

Institutional Rebalancing: the ‘Political’ Commission

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5 March 2019

Originally published as a part of the CEPS Paperback

[What Comes After the Last Chance Commission?](#)

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What is ‘political’?

By labelling his Commission as ‘political’ President Juncker has created much confusion, inside and outside the institution. Absent a prevailing definition of what constitutes a ‘political’ entity, some features can be determined, such as that it is ruled by political bargaining and value-based reasoning; aims to influence the substance of policy outcomes (Winzen, 2011, 39); targets responsiveness or social justice (Gormley, 1986, 619); is based on open political debate (Radaelli, 1999a, 37); has the tendency to focus on ends rather than means; and is subject to the public (Bozeman and Pandey, 2003, 5).

One of the most widely used definitions is the ideal-type approach by Claudio Radaelli, who defined ‘Politics’ in terms of reasoning from values, whereas ‘technocracy’ describes behaviour based upon expertise (Radaelli, 1999a). ‘Technical’ decision-making is said not to be influenced by personal interest or political consideration (Schudson, 2006, 492); to lie outside the scrutiny of voters and influence of pressure groups (Borrás, Koutalakis and Wendler, 2007, 586); to exclude the consensus of the citizens (Radaelli, 1999a, 42); to rationalise the policy process along predictable lines (Radaelli, 1999a, 47) and to be concerned with efficiency and productivity, in a rigid process guided by rules.

Due to its hybrid nature as a “politicised bureaucracy”, the Commission is functionally divided into political and administrative levels.

The concepts of the ‘political’ and a ‘democracy’ are by no means the same. However, they are heavily intertwined and mutually dependent on each other. In fact, there is broad academic agreement that the concept of expertise contrasts with the concept of democracy (Borrás, Koutalakis and Wendler, 2007; Fischer, 1990; Radaelli, 1999a). The underlying logic of the concept of democracy is legitimate consensus and participation, whilst technocracy is based on the notion of expertise as the basis of power and authority (Radaelli, 1999b, 758). Hence, both concepts have legitimising powers, but follow different logics. “While democracy is based on legitimate consensus, free elections and participation, technocracy recognises expertise as the sole basis of authority and power.” (Radaelli, 1999b, 758). Therefore, technocratic decision-making is “a deep-seated challenge to democracy and its political form of decision-making” (Fischer, 1990, 23–24) as decision-makers are non-elected actors, who cannot be held accountable by the public.

The Commission: Evolution from a technocratic to a political institution?

The Commission constitutes in many regards an administrative and executive body *sui generis*, due to its hybrid nature as a “politicised bureaucracy” (Christiansen, 1997, 77). The Commission is and always has been a hybrid creature, as it is functionally divided into political and administrative levels and was designed as a body with both an administrative and a political mission. Its mission is contradictory in a sense, seeing that its main activity and core responsibility, i.e. proposing and drafting EU legislation, is a highly political task (Christiansen, 1997, 76) and that, at the same time, it represents a “rigid, rule-bound and hierarchical environment” (Wille, 2012, 386) – as the guardian of the treaties.

Despite its dual nature, the European Commission was initially created according to a technocratic ideal. Under its first President, Jean Monnet, the Commission (then the High Authority of the European Coal and Steel Community) was designed and ruled by a technocratic elite, following the so-called 'Monnet method'. For a long time, European policies were shaped within the circles of (internal and external) experts, highly skilled and dedicated people operating inside a small, non-hierarchical structure (Radaelli, 1999b, 759). Next to expertise, qualities such as reliability, efficiency and coherence were aspects on which the EU's decision-making was based, as opposed to democratic participation (Tsakatika, 2005, 198). In Monnet's conception, a political Commission was seen as flawed because prone to actors who could undermine the legitimacy of the organisation by being "short-sighted and self-seeking" (Wille, 2012, 386). Therefore, the "EU founding fathers sought to insulate the Commission from politics" (Wille, 2010, 1112). The Commission was designed as an independent body, composed of people representing all the various political majorities in the member states. It was intentionally kept outside the daily electoral fray, which offered the opportunity to formulate long-term ideas in defending the common good. It was intended to be an institution which was not politicised in the traditional sense of the term and therefore could be trusted to enforce the respect of the law.

This tradition prevailed for a long time and was not perceived as a problem. There was no need for more transparency in those days as the European Community delivered satisfying policy results, which led to a disinterested agreement and 'permissive consensus' among the general European public about what was happening at the EU level (Carrubba, 2001, 141). The Union was perceived as quite successful for efficiently carrying out projects such as the creation and completion of the single market and the establishment of the single currency, and thereby established output legitimacy (Scharpf, 2002). This "problem-solving" form of legitimacy (Tsakatika, 2005, 203) for a long time compensated the inherent lack of input legitimacy (Wille, 2010, p. 1112).

The Danish 'no' to the ratification of the Treaty of Maastricht marked a watershed moment in European integration history. For the first time, citizens' scepticism and distrust was directed against an "unaccountable technocratic elite in the Commission" (Wille, 2012, 387), giving rise to the notion of a democratic deficit. There were a number of reasons, but two in particular. First, since Maastricht integration went well beyond single market integration and the EU was no longer predominantly involved in market regulation, but also in foreign affairs, justice, immigration and other policy fields, the demand for more democratic modes of accountability became more strident (Wille, 2010, 1112). Second, the expansion of Qualified Majority Voting (QMV) had diminished the veto right of member states. Third, the collapse of the Santer Commission in 1999 damaged the standing of the institution and forced it into a "self-conscious period of soul-searching about what its future role in the institutional balance should be" (Cram, 2002, 310).

The post-Maastricht era is characterised by increasingly louder demands for elected politicians in charge, instead of technocrats and more legitimacy through input (Wille, 2010, 4). European citizens have become increasingly opposed to rules shaped by technocrats and demanded

democratically legitimate decision-making processes and an accountable Commission (Wille, 2012, 387).

The EU responded in two ways. Firstly, the legislative competences of the European Parliament (EP), as a basis for democratic legitimacy, were gradually strengthened, resulting in significant influence over the policymaking process as the Parliament developed from a consultative assembly into a genuine co-legislature with the Council (Neuhold, 2002, 1–2). As such the EU’s institutional balance was henceforth determined by a triangular relationship.

Secondly, the ties between the Commission and the EP were tightened to ensure stronger democratic control over the executive and to provide it with legitimacy: when entering office, the Parliament approves the College of Commissioners (Article 17(7) TEU); during the term the EP has the capacity to hold the Commission to account by parliamentary questions (oral, written and ‘question time’) (Article 230 TFEU); furthermore, Commissioners are obliged to report regularly to the EP and appear before committees. Ultimately, the Parliament even has the power to issue a no confidence vote against the Commission and thereby force it to step down collectively (Article 17 TEU and Article 234 TFEU).

Consequently, the EP triggered a politicisation trend of the Commission by becoming its stronger counterpart and a “far more vociferous and demanding interlocutor” (Wille, 2012, 387). Hence, a process of politicisation was triggered in the post-Maastricht era, which made the Commission successively more ‘political’ by tying it closer to the EP with a view to giving it greater democratic legitimacy. The politicisation of the Commission can hence be seen as evolution triggered long before ‘team Juncker’ took office.

That raises the question, what is new under President Juncker? And what did he mean when he labelled his Commission as “highly political”?

Juncker’s ‘political’ Commission

Juncker sought to distance himself from his immediate predecessor José Manuel Barroso, who was generally perceived as a technocrat who did not move far from business as usual (Peterson, 2017, 1), and as being very deferential to national leaders and therefore politically weak (Dinan, 2016, 103). Despite closer bonds to the European Parliament, the output-focused Monnet conception of legitimacy was still very much present and the Commission stood accused of prioritising efficiency over democracy (Tsakatika, 2005, 214). As a non-elected institution, it remained perceived as being largely obscure and non-transparent, though at the same time playing a crucial role in the policymaking of the Union.

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Juncker’s proposition that ‘his’ Commission was a “highly political” one (Juncker, 2014, 16) can be seen as an attempt to counter the negative perceptions of a distant and unaccountable institution. By opposing the technocratic concept of policymaking, Juncker aimed to give the Commission more democratic legitimacy. It can be seen as yet another answer to the post-

Maastricht perception of both the technocratic character of the Commission and equalisation of the notions of 'political' and 'democratic'. The 'political' Commission continues to borrow legitimacy from the European Parliament.

Apart from this legitimacy aspect, there are two crucial organisational elements that feed into the Commission's own narrative about it being more political: first, the prioritisation of policies and second the application of a top-down approach. These elements are implemented and realised through the Commissions' new way of working that focused on ten priority policy fields in a restructured College.

Policy prioritisation

The Commission understands 'political' as exercising political responsibility. This means refraining from blindly accepting and implementing the instructions of other institutions, but

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instead embedding all actions in the bigger political context. A political Commission does not act in a political vacuum: it is sensitive to political developments and coordinates its actions accordingly. The much-quoted slogan of 'being big on big things, small on small things' captures this mind-set. By deciding on what is 'big' and what is 'small', the Commission defines 'political' as the prioritisation of policy fields in which action is most needed.

To anchor this mind-set, Juncker set out ten political guidelines, a political agenda that aims to limit all Commission actions to predefined policy fields. By concentrating on the most pressing issues, the Commission highlighted its own agenda-setting role and a new-found resolve to be less hyper-active.

Top-down approach

A second element of the Commission's own understanding of 'political' is a top-down approach. The rationale behind this is to give decision-making authority to politicians, not officials. Important decisions, as well as impetus for the Commission's legal proposals, shall come from democratically elected office holders.

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Juncker substantially revised the structure of the College of Commissioners in a more team-orientated way, grouping related portfolios and upgrading the hitherto honorary role of the Vice-Presidents, entitling them to coordinate and steer the work of Commissioners in so-called project teams. The project teams operate as pre-coordination bodies, where several Commissioners come together to discuss dossiers from different policy angles.

The project team approach and the ‘gatekeeper’ role of the Vice-Presidents were supposed to streamline all European Commission actions; to foster teamwork among Commissioners and their cabinets. In this way, the Commission attempts to give political impetus to its actions and considers the political appropriateness of any particular action. The new way of working facilitates involvement at the political level from the very early stages of the policymaking process, in contrast to the traditionally strong agenda-setting role of the Directorates-General (Hartlapp, Metz and Rauh, 2013). The Commission defines the administrative level as subordinate to the political. Hence, a ‘political’ Commission under Juncker stands for policy prioritisation as well as for a top-down rather than bottom-up approach, entailing greater political control over administrative actions (Russack, 2017).

Institutional rebalancing

Not only the Commission’s inner organisation should be in focus in this context; its relationship with the other institutions is also crucial. Particularly interesting are its relations with the EP and the European Council.

Relations with the European Parliament

As the principal executive body of the EU, the Commission is politically dependent on and accountable to the EP. Building on a long evolution of closer ties to the European Parliament, the lead candidate procedure that was followed to designate Jean-Claude Juncker as President moved the Commission ever closer to the EP. The Treaty provides that the EP not only approves the whole College after extensive hearings of each individual Commissioner; it also elects the President of the Commission (Article 17(7) TEU). Derived from that treaty provision, the so-called ‘Spitzenkandidaten’ procedure (whereby the EP’s political groups nominate lead candidates for the Commission presidency) introduced an electoral logic similar to what is customary in many European democracies, in which elections lead to a parliament and the majority in the parliament determines the nature of the executive. Throughout this process, the EP lends the Commission President democratic legitimacy, in addition to the indirect line running through the appointment procedure of the European Council.

At the beginning of his mandate, Juncker spoke about the “special partnership” with the EP and expressed his intention to fill this with “new life” (Juncker, 2014, 12). Also in his annual State of the Union (perceived by MEPs as being generally more enthusiastic than Barroso’s speeches), Juncker was “gushing his praise for the Parliament and especially for its President” (Dinan, 2016, 103). The Spitzenkandidaten process is said to make the Commission more compliant with the European Parliament and more sensitive to its interests (Dinan, 2016, 111), especially under the previous EP President. It does not lead automatically to a political Commission, but it is a crucial element of it and generated closer institutional bonds.

Relations with the European Council

The ‘political’ notion also has an effect on relations between the Commission and the European Council. In recent years, one can observe the rise of the European Council. In formal legal terms, the European Council was ‘institutionalised’ by the Treaty of Lisbon and endowed with a full-

time President who is not allowed to hold any other office. Despite being located outside the formal legislative decision-making triangle, the European Council gained political stature in the past decade as heads of state or government tried to manage the multiple crises confronting the Union (starting with the sovereign debt crisis; a flare-up of armed conflicts in the outer periphery; the migration crisis; Brexit and the perennial future of Europe debate).

As a corollary, the Commission – the EU's traditional agenda-setter and initiator – has generally been perceived to have lost power. This has led to a school of thought: new intergovernmentalism, which finds that the EU has generally followed a much more intergovernmental than supranational logic towards deeper integration and advocates that the rise of the European Council is an answer to the paradox that member states are willing to deepen EU interaction, so as to expand policy scope, but not to transfer sovereignty to supranational institutions (Bickerton, Hodson and Puetter, 2015).

Arguably, the Commission is threatened in its key responsibility of agenda-setting, where the European Council now appears as a competitor. Yet, one needs to make a distinction between formal and informal agenda-setting. Formal agenda-setting, through the ordinary legislative procedure, prescribes a clear division of labour between the Commission as initiator, and the EP and Council as co-legislators. The European Council provides the Union with “impetus”, “general political directions” and “priorities”, but is legally excluded from performing any legislative functions (Article 15(1) TEU). That clearly distinguishes its role from that of the Commission, which retains the formal monopoly over initiating law (Bocquillon and Dobbels, 2014, 20).

Informally, however, the European Council frames the issues that will be legislated on. This is exemplified in the European Council conclusions, which contain quite precise mandates and instructions for policy actions for the other institutions. As such, the European Council delineates – or even curbs – the Commission's discretionary powers, reducing its right of initiative into an executive, i.e. technical power. It has led some scholars to describe the Commission as some kind of secretariat of the European Council; a neutral agent with specialised knowledge and expertise (Bocquillon and Dobbels, 2014, 25); an ‘administrative executive’ as opposed to the European Council as a ‘political executive’ (Dinan, 2017).

As the European Council emerged as another powerful player on the crowded institutional scene of the EU, the Commission found itself locked into some kind of “competitive cooperation” (Bocquillon and Dobbels, 2014). Two reactions of the current Commission are noticeable. First, Juncker appeared skilful in influencing the debate *within* the European Council, of which he is a member (Article 15(2) TEU). He seems better equipped than his predecessor, as Barroso is said to have gauged “what the political traffic will bear” whereas Juncker aimed to be “more connected to the political process”. In that, Juncker's experience “far outstripped that of Barroso” (Peterson, 2016, 16). The fact that both the European

Council's strategic agenda¹ and the Juncker Commission's political guidelines (both authored in 2014) focus on very similar policy priorities, feeds into that argument.

Second, Juncker used the notion of the 'political' Commission to be bolder and more forward leaning. Vis-à-vis the European Council, the *political* Commission appears as a stronger (informal) co-agenda setter, compared to a more technocratic Commission. In Juncker's own words: "The European Council proposes the President of the Commission. That does not mean he is its secretariat. The Commission is not a technical committee made up of civil servants who implement the instructions of another institution" (Juncker, 2014, 16). Hence, while strategically preparing the ground of his initiatives behind closed doors within the European Council, Juncker at the same time sought to give the Commission the image of a strong and independent institutional player.

In many respects, the Juncker Commission has been perceived as being more ambitious than its predecessor (Peterson, 2017, 15), as shown, for instance, in the case of the proposed quotas on migrant relocation, the idea of the need to create a joint EU army or the proposal to introduce QMV in the area of taxation. Juncker was also ambitious in proposing the creation of a common 'European Minister for Economy and Finance', in charge of promoting and supporting structural reforms in member states, and coordinating all EU financial instruments that can be deployed if a member state is in a recession or hit by a crisis. However, all these proposals were met with hostility from part of the European Parliament, as well as from many national politicians, in the latter case because they were concerned by the tendency to replace democratic processes with technocratic structures such as the Troika (during the Greek crisis) and fiscal boards.

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Inter-institutional collaboration is crucial. A 'political' Commission should therefore also be measured by how successfully it guides proposals through the whole decision-making procedure and negotiates with the other law-making institutions.

According to monitoring work done by the European Parliament,² by 1 December 2018, the Commission had submitted almost all of its announced proposals (94%, i.e. 519 of 551 proposals), but only about 50% had been adopted. The other half is either 'proceeding normally' (36%), 'close to adoption' (5%); or 'proceeding slowly or blocked' (9%). Even if most of those yet to be adopted files are categorised as 'proceeding normally', it seems unlikely that a majority of those 200 proposals can be adopted by April 2019, when the EP plenary meets for the last time in its current composition. Unfortunately, there is no means of direct comparison to previous Commissions, as this is the first time the EP has run such a systematic screening of the Commission's achievements. Nevertheless, it indicates a considerable gap between what the

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¹ https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/143477.pdf

² <http://www.europarl.europa.eu/legislative-train>

Juncker Commission wanted to do and what it was able to agree on with the co-legislators. As the sole holder of the right of initiative, a 'political' Commission cannot be too bold and progressive in its proposals – it must anticipate what will fly with the other institutions and be able to organise majorities. That raises the (so far unanswered) question: to what extent does the preparation of *realistic* proposals fall under its *political responsibility* (a crucial element of a 'political' Commission, as the institution itself understands it)?

Will the next Commission be 'political'?

The concept of a 'political' Commission is not new but a gradual development since the post-Maastricht era. The Juncker Commission, however, went one step further in trying to shape a more distinct agenda of its own and in having a stronger focus on political leadership internally. Certainly, one can argue that the Commission has always had its own agenda. Indeed, Juncker did not reinvent the wheel. He did, however, put strong emphasis on the institutional independence of the Commission and he added substance to the 'political' mind-set through the implementation of internal organisational principles.

Throughout President Juncker's mandate, the concept of the 'political' Commission has also received critical feedback. Observers levelled the accusation that being 'political' leads to disorder through a lack of application of the rules. Also, there are claims that the Commission moved too close to party politics. Indeed, the strong institutional bonds between the European Parliament and the European Commission entail a certain 'politicisation' of the process, which means that the appointment of the Commission President does become a partisan matter (note the conceptual difference from being 'political'). Making this position an instrument of party politics might be dangerous, as it might erode the independence of the role as guardian of the treaties in which the Commission is supposed to serve the general interest. Favourable treatment of individual member states has in the past fuelled this argument, for instance regarding the assessment of national budgets under the Stability and Growth Pact, which was treated less mechanically and more flexibly by this 'political' Commission.

Whether one wishes the next Commission to continue to go down the path of being 'political' depends on one's understanding of the concept of European democracy. There are two diametrically opposed visions of EU democracy that are inevitably linked to the concept of a 'political' Commission. First, a federal idea that leads to a politicised establishment of parliamentary government. Here, the European Parliament has a democratic mandate from citizens to decide on a politicised European government. Second, an intergovernmental vision, where national governments retain the power to decide on the top post for the largely technocratic executive (Hobolt, 2014, 1533). The inter-institutional dynamics of the European Union and the power struggle between the Commission and the European Council fuels the tension between these two different visions of democracy for the EU. The Spitzenkandidaten system epitomises this tension.

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We find proponents of both visions of EU democracy. Yet, as a matter of fact, these are times of growing importance of intergovernmental decision-making and the (European) Council as a central decision-maker. Arguably, this is not fertile ground for the concept of a ‘political’ Commission and the federal vision of EU democracy that it carries.

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