the Commission possesses the instruments to influence the nature and magnitude of the coalitions, which develop around its policy initiatives. This is an important political weapon. Because, as argued by Schattschneider (1960), the outcome of political processes is often determined by the scope of the conflict. By scope he referred to the number and nature of actors involved in the conflict. Changing the scope of conflict is likely to change the balance of power among the original actors, sometimes so much that the original actors may lose control of the conflict altogether. As Schattschneider (1960: 4) argued, "conflicts are frequently won or lost by the success that contestants have in getting the audience involved in the fight or in excluding it".

Since the Commission is the core actor in the formulation phase of EU politics, it occupies a unique position from which to influence the scope of the conflicts in the later stages of the policy process. It can do this by building more or less encompassing coalitions of stakeholders. Given the fragmented and collegial nature of the Commission's organization, these coalitions are not likely to be organized from the top and resemble neo-corporatist structures in which peak associations of organized interests negotiate with top political decision-makers (Schmitter 1979). The building of coalitions is more likely to be left to individual commissioners and DGs.

One example of a powerful coalition orchestrated by the Commission is the green coalition that in the late 1980s succeeded in changing EU biotechnology policy from a business-friendly to an environment-friendly regime. Against a backdrop of rising environmental consciousness among citizens and an increasingly powerful green lobby, DG Environment created a coalition consisting of powerful NGOs, environmental officials in national governments, environmental ministers, sympathetic journalists, environmentally oriented scientists, and the wider public. It was a network that met in environmental conferences and summits organized by international organizations like the UN and OECD, environmental policy forums, advisory bodies and committees. It was tied together by a belief that biotechnology is a "risky" technology with uncertain outcomes, a commitment to protecting the natural environment, an aspiration to stay in control of science, and a low tolerance for risk. In the late 1980 this coalition was successful in not

only initiating restrictive regulation of biotechnology, but also in defending it throughout the legislative process (Rhinard 2010: 141-177).

More generally, what do coalitions look like in practice? They are likely to be informal networks of a more or less fluid nature and have a more or less permanent character. In the literature, three such types of networks are often discussed under the headings of policy networks, epistemic communities, and advocacy coalitions. In the following a closer look is taken at these network types, and it is discussed how relevant they are in the EU system.

First, the term policy network is generic and encompasses a list of network types ranging from closely knit "policy communities" to loosely coupled "issue networks". In between these endpoints lie intermediate cases characterized by varying number of participants, types of represented interests, frequency of interaction, persistency, degree of consensus, and resource dependencies (Marsh and Rhodes 1992; Blom-Hansen 1997). In the EU, policy communities, the most closely integrated and stable type of policy network, are difficult to establish and maintain due to the EU's lack of a political center, its fragmented, complex and fluid institutional landscape and the continuing inter-institutional contestation over political leadership (Kassim 1994). But examples exist. The most compelling example is probably found in agricultural policy. For the first 3-4 decades of the history of the EU, the common agricultural policy was characterized by a tight policy network consisting of the agricultural commissioner, DG Agriculture, agri-businesses and the interest group for European farmers, COPA. This network was able to dominate agricultural policy-making and to exclude consumer and environmental interests. The most important implication was that, although EU agricultural policy had several objectives, ensuring farmers a fair living standard was in practice the objective, which had the highest priority. In the 1980s the tight agricultural policy network was gradually loosened due to the influence of environmental and consumer-oriented interests (Daugbjerg 1998; Rhinard 2010)

Epistemic communities, the second type of network, are composed of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain. They function on the basis of shared beliefs, scientific expertise and understandings of proper policy solutions. Their influence is based on the complexities and uncertainties of policies, which lead policy-makers to seek their advice (Adler and Haas 1992; Haas 1992). The role of epistemic communities in EU politics has been investigated in a number of areas, including biotechnology (Rhinard 2010), taxation policy (Radaelli 1995), economic and monetary union (Verdun 1999) and common defense policy (Cross 2013). The

support of epistemic communities is no guarantee for success since, as pointed out by Haas (1992: 11), the scientific evidence may be ambiguous, or the experts may be divided into contending factions. Furthermore, epistemic communities are not easily manipulated for short-term political gain since their motivation lies in developing professionally sound policies rather than winning political fights. However, when policy initiatives are congruent with dominating scientific beliefs, epistemic communities may be mobilized into politics. Importantly, the Commission has a first-mover advantage here since it develops and formulates policy initiatives.

Advocacy coalitions, the third and final type of network, share some characteristics with both policy networks and epistemic communities (Jenkins-Smith et al. 2014). Like both these network models, the advocacy coalition framework assumes that policy is made at the subsystem level by a mixture of actors with formal roles in the policy process (such as political parties, ministers and civil servants) and actors who are involved informally (such as interest groups, representatives of subnational governments, researchers, journalists, and members of the news media). With the policy network model it further shares the notion that part of the "glue" that ties coalition members together is resource dependencies. With the epistemic community perspective it shares the notion that another part of this "glue" is cognitive - shared core beliefs about policy. The advocacy coalition framework is, however, distinct by its insistence that policy change takes place gradually and takes a long-term perspective to understand. It is also distinct by the notion that policy subsystems are likely to be inhabited by several advocacy coalitions that may co-exist peacefully or be in conflict with each other. The advocacy coalition framework was developed with the political system of the USA in mind but, according to its proponents, it has a high potential as a framework for analyzing EU politics. This is because the framework directs attention to the subsystem level, to the broad involvement of formal and informal actors in politics, and to venue-shopping as a likely strategy adopted by coalitions (Sabatier 1998). However, the framework has also been criticized as insufficient for analyzing EU politics because of its insistence on stability and the adoption of a long-term perspective. EU policy-making is, allegedly, often made by fast-changing and issue-specific alliances constructed on an *ad-hoc* basis. The advocacy coalition framework should therefore arguably be supplemented with *ad-hoc* coalitions for the study of EU politics (Rozbicka 2013; see also Mahoney 2007). Be that as it may, the advocacy coalition framework has been applied to EU politics in a number of areas, including biotechnology policy (Rhinard 2010), the common agricultural policy (Nedergaard 2008), financial services (Quaglia 2010), and steel policy (Dudley and Richardson 1999).

In sum, the Commission has both the incentive and the means to influence which coalitions develop around its policy initiatives. It knows from experience that the Council of Ministers and the European Parliament are not immune to pressure from outside coalitions. And the the European administrative space, the lobbying efforts of interest groups, an institutional setting favorable to widespread involvement of affected interests and the consultation regime established as part of the better regulation agenda provide the the Commission with opportunities for seeking out useful allies for dealing with the Council and the European Parliament. The point is not that the Commission can always control coalitions, decide when they develop or whether they evolve as policy networks, epistemic communities, advocacy coalitions, or *ad-hoc* coalitions. The point is rather that the Commission, due to its first mover advantage in EU politics, may influence how encompassing a given coalition is and at what point in the policy process it is activated. The Commission may therefore have the opportunity to influence what Schattschneider (1960) referred to as the scope of conflicts.

Strategy 4: Manipulating institutions

To simplify only a little, the formal role of the Commission in the EU policy-making process is two-fold. First, it is to produce legislative proposals for the Council of Ministers and European Parliament to decide. Second, once these proposals have been enacted, the Commission is to implement them by adopting delegated and/or implementing acts under the guidelines specified in the delegation provisions in the proposals. These two tasks may sound innocuous but, in reality, they are embedded in procedures that leave many options open to the Commission, which, if cleverly used, may be utilized to influence the process and its outcome.

Some of these options have attracted considerable scholarly interest; others lead a quiet life under the scholarly radar. In the following, five options for institutional manipulation are discussed in more detail. They are not meant to constitute an exhaustive list, but to convince the reader that the EU's decision procedures leave many options open to a creative utility-maximizing actor.

The first option has been subjected to intense scholarly scrutiny. This is the option of strategically formulating proposals so that they are acceptable to the most "friendly" majority in the Council of Ministers and European Parliament. As demonstrated by McKelvey (1976) and others, when an actor has the exclusive right to make a proposal, and when this proposal is decided by majority-voting with no amendments allowed, then this actor possesses almost dictatorial powers to

select a proposal close to his own policy preferences while simultaneously commanding the support of a minimal majority of the decision-making body. It has been intensively discussed in the literature to what extent the Commission has such formal agenda-setting powers (e.g. Tsebelis and Garrett 2000; Slapin 2014; Steunenberg and Selck 2006). The consensus is that over time this is decreasingly the case. This holds especially for the period after the Lisbon Treaty, because this treaty extended the co-decision procedure (now the ordinary legislative procedure) to most policy areas. Under this procedure, the Council and the Parliament can negotiate directly in the conciliation committee and change proposals without any further involvement of the Commission. To most observers this fact effectively strips the Commission of formal agenda-setting powers (but see Tsebelis and Garrett (2000: 25-26) for a dissenting view).

However, even though the Commission's formal agenda-setting powers may be curtailed, it may still possess *informal* agenda-setting powers. As argued by Pollack (2003: 47–56), agenda-setting may take place informally when an actor can set the agenda for a group of decision makers, not through formal powers, but through the ability to define issues and present proposals that can rally consensus. This line of thought dates back to Schelling's (1963) idea of focal points. He argued that co-ordination problems with multiple solutions can be solved by proposing solutions that enjoy "prominence, uniqueness, simplicity, precedent, or some rationale that makes them qualitatively different from the continuum of possible alternatives" (Schelling 1963: 70). Garrett and Weingast (1993; see also Ringe 2005) have taken this thinking further and developed the idea of constructed focal points. They argue that, in the absence of a natural or preexisting focal point, an institution can create one and may even be entrusted with this task. Arguably, this is exactly one of the reasons why the Commission was originally given the right of initiative in the EU's legislative process. In other words, constructing focal points is a way of exercising informal agenda-setting power. It is not an omnipotent weapon; its efficiency is likely to vary with the structure of the decision situation. Focal points are likely to have limited impact in situations characterized by full information, clear distributional consequences and intense societal pressure. Under these conditions, agreements are likely to be the result of hard intergovernmental bargaining. However, absent these conditions, focal points may lead actors to settle on one solution among many potential ones. In EU politics, focal points have been shown to matter in areas as diverse as international trade policy (Elsig and Dupont 2012), the design of the comitology system (Blom-Hansen 2008), international air transportation policy (Woll 2006), company law (Ringe 2005), and the evolution and operation of the internal market (Garrett and Weingast 1993). The point is that when a negotiation situation

can be influenced by focal points, the Commission is in a favorable position for doing so due to its right of initiative and first mover advantage.

The second option for institutional manipulation follows directly from the Commission's right of initiative. This is the power *not* to make a proposal. This means that if the Commission finds that the potential changes of the status quo, which are acceptable to the Council and Parliament, are inferior to the status quo, it can refrain from making a proposal. The Commission can thus act as a gatekeeper and possesses a *pre*-veto in the EU legislative process. However, the Commission is not completely autonomous to act in this way. Both the Council and the Parliament can request the Commission to make legislative proposals (TFEU articles 225 and 241). Until the Lisbon Treaty, there was some uncertainty whether such a request was legally binding for the Commission (see Moser 1997: 336). However, the Lisbon Treaty clarified that the Commission need not act upon such a request, but then must explain its reasons.[4] The record shows that the Commission often, but far from always, acts upon requests from the Council and the Parliament to make legislative proposals (Maurer and Wolf 2018). However, whether this is because the Commission agrees with the requests or feels pressured to act, is not clear. Under all circumstances, the Commission's right of initiative has been clarified and strengthened by the Lisbon Treaty, which provides it with a weapon to prevent moves away from its preferred policies. The right of initiative, and thus the power *not* to make a proposal, is closely connected to the Commission's right to withdraw proposals from the legislative process (Rasmussen 2007). The withdrawal right does not amount to a *post*-veto, because it can only be used as long as the Council has not acted (Lupo 2018). But in combination with the right of initiative it may constitute a powerful weapon. If the Commission suspects that the Council or the European Parliament intend to amend a Commission proposal in a way that it dislikes for political reasons, it can withdraw – or threaten to withdraw – the proposal and prevent a new or substitute proposal from being made. In this way the Commission can prevent a worsening of the status quo, as judged from its policy preferences. A dramatic example of this fact came with the Commission's 2015 work program, which the new Commission President Juncker used to announce the withdrawal of no less than 80 legislative proposals that the new Commission had inherited from the old Barroso Commission, but which the Council had not yet acted upon. The Commission argued for the withdrawals in the following way, which did not hide the fact that some of them were politically motivated:

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[4] The Lisbon Treaty added this sentence to article 225: "If the Commission does not submit a proposal, it shall inform the European Parliament of the reason", and this sentence to article 241: "If the Commission does not submit a proposal, it shall inform the Council of the reason".

[P]roposals are of no use if they are simply sitting dormant on a negotiating table, if they are overtaken by events, or if in the course of negotiations they are watered down to a point where they can no longer achieve their initial purpose. In some cases, the Commission is proposing to withdraw proposals in order to replace them subsequently by more ambitious proposals *or to tailor them more closely to its ten priorities* (Commission 2014: 4; emphasis added).

The third option for institutional manipulation is to strategically select the treaty base for new initiatives. The EU has many legislative decision procedures, and which one to use for a given proposal is regulated in the treaty article which functions as the proposal's legal base. The treaty base regulates matters like the decision rule in the Council of Ministers (e.g., unanimity or qualified majority) and the involvement of the European Parliament (e.g. consultation or codecision). But since it is not always clear which treaty article is the relevant one to use, and since different treaty articles may specify different decision procedures, the Commission may have some leeway to strategically select the decision procedure and thus subtly stack the deck in favor of its friends in the Council and the Parliament (Engel 2018). One blatant example of such behavior was provided by the Working Time Directive in the early 1990s where the Commission, in order to avoid a UK veto, chose to base the directive on ex-article 118a EC, which only required qualified majority in the Council, and not ex-article 235 EC, which required unanimity (Beach 2005; Rhodes 1995). More generally, this type of behavior is known as "playing the Treaty base game" (Rhodes 1995) or "procedural politics" (Jupille 2007). It may be less relevant in the post-Lisbon period since this Treaty streamlined the EU's legislative procedures so that most proposals are now decided by qualified majority voting in the Council and full involvement of the European Parliament. But the choice of Treaty base may still matter. It may influence internal procedures in the legislative bodies, for example which Council configuration and which Parliament committee treat the proposal. But it may also still matter for the relative power of the Council and the Parliament. For example, in 2018, the Commission prepared a proposal on cybersecurity and argued that the legal base for such an initiative was not completely clear:

EU action is justified based on two Treaty provisions in particular: The EU is empowered to encourage an environment favourable to cooperation between

undertakings and fostering better exploitation of the industrial potential of policies of innovation, research and technological development (art. 173 of the TFEU). Furthermore, Art. 187 TFEU specifies that the EU may set up the structures needed for the efficient execution of EU research, technological development and demonstration programmes (Commission 2018: 21).

Deciding whether to base the proposal on article 173 or 187 is not without procedural consequences, since article 173 prescribes that enactment of the proposal requires the full involvement of the European Parliament via the ordinary legislative procedure, whereas article 187 only gives the Parliament consultation rights. So, depending on how friendly the Parliament is towards the proposal, the Commission may strategically decide how much power to allocate to it through the choice of treaty base.

The fourth institutional manipulation option open to the Commission is to speculate in the dividing line between legislation and delegation. Most major EU initiatives involve some delegation of power to the Commission to issue implementation rules. But the exact dividing line is up for the Commission to suggest as part of the legislative proposal. The Commission can, of course, not decide the dividing line but, as part of its first mover advantage and informal agenda-setting power, it may influence this decision. The Commission may have a strong incentive to do so, because delegated rules are decided by other procedures than legislation and therefore allocates power differently among the EU institutions. Depending on the preference configuration among the EU institutions, the Commission may therefore subtly influence the outcome by carefully proposing what is to be decided in the legislative arena and what is to be left for delegated decisions in the executive arena. There is some evidence to suggest that this is not pure speculation. In the 1990s, when the European Parliament's power was on the rise due to the gradual introduction of codecision, the Commission and the Council had a common interest – at least in some cases – in formulating legislation in relatively broad terms and delegating wide-ranging implementation powers to the Commission. In this way, the Commission and the Council could circumvent the European Parliament and leave matters to be decided by the Commission acting under comitology procedures, which provide for control by the Council, but conveniently leaves no role for the Parliament (Heritier and Moury 2011). The Lisbon Treaty introduced an alternative delegation system to the comitology system, namely the delegated acts system. This system provides control positions for both the Council and the Parliament. Since the dividing line between the two

delegation systems is far from clear (Craig 2016), the Commission is now arguably in an even better position to speculate in delegation. Not only can it carefully propose what is to be decided by, respectively, legislation and delegation, but it may also speculate in what is to be delegated to, respectively, the comitology system and the delegated acts system (Brandsma and Blom-Hansen 2017).

The fifth and final option for institutional manipulation is to speculate in the comprehensiveness of initiatives. New initiatives often include several elements that may either be packaged into one major initiative or split into several formally separate minor initiatives. Depending on the time pressure and decision rule in the Council and Parliament, the Commission may have incentives to either package or split initiatives. The clearest example is probably found in the delegated acts system, that was introduced by the Lisbon Treaty. Delegated acts are adopted by the Commission based on delegation provisions in basic acts. They do not enter into force upon adoption by the Commission, but only after an approval period – normally two months – in which the Council and/or the Parliament may veto them (TFEU, article 290). In other words, when the Commission adopts a delegated act, the Council and Parliament are effectively given a take-it-or-leave-it offer and only have limited time to evaluate it. In this situation, the Commission may have an incentive to package initiatives in order to make them complex to evaluate and to embed unpopular elements in popular ones and thus increase the costs of vetoing the unpopular elements. An extreme example of such behavior is provided by the Commission's (2015) delegated regulation on insurance and reinsurance. This delegated act is based on 53 delegation provisions in the Solvency II directive. The Commission might have made a separate delegated act for each delegation provision – that is, 53 separate delegated acts – but it chose to package them all into one massive delegated regulation containing 381 articles and 26 annexes, taking up almost 800 pages in the EU's *Official Journal*. Packaging initiatives in this way can easily make the Council and the Parliament feel they are presented with a *fait accompli*. Not surprisingly, the Council has complained about this practice, known as "bundling", (e.g. Council 2014), and an inter-institutional agreement has even been made to restrict it (European Parliament, Council and Commission 2016: Point 31). However, as the Council readily admits, there may be legitimate reasons for bundling since delegation provisions are sometimes interlinked. But it is not always clear when this is the case, so there is a grey zone for the Commission to operate creatively in.

The five ways of manipulating institutions that have been discussed in this section should make it clear that it is possible to use the intricacies of the EU's decision procedures to

subtly influence the process and its outcome. If the Commission is not a neutral actor in EU politics, but an actor with interests to protect, pursue and develop, it has an incentive to use these options and to look for options in addition to those discussed.

Conclusion

Although the Commission sometimes acts as a disinterested technocratic actor, this paper has argued that in most situations the Commission is an actor with interests to pursue, protect and develop in the EU political system. It has also argued that the Commission is in a position to act on these interests, even though the post-Lisbon institutional landscape may provide it with a less powerful position in EU politics than previously. More specifically, the paper listed and discussed a catalogue of strategies open to the Commission. These strategies are informal but, if cleverly used, may turn the Commission into an actor that is more powerful than the formal set-up suggests.

A final question to be addressed is who within the Commission system employs these strategies? Or, at which level the strategies are employed? These questions are really questions about the Commission's internal coherence. More specifically, one may ask whether it makes sense to treat the Commission as a unitary actor in EU politics. There is no clear answer to this question, and the literature is divided. Sometimes the Commission is portrayed as a monolith with uniform preferences, other times it is described as a "multi-organization" (Cram 1994), in which the different parts are at best loosely coupled. As an empirical matter, it would be absurd to argue that the Commission is a monolith with fixed and uniform preferences. It is evident that the Commission is composed of hundreds of bureaucratic units with distinct preferences, and that decision-making in this system often resembles bureaucratic politics. However, as an empirical matter, it would be equally absurd to argue that the Commission's different parts are really independent entities acting without any central control or guidance. The question, however, is not so much what is empirically accurate, but rather what behavioral assumption is defensible for the purpose of analysis. More specifically, one may ask whether the Commission behaves with sufficient coherence in its dealings with the other EU institutions, interest groups, and member states to represent a united actor. Since decisions in the Commission system are ultimately made by simple majority-voting in the College of Commissioners, there are plausibly limits to how far policies can drift from the median commissioner. Therefore it seems justified to expect the Commission to present a relatively

consistent position towards the outside world. Consequently, it also seems defensible to base analyses of the Commission's dealings with the outside world on a unitary actor assumption. In sum, while it cannot be ruled out that the strategies discussed in this paper are sometimes used by warring factions inside the Commission in their fights over the adoption of the official Commission position, it seems defensible to assume that the strategies in general are targeted towards the outside world and employed by actors who represent the full Commission.

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