

The European Commission in balance?

Ambition, organisation and power

Adriaan Schout
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Clingendael Report



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'Nothing is possible without men,
but nothing lasts without institutions.'

Jean Monnet

(With the added remark:
Provided that people have trust in institutions)

1 Introduction

As Ursula von der Leyen takes office as the new Commission President,¹ it is good form to give thought to the trends in the development of the European Commission. The new President will formulate her agenda and organise the Commission as she sees fit. Von der Leyen aims for an ambitious agenda including, once again, considerable discussion about the 'future of the EU' with institutional deepening, such as transnational lists of candidates as a new step towards giving the European Parliament (EP) and Commission President more European legitimacy, reform of the Economic and Monetary Union (EMU) and getting serious with sustainability. In addition, further experimentation with the top structure of the Commission is under way with the appointment of three executive Vice-Presidents, one from each large political family. The aim is to realise ambitions and organisational innovation.

The European Commission occupies centre stage in the European integration process. Ambitions, implementation, quality of policy, the balance of power in the interinstitutional arena, trust in the EU, etc., are determined in part by the organisation and the policy of the European Commission. Because of its formal monopoly on new bills, its task as supervisory body, and its central information position, the Commission enjoys a privileged position towards national governments. For the Netherlands as well, the Commission has occupied centre stage as the protector of the interests of the smaller countries. The arrival of a new Commission President is therefore a time of political reflection, which can make it part of EU-wide democratic control, also in the Member States.

1 Officially, the term *Commissievoorzitter* (roughly translated as 'chair') is used in the Netherlands. However, the term 'President' is used in the EU. This is 'Präsident' in German, and 'President' in English, not 'Vorsitz' or 'Chair'. The term 'President' is now commonly used in the House of Representatives. Eurospeak is changing in its daily use. For example, on 19 September the evening news used the term 'ministry' to refer to the collective tasks of a Member of the European Commission.

This report was written at the request of the European Affairs committee of the House of Representatives (see the engagement letter in Appendix IV). Because the organisation and tasks of the Commission are multi-layered, the questions from the House of Representatives were likewise as varied and concerned the development of the tasks of the Commission, the history, politicisation (especially after the Lisbon Treaty), the achievements of the Juncker Commission, formulation of an assessment framework and the identification of problem areas. Discussions about possible alternatives follow naturally from the identified developments and bottlenecks, such as the importance and limitations of high ambitions, of leadership styles, administrative pressure at the top, the separation of duties and of the possibilities of establishing organisational units. Because the House of Representatives has asked the government to examine the enforcement tasks of the Commission, less attention is given in this study to the theme of enforcement.

The breadth of the study should be seen in connection with the limitations in time and scope of the study. To a certain extent therefore, the discussion of legal, historical and organisational developments fails to do the Commission justice. Nevertheless, their discussion does raise the necessary questions, which was also the aim of the House of Representatives. It should be considered in this respect that relatively little systematic research has been done on the Commission.

To answer the question about review criteria, a wide choice of such criteria can be found in the writings on e.g. politics, administration, business, sociology and economics. During the study, the historical development of the Commission provided an assessment framework on the basis of developments which had been set in motion by the Commission. Firstly, the development of the organisation (including its internal management and the external management of its national administrative bodies) gives insight into which measures of quality the Commission has pursued. Secondly, the outline discussion of Commission Presidents provides insight into leadership styles. This has basically given the study an organisational slant. Which is not surprising, because the functioning of the Commission is the result of cohesion between tasks, ambitions, organisation, relations with its stakeholders and leadership style. For it is precisely in the multi-layered political-administrative reality of the EU that trust in government goes hand in hand with the quality of government. Procedural agreements, tasks, administrative capacities and leadership are what ultimately determine who has access when and with which knowledge and resources to decision-making and how effective its governance is. In other words, European decision-making shows to what degree power, trust and results are related to the quality of the organisation of the Commission, of the Member States and of their mutual networks. The demands placed on the effectiveness of relevant national organisations have been given too little attention, also among national and European policymakers.

The developments of the Commission also tell us something about the changing power relations among the European institutions (especially in the relationship among the EP, Commission and Council). The EP has developed from talking shop to a co-legislator (Priestley 2008). This development has strengthened the relationship between the EP and Commission, thus shifting the interinstitutional balance. This development has contributed to the politicisation of the Commission. However, European integration was no one-way street with a shift in power towards 'Brussels'. The Member States have created new control mechanisms, such as the formulation of the Strategic Agenda. In addition, the Member States have stood their ground in areas that touch on solidarity (transfers) and sovereignty. The Member States have also continued in sensitive areas to establish intergovernmental cooperation in new structures that can better be termed 'transgovernmentalism' (see below). The 'ever closer union' can, against the will of the Commission, apparently take place outside the Commission as well. This says something about the trust of the national governments in and their support for the European Commission. In several off-the-record media briefings held in the context of this study, it was therefore emphasised that trust in the Commission needs to increase.²

Section 2 starts with introductory themes: the nature of the organisation and its functions and tasks. This nature has been described in dog terms as 'mixed-breed' (people familiar with the problems with pedigree dogs understand that this is a positive term). The Commission's quest for a more effective and professional organisation occupies centre stage in section 3. The developments are also related to shifts in the interinstitutional balance. Section 4 goes briefly into a number of Commission Presidents. Section 5 sums up a number of problem areas from this brief analysis for further discussion. The core of the study revolves around balancing. Balancing is not about compromises but rather ensuring that the right weight is placed on the scales of the balance.

In addition to the literature consulted, off-the-record media briefings were organised with a number of current and former civil servants in The Hague and Brussels, and researchers, in order to identify relevant themes. Given the limited study, these briefings were used to colour in the themes to be covered. In addition, many discussions and interviews were used which had taken place in the course of the years for past studies and projects (see the bibliography). The supervisory committee of the House of Representatives met three times, and one written round took place. Four experts also read versions of the report. They acknowledged the trends and challenges set out in the report, and their comments concerned additions, subtle distinctions (most of which

2 This study does not go into any further depth on trust in the Commission (but see Appendix III). Experts have expressed their concerns (sometimes assertively). In addition, the Eurobarometer shows an increase in trust in the Commission, especially in the Netherlands. For a discussion of the reliability of the Eurobarometer, see Schout and Holderied (2018) and the works cited there.

were incorporated into the text) and the specification that the Commission is naturally political and thus calls for better separation between technical tasks and tasks that concern political considerations. In particular, we would like to thank mr. dr. Sandor Loeffen of the Analysis and Research Department of the House of Representatives for his professional assistance.

2 Development, tasks and functions

Nature of the organisation: The Commission as a mixed-breed

The strength of a mixed-breed is the mixture of DNA and experiences so as to function in all kinds of different circumstances. The European Commission is the result of a mishmash of the best – and sometimes the worst – of Europe's traditions in government. In the Europe of the Six³ in the 1950s, France had a guiding influence on the shape of the predecessor to the Commission (the High Authority). The High Authority and the European Commission were rooted in French (and Belgian) bureaucratic traditions. The French influences are evidenced by the hierarchical structure of the Directorates-General (DGs) and the internal decision-making, the political cabinets of the Commissioners (traditionally filled by fellow countrymen of the Commissioner, who is formally neutral, see Article 17(3) of the Treaty on European Union), the importance of the President and, originally, the language. The first Commission President, the German Walter Hallstein (President from 1958 to 1967), added German bureaucratic traditions, such as the compartmentalisation of policy areas.

New influences became visible as new Member States joined. The British, supported by the Dutch, further rationalised the organisation by means of impact assessments, formalisation of planning and the policy processes, and evaluations. The Scandinavian Member States provided the much-needed transparency and promoted independent agencies. At the beginning of the 1990s, a simple organisational chart of a DG was confidential information, but under the influence of the administrative culture especially in Sweden, the website of the EU (including the Commission) grew to become perhaps even the largest public sector-related website in the world, with a plethora of public information. When Austria, Sweden and Finland joined in 1995, the environment gained political importance as a norm in the EU, and thus also in the Commission. Eastward expansion partly brought a certain professionalisation to the business culture: East-European civil servants preferred making an international civil service career for themselves to a career as a convinced European (Ban 2013).

This diversity sometimes makes it difficult to determine the balance in the culture of the organisation, which is sensitive to changes in staff or the departure of a Member State. For instance, the departure of the United Kingdom will have consequences for the Better

3 The Six were Belgium, Germany, France, Italy, Luxembourg and the Netherlands.

Regulation project. What can therefore be seen as France's rising star, possibly born out of a combination of waning British influences and the more difficult French-German relationship, has influenced recent political appointments. Likewise, the instalment of Pierre Moscovici (France) as the European Commissioner for Economic and Financial Affairs to replace Olli Rehn (Finland) has changed the character of the post of 'budget czar'. Although Commissioners may not officially be referred to in terms of 'Dutch' or 'German' – there are only 'European' Commissioners – the degree of national identity differs from person to person. In addition to personal character and political experience, national identity does influence the weight carried by a Commissioner. For example, the French Commissioner Pierre Moscovici mentioned above made the *Financial Times* about twice as often during his term than his Vice-President, Valdis Dombrovskis, from Latvia.

In addition to national administrative cultures, personal characteristics of Commission Presidents can also be identified. Commission Presidents are entitled to decide on the internal organisation of the Commission (Article 17(6) of the Treaty on European Union). The lauded Jacques Delors (1985-1995) created his own personal channels and contacts within the organisation, with a leading role for his Chef de Cabinet, Pascal Lamy. The reviled – perhaps undeservedly⁴ – José Manuel Barroso (2004-2014) sought bureaucratic stability, with an important role for the Secretariat-General in making and documenting policy. Jean-Claude Juncker (2014-2019) changed the role of the Secretariat-General again, mainly by relying on his Chef de Cabinet, Martin Selmayr, which led to the remark⁵ that if something came from Selmayr (in his position as Chef de Cabinet), there was no need to run it by the Secretariat-General for coordination and quality control.

Quality is also a characteristic of the Commission. In many respects, the Commission is one of the best possible administrative organisations. After the French example, the entry requirements (the *concours*) are high and even mirror the French ENA (*École nationale d'administration*) in the form of the *Collège d'Europe* in Bruges. It is often said that the Commission has fewer civil servants than a large European city. However, the Commission has about (depending on how different categories are counted) 32,000 civil servants who focus on EU policy and are supported by scores of networks of experts, while in national ministries the EU expertise is usually divided across individuals in departments (see also the discussion below about 'power of expertise'). Low in the past, the morale among Commission civil servants is high again, thanks in part to the EU-wide legitimisation of their work by the ambitious Strategic Agenda and the *Spitzenkandidaten*

4 Schout, A. (2014) 'Ten years of Barroso's presidency: Passive or smooth operator?', *Internationale Spectator* 68(2) pp. 30-35. https://www.clingendael.org/sites/default/files/pdfs/ten_years_barroso_presidency_Schout_Buirma_Barroso_UK.pdf, Schout, A., A. Mijs (2014), 'The EU Commission: from technocracy to government?', *Internationale Spectator*.

5 In an interview for Schout and Schwieter (2018a).

process.⁶ Accessibility is also a characteristic of the Commission. The doors of civil servants from high to low are open to anyone who is relevant. They are convinced of the need to understand the different contexts from the far north to the deep south.

In 2018, the Organisation for Economic Cooperation and Development (OECD) reckoned the quality of the Commission's preparation of policy among the best in the world on the basis of its formal structure (not on the basis of effectiveness), given its extensively formalised procedures and transparency. That the Commission formally belongs to the top does not mean that the formal procedures are actually followed or that the boundaries are not pushed.⁷ Extensive procedures are – usually – part and parcel of a bureaucracy; doubts about whether the procedures work undermine a bureaucracy.⁸

Functions and tasks of the European Commission

In this study, *functions* are interpreted as the main duties of the European Commission that ensue from the texts of the Treaties. The functions of the Commission stem from the Treaty of Rome (1957). The *tasks* concern everything that the Commission must do to execute its functions in the different policy areas. This ranges from preparing meetings to enforcement tasks. This study limits its discussion of tasks to the expansion of the Commission's activity in specific policy areas and a schematic representation of the tasks in relation to the discussion about the separation of tasks. The formal functions and the implementation of the tasks in practice continuously call for choices to be made.

Functions

Part of the functions of the Commission can be found in Article 17 of the Treaty on European Union. In addition, researchers have added several functions that are not contained in the Treaty. The table in Appendix I shows the functions and briefly discusses their inherent ambiguities. The functions of the Commission are, roughly, the preparation of annual and multiannual agendas and the budget, legislation (right of legislative initiative), promoting the general interest of the EU as an engine of integration, supervision, external representation of the EU and manager (coordinator).

6 Research briefing 2: 'The "political Commission" and the "new ways of working"'. The views of European Commission staff, H. Kassim (2019). <https://www.uea.ac.uk/political-social-international-studies/research/the-juncker-commission/briefings>.

7 See Schout and Schwieter 2018a for a discussion.

8 E.g. Mastenbroek, E., S. van Voorst (2017).

Article 17 also sets out several rules of conduct for the Commission in the exercise of its functions: Commissioners are independent and may not accept instructions from Member States, and Commissioners are considered equal in the College of Commissioners. The President is a *primus inter pares* but, in practice, the President's weight has grown, partly because of the changed legitimacy of the Commission President by the EP.⁹

Ambiguities are part of function descriptions and call for the many accountability mechanisms that typify the public sector. The functions – such as that of the engine of integration – have been pushing the Commission towards high integration aims. The EMU was one of the main objectives long before 'Maastricht' in 1991, just like the formation of a 'political Union', expansion (all European countries may become members), the ever closer union and social objectives (long opposed by the Member States, especially the UK). The tensions with the Member States about the level of ambition are emblematic of the history of European integration. This is also evident in the use of language: European 'integration' refers to the final objective of the ever closer union to which Jean Monnet aspired in the 1950s, while official documents and speeches in Dutch use the term 'European cooperation' for the most part.¹⁰ Other ambiguities discussed in Appendix I include the changed right to set the policy agenda under the influence of expectations that the EP and the European Council pass to the new President, the degree to which the right of legislative initiative actually lies with the Commission and the tough role of supervisory body in combination with the soft role of an honest broker who must unite interests.

Tasks

The tasks – activities in the policy areas – of the Commission have been given more depth and breadth as successive changes to the Treaties were made. With the Treaty of Rome (1957), the Commission was given the task to focus on the establishment of a customs union, elimination of import duties, common agricultural policy and competition policy. The Treaty also set out the power to act where necessary to make the internal market possible (implied powers). Social policy was indeed mentioned in the beginning, but the idea was for integration to lead to stronger welfare states on its own. The Commission has exclusive competences in several areas (such as the customs union and competition), the Member States have shared competences in most areas (such as in internal market legislation) and, in the remaining areas, the Member States

9 Just like the position of the prime minister in the Netherlands, under the influence of European integration and the arrival of the European Council.

10 See, for instance, the Churchill Lecture by Prime Minister Mark Rutte, delivered in Zurich on 13 February 2019: <https://www.rijksoverheid.nl/documenten/toespraken/2019/02/13/churchill-lezing-van-minister-president-rutte-bij-het-europa-instituut-van-de-universiteit-van-zurich>.

have extensive autonomy with supporting competences of the Commission (such as in education).¹¹ In the exercise of the policy competences, from the Single European Act (1986) to the Lisbon Treaty (2009), decision by a qualified majority of votes in the European legislative process too has grown in the Council of Ministers at the expense of decision by unanimity.

Big steps in the development of the tasks of the Commission included the introduction of the Economic and Monetary Union in the Treaty of Maastricht (1992) and the transfer of the intergovernmental¹² 'third pillar' (justice and home affairs) to the Community working methods as decided in the Treaties of Amsterdam (1999) and Nice (2001). Likewise, expansion from 15 to ultimately 28 Member States meant that the Commission obtained new tasks in bolstering the institutions in the Eastern European Member States and, more recently, supervision on the quality of the rule of law has grown in importance.

The Commission's tasks have also changed because the Member States have started to work together outside the Treaties, such as on the basis of the Fiscal Compact and in the European Stability Mechanism (ESM), by which other working relationships have arisen (see the section on transgovernmentalism).

As the tasks have expanded, new working methods have also become necessary. In addition to the large legislative role, the 'open coordination method' (based on voluntary participation of the Member States in benchmarking and peer reviews) has, for instance, become a pillar in the work of the Commission. The development of informal management instruments was necessary in part because policy that does not fall under European competences, as the organisation of the welfare state (such as in pensions and education) has great influence on the stability of the euro. Mutual dependence simply means a blurring of the lines between official competences in practice.

The developments in the tasks of the Commission show that, besides the main legislative function, other policy functions such as supervision over economic and fiscal policy in the Member States and the management of open coordination projects have arisen.

11 For an overview of the division of competences, see Appendix I.

12 In intergovernmental decision-making, control is maintained all the way from taking the initiatives up to decision-making. In the Community method, the Commission has the right of initiative and the European Court of Justice has authority.

Content of certain functions

Legislative machine with the tendency towards harmonisation

Because the EU budget has been kept limited, tasks belonging to a welfare state have remained limited. The EU is essentially about legislation (regulatory state). Legislation, thanks in part to the less immediately visible division of income and expenses, therefore forms the basis of the work of the European Commission (Majone 1996).

An extensive *acquis communautaire* has been created in the development of the internal market. Several trends can be seen in the development of legislation:¹³

- The number of legislative initiatives probably decreased under the Juncker Commission. But nevertheless the *acquis* increased (yet less than under Barroso, for example). Several legislative pages and articles still need to be added up to show whether the legislative packages (the focus that the Council asked Juncker to adopt) do not contain a great deal of details anyway.
- In addition to the steady increase of the *acquis*, Regulations are used more and more often instead of Directives, which means that the Member States have less freedom of implementation. The Netherlands is in favour of this, because it gives countries with inadequate implementation and enforcement capacities less flexibility.
- EU legislation leads to increasingly higher harmonisation ambitions. Due to appeals from all kinds of actors (Member States, businesses, NGOs, the European Parliament, etc.) there is permanent pressure towards harmonisation. Policy mechanisms also contribute to more and higher harmonisation standards: built-in revisions are more likely to lead to higher than lower standardisation, problems with implementation lead to revisions and detailing (failing forward, or integration by default)¹⁴, expert committees (comitology) have the tendency during implementation to establish calculation methods and implementation procedures etc., the Court's reports add to the legislation, objectives regarding high environmental or consumer protection lead to higher standardisation, etc. 'Integration by default' is the principle that the EU must step in if Member States fail in their implementation and supervision, such as by exercising more supervision itself, or implementing a social policy because Member States themselves do not have their change processes in order (Schout 2017b). Another result of regulation, and overregulation, of the internal market and 'integration by default' is, in the words of Vivienne Schmidt (2006), that national parliaments become arenas for 'politics without policy'.
- Interestingly, few questions have been raised about the increasing specificity of EU legislation (as opposed to questions about the size of the *acquis* and the use of

13 For an overview of the development in the size of the *acquis* and the growing degree of harmonisation, see Schout and Van Schaik 2019 (yet to be published).

14 Jones, Keleman and Meneur (2015); Schout (2017b).

an undifferentiated measure such as 'one in, one out'). It would be worth considering whether this trend towards harmonisation with higher minimum standards is actually taking place and whether this development in the right of initiative should be reviewed.

The paradox of the legal character of the EU is that EU law is not as clear as it may seem. This paradox can also be seen in the priority to improve the quality of the rule of law in the Member States while there is no viable legal framework for that (it is difficult to give a precise definition of a value such as 'democracy'). Even in the Commission itself, much is made of its understanding of the law where, according to a civil servant at the top of the Commission, the Commission is much more capable than the Member States of interpreting legislation, in order to push out frontiers or find the loopholes (see for instance the supervision on national budgets¹⁵). In this regard, the Commission's power of expertise also underscores the relativity of procedures and European rules.

Box 2.1 Harmonisation and its effect on national governments

Harmonisation leads to a level playing field, which has rightly received much attention (limitation of external effects, creation of scale effects, giving certainty to businesses and consumers). Harmonisation has in the past decades been given more depth (higher standards) and breadth (covers more parts of policy).

Besides the advantages, harmonisation also has disadvantages. It limits policy competition among the Member States, the differences about policy objectives will grow in a more varied Europe of perspectives among Member States (e.g. not every country is equally attached to high environmental standards) and Member States will lose their flexibility. Each European measure makes it more difficult for a Member State to change policy ('that's what they want in Brussels' becomes more pressing). If a country formulates rules itself, it can also change them itself. Making changes at European level is generally more difficult and takes much longer. Harmonisation thus leads to inflexibilities as well.¹⁶

This raises several questions:

- Up to what point is harmonisation useful, and when does it end up limiting a healthy dose of competition between policies?
- Is adequate account taken – in the processes of the Commission and in the Member States – of harmonisation that goes too far?

15 For example, 'Commission delays French deficit procedure', *Euractiv*, 27 November 2014.

16 Compare also Katzenstein 2003.

Supervision

Supervision is a theme that did not get going from the start. The activism of Jacques Delors was what really drove this theme, because it was clear that the success of his internal market project would depend on its implementation and enforcement and because businesses would complain otherwise. The supervisory function creates a delicate relationship with the Member States, because the Commission has various relationships with the Member States. On the one hand, there is a constant exchange of information and cooperation in the preparation and implementation of policy, where policy revision is closely connected to the problems that arise in the implementation of policy. This requires an intensive and open relationship. On the other hand, the Commission can, as a supervisory body, take countries to the Court of Justice of the European Union and even impose sanctions. The problem with this combination of tasks is that the mutual relationship is based on both confidence and hierarchical control. This is one reason why the Commission has taken a political approach to supervision. This sensitivity is readily visible in the network of independent fiscal authorities where two networks function in parallel: one with and the other without the Commission (Schout and Schwieter 2018b).

External management: The management deficit of the EU

The essential question that remains neglected in many writings and political discussions is: to what extent can, or must, the Commission act as a manager? The internal management of the Commission has become an important theme, and giant leaps have been made (see Section 3). The core of public administration in general is that objectives can only be achieved by working together with external organisations in all stages of the policy process. Metcalfe noted that the Commission is too preoccupied with itself and does not do enough to build administrative qualities and networks in and among the Member States, leading to implementation and enforcement problems. The EU suffers from a lack of management as a result. Problems with national supervision over economic policy, border control on the external borders or the quality of the rule of law underscore the constant concern about the quality of Member States (Schout 2018a).

Several challenges are at play in the external management role of the Commission that are closely connected to the multi-level European administration model. Firstly, the Member States lack the necessary administrative capacities in scores of areas. For effective European public administration, it is not enough if the Commission itself is highly dedicated to management innovation if similar processes do not exist in the

Member States.¹⁷ Inferior administrative capacities have played a role in the EU from the very beginning, and for countries like Italy and Greece taking part in European cooperation and the euro was part of the strategy to modernise. Underdeveloped administrative capacities force us to look for solutions at EU level even where the Member States are the cause of the problems ('integration by default').

Secondly, the Treaty on European Union requires Member States to show solidarity and take all the necessary measures to that end, but it also shows a high degree of respect for existing administrative traditions (Article 4 of the Treaty on European Union). The organisation of public administration is therefore a matter of national sovereignty of the Member States. The sensitivity of EU policy also plays a role in this respect, such as can be seen in border controls or national budgetary control.

Thirdly, the policy of 'don't complain about me, and I won't complain about you' applies when it comes to criticising each other's administrative capacities.¹⁸ This makes it easier to talk about policy than about the requirements that must be placed on Member States to make policy truly effective.

In addition, the Commission has scores of specific types of expertise, but in the culture of the organisation that is dominated by legal and political considerations, interest in accepting a multi-level management role is less developed. The mandatory introduction of national fiscal councils is a salient example. Here the Commission has looked to see whether Member States have established 'something', without paying any particular attention to the number of people, what qualifications they have, whether they have sufficient resources in order to operate independently or whether the European networks in which they work together are strong enough.

There are also examples of successful administrative networks, incidentally. Aviation safety, for example, has been organised around, among other things, mutual, mandatory, inspections where countries evaluate each other as part of the UN. And with food safety – originally a very sensitive theme culturally and economically – an effective network has been created which has contributed greatly to consumer safety and economic success (see the importance of the export of the foods industry and the good reputation of agricultural products).

Sufficient administrative capacities in the Member States open up possibilities for the EU to operate as a decentralised European federation. In other words, there is less need for an ever closer union if the Member States have their affairs in order.

17 There are administrative networks in the EU, but the big problems make it difficult to call them – and especially their non-committal nature – into question.

18 Jordan and Schout 2006.

European institutions seem to be much more interested in strengthening the EU ‘top-down’ rather than on the basis of decentralised cooperation. Proposals for the establishment of a ‘fully operational Border and Coast Guard’ and the appointment of a European minister of Finance including a budget for the eurozone reinforce this impression. Discussions in executive circles in Brussels have also given the impression that they have a negative to very negative view of the Member States. Given the national dynamics, different cultures and importance of subsidiary cooperation, however, the centralisation of tasks cannot be the solution.¹⁹

The Commission recently established the Structural Reform Support Service to help Member States, on a voluntary basis, build up their institutions. The question is whether this, first of all, is sufficient if, when shaping policy, considerably more emphasis is not placed right away on creating European networks at the same time, in which the Member States keep each other on their toes and in which more coercion and supervision are involved. Second of all, the administrative quality in the EU and of the Member States will need to be weighed up for each policy initiative. The Commission, Member States and the relevant networks need to be capable of handling implementation and control. More is needed than a budget for individual Member States that wish to tackle their institutions voluntarily.²⁰

European narrative building

The expansion and diversification of the Union’s policy areas, but also growing doubts about European integration after the introduction of the euro plans in 1992, made narrative building to the Union an important theme. Giving meaning was of importance from the very beginning, where the idea of freedom existed next to safeguarding national interests (Milward 1992). The focus on technical integration and its limited impact on the establishment of state tasks, however, made narrative building a secondary issue.

The sharp increase of European legislation under Delors, and his suggestion in 1988 that, within ten years, 80% of legislation would come from the EU generated a sense of uneasiness. To calm the intensifying debate, Delors introduced the concept of subsidiarity, which was little known until then, except in countries with in-depth discussions about the division of powers within their federal structure, such as in Germany, for instance.

19 Compare Perrow 1977.

20 For an utilisation of strengthening national capacities via European networks in the rule of law, see Schout and Luining 2018.

Until 2008, doubts about the importance of the EU and even the euro were almost impossible. According to influential opinion makers such as Tony Judt and Jürgen Habermas, the EU was a 'perfect example of international quality', 'irresistibly attractive', 'a beacon of light' and 'a model for the world'.²¹ In addition, the Netherlands Bureau for Economic Policy Analysis (*Centraal Planbureau* (CPB)) had calculated that the internal market would generate a month's salary for us, and the euro a week's pay.²²

The euro crisis and the subsequent crisis measures after 2008 and plans for deeper integration forced former Commission President Barroso to explicitly tackle the challenge of building a European narrative. In 2013, Barroso launched a project to formulate a 'narrative' based on cultural diversity (unity in diversity) and confidence in European values, because 'populism and nationalistic narratives must not prevail': 'We need a new narrative for Europe,' said the Commission President.²³ The debate about values was an answer to the migration crisis, criticism among Member States back and forth about the lack of solidarity, and growing distances between north, east, south and west. Because the economic benefits of membership had faded in the wake of the euro crisis, as emphasised in off-the-record interviews, the more abstract core values of democracy and solidarity would just have to be emphasised in the European narrative.

President Juncker recognised the abstract side of the debate on values and went out to prove that the EU can solve concrete problems ('a EU that delivers'). In this spirit, a senior civil servant of the Commission also said in an interview: 'Avoid philosophical discussions; we need action.'

The issue of narrative building is also surrounded by the necessary questions and ambiguities given the great differences between countries in terms of economic development, the distance to the Russian border, for instance, and economic traditions. It might be possible to create a rough narrative ('security'), but its exact meaning is very much open to debate. That is why we must wonder whether narrative building has any use, whether the Commission should remain largely practical and pragmatic and whether the European narrative is not primarily a national matter. We must also bear in mind that the EU demands the serious attention of citizens only now and then. The EU (and national governments) might want a debate about narrative building; citizens generally have other things on their minds.

21 Schout and Kassim 2018.

22 Later, during the crisis years, former CPB director Coen Teulings admitted in newspaper the *Telegraaf* that the figures had been rounded up and should be taken with a grain of salt: 'CPB exaggerated benefit of euro. Coen Teulings: Take calculation with a grain of salt', *Telegraaf*, 17 May 2014.

23 Speech by Commission President Barroso: 'A new narrative for Europe' (2013), https://europa.eu/rapid/press-release_SPEECH-13-357_en.htm.

Separation of tasks?

What is relevant in relation to the discussion about functions and tasks is the tendency of the Commission to keep its duties within the Commission for bureaucratic and technical reasons. The technical argument is that tasks are mutually connected²⁴ and that there is a risk that tasks located outside the organisation will carry less weight in internal decisions. On the other hand, each organisation must, firstly, coordinate flows of information, irrespective of where that information comes from. In other words, the procedures need to be well designed: formal, transparent and with complaint procedures. External tasks can also be interconnected. Secondly, with a view to confidence in information, analyses and decisions, there is much to be said for separating tasks as much as possible and designing them partly on the basis of independent agencies, so that each step can be traced and each step is also designed on the basis of specific needs – and need for independence – of the task.

Thirdly, there are some tasks that are incompatible. A breakdown of policy tasks into individual steps is illustrated below:

Box 2.2 Tasks from agenda to enforcement

Setting the agenda	Data collection	Analysis	Formulating alternatives	Choice of policy	Implementation	Monitoring	Enforcement
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Independence matters in the collection of data, analysis, formulation of alternatives and monitoring. Setting the agenda and making policy choices make it necessary to consider the pros and cons of different standards from a political perspective (among policy priorities and among different national and ‘European’ priorities). With the information tasks, legitimacy is based on expertise, while considering the pros and cons is about political legitimacy (the Strategic Agenda, the working methods presented by the President in the EP, etc.).

In relation to data collection, Eurostat and agencies enter the picture. Member States are required by European legislation to have their own independent statistics agencies. However, Eurostat’s position within this structure is characterised by compromises in decentralisation. Eurostat is a DG within the Commission and it falls under a Commissioner (in the Netherlands, Statistics Netherlands is not a Directorate-General of Economic Affairs and Climate; it is a decentralised agency – an independent administrative body). For economic supervision and budgetary oversight, Member States

24 Smulders and Paquet (2018); Schout and Schwieter 2018a.

need to have independent supervision structures. In the Netherlands, the Council of State and Bureau for Economic Policy Analysis (CPB) have been designated for this purpose (outside the direct ministerial lines). Economic supervision, however, is organised within the Commission in the DG ECFIN (Directorate-General for Economic and Financial Affairs). Following the economic and financial crisis, it was decided to bolster independent supervision over the Member States by the Commission. The supervisory task of DG ECFIN was established to this end, following the example of DG COMP (Directorate-General for Competition, with significant independence within the Commission and within the College of Commissioners).²⁵ For now, supervision over competition via DG COMP is seen as a success in making a politically sensitive task independent. This set-up initially seemed successful under Barroso as well, with Commissioner Olli Rehn as the 'budget czar'. However, the arrival of the Juncker-Moscovici team made it clear that this independence clashes with political ambitions.

There are also hybrid forms of decentralisation. Supervision of national budgets has been placed within the Secretariat-General, but it is carried out in part by five professors, each of whom is allocated about 12 days a year and who therefore rely heavily on the data and analyses of the Commission. Some independent expertise has indeed been brought in, but this is encapsulated in the Secretariat-General. Likewise, supervision of the quality of impact analyses has been kept within the Secretariat-General – although with the addition of three independent experts; but they, too, are dependent on information that comes from the Commission. They have neither the time nor the resources to conduct their own analyses to fathom the impact assessments given to them.

It should be borne in mind in this respect that EU agencies are limited in number (about 60²⁶) and in their independence.²⁷ This paints a picture of a European Commission that holds off the separation of tasks. This also harbours the danger of contamination: faulty supervision of national budgets and economic plans gives the Commission as a whole an unreliable reputation.²⁸ There is a clash of administrative cultures around the separation of powers in the Commission, and this has materialised into a compromise that calls for debate, also in the Member States, about the requirements that should be placed on European administration (including by the Member States themselves). The argument that independent structures lead to 'more bureaucracy' is debatable. Bureaucracy is needed because tasks need to be carried out. The question is whether this bureaucracy

25 For references, see A. Schout and A. Mijs 2015.

26 Compare the some 250 similar structures in the Netherlands.

27 Schout 2018.

28 In addition to all manner of discussions about this in think tanks and academia (such as Wyplosz 2018), see also the column '*Italiaanse toestanden* (Italian conditions)' in the 11 September 2019 edition of *het FD*, where Mathijs Bouwhuis pokes fun at this situation: <https://fd.nl/opinie/1316447/italiaanse-toestanden>.

is good (transparent, subsidiary to national structures, working with the best possible information and with separation of substantiation and political choices).

In addition, one more thing must be taken into consideration. The notion of the 'Brussels bubble', an established term in eurospeak²⁹, refers to the situation where EU civil servants are concentrated in Brussels and would be reluctant to move, if required, to Luxembourg or somewhere even farther from the centre of policy-making. This concentration of EU civil servants also has its own frame of reference of European families, European schools, close mutual contacts including – as typified by one of them in an interview – on the hockey or football pitches. Decentralisation (also literally) can strengthen the ties to and visibility of the EU in the Member States.

29 <https://euobserver.com/opinion/127523>, <https://www.beout.be/2018/10/25/frans-timmermans-verlaat-je-bubble-praat-met-mensen-die-het-oneens-met-je-zijn/>.

3 Assessment framework: Commission reforms

The organisation of the Commission as a bottleneck

En route to a legitimacy crisis

Interest in the Commission as an organisation took a while to get going. The book by Britain's David Coombes from 1970 long remained an exception in European integration studies, which were mainly about integration theories and policy (Coombes, 1970). Les Metcalfe, also from the UK, can be seen as one of the pioneers in the field of European public management with his article 'After '1992': Can the Commission Manage Europe'. Overdue maintenance of the organisation, exacerbated by the activism of Jacques Delors, did not emerge until the degree of mismanagement (and even nepotism)³⁰ had become clear. The Santer Commission, which, incidentally, was hard at work on renovating the organisation, resigned, and two Committees of Wise Men were created in order to map out the situation. That period saw publication of scholarly articles with titles such as 'The Credibility Crisis of Community Regulation' (Majone, 2002).

The underdeveloped organisation hampered the Commission in various areas: poor internal coordination among Directorates-General, an underdeveloped set of instruments for underpinning and documenting policy, faulty internal and external supervision, inadequate quality of policy proposals with large differences between them (such as in weighing social risks), failing financial mismanagement, unprofessional staff policy, the closed nature of contact (among Directorates-General too but certainly also towards the outside world), a one-sided set of instruments for policy (also from a legal perspective), and lack of focus on external management (building up capacity in and among Member States) (Schön-Quinlivan 2011). Management of a national government department alone is complex and sensitive to administrative trends, but, on top of that, the Commission must deal with the advantages and disadvantages of different European administrative cultures and watchful eye of the Member States over the national top positions.

30 Committee of Independent Experts, *First Report on Allegations regarding Fraud, Mismanagement and Nepotism in the European Commission*, European Parliament, 15 March 1999.

Not only is the European Commission exposed to a multitude of influences; it also operates under a glass dome. In addition, there may be more tolerance of inadequate policy at national level than at EU level. European media, MEPs, national politicians and interest groups keep a close eye on the Commission. A proposal for refillable bottles of olive oil received much attention because some said it would help southern European olive oil producers to supply small expensive bottles to restaurants, which would drive up the cost for consumers. A story like this has great allure and is made much of in the media.³¹ Given the sensitivities, the Commission has an extensive communications department, and it keeps a finger on the national pulses via national representative offices of the European Union ('embassies'). Naturally, in this quest for support, there is a constant clash between the different values of the Member States. The differences in opinion about bottles of olive oil partly concerned whether consumers would be served quality olive oil (consumer certainty), at low cost, and whether this was a completely unimportant detail that the Commission should not interfere with. The checks and balances of the glass dome force a response. However, amusing scandals, large and small, and clumsy acts are more likely to draw attention than whether enough progress is being made on sustainability or the broad question of whether Juncker was an effective Commission President. In the glass dome, incidents stand out more than smouldering trends do.

Towards professionalisation

A slumbering trend was what caused the Santer Commission to resign, but the reason for it were scandals involving French Commissioner Edith Cresson, who was a controversial person even before she was recommended for the position by France. She had added a dental surgeon to her Cabinet as a personal assistant, for mental support. However, in the post-Delors era the causes lay deeper. Ambitious reforms were subsequently carried out in:

- Internal management (organisation): Staff policy based more on meritocracy (a points system was introduced as a basis for more reliable promotions), stricter financial management and accounting, reforming the Cabinets of the Commissioners, activity-based management (human resources and budgets allocated to tasks), etc. For better accounting, control procedures were also set up around internal financial watchdog OLAF (a 'service department' of the Commission working for European institutions).
- Improvement of the policy processes: policy processes around a transparent policy cycle were established in the name of 'better legislation'. These included pre-information notices by way of road maps, consultations (also over the internet), integrated impact assessments based on the best available information and with

31 See for example Nu.nl 'EU withdraws proposal about olive oil bottles (*Brussel trekt voorstel olijfolieflesjes terug*)', 23 May 2013.

internal quality assurance (Regulatory Scrutiny Board) and, still somewhat in their infancy, ex-post evaluations.³²

- A European set of instruments (European governance): e.g. open coordination and creation of independent agencies.³³ After the influx of legislation under Delors, a start was made under Santer – and partly under the influence of e.g. Dutch discussions about soft management instruments – to introduce instruments that would give the Member States more ownership.

The professionalisation of the organisation and policy processes up to and including the Barroso Commission count as very successful, especially since the Commission is a very large organisation where Member States are keen to guard their positions.³⁴ Modernisation and reform of organisation, quality of the policy processes and policy instruments will always continue. Questions raised by the above discussion for the current juncture include (in random order):

- The size of the College of Commissioners has been a subject of debate for years now. The Netherlands has been a proponent of a smaller College. The argument is that the number of Commissioners promotes the tendency towards longer wish lists and hinders internal coordination. However, Member States want a national Commissioner, also with a view to ownership in the Member States and recognisability of the Commission in the national media. For example, the question is how the Netherlands would view a controversial Commission or Commission decision if no one from the Netherlands was part of the Commission. Would that add to the idea that ‘the EU doesn’t know what it’s doing’? A smaller Commission would also give the impression of forming a government and being a step closer to the ever closer union. With less control by the Member States, accountability may possibly proceed more via the European Parliament. This would lead to the situation, or at least the impression, that a smaller College would have more of a free hand for ‘real’ European interests. This would mean that these European interests should be under the control of the EP. In addition, it must be considered that large countries without any representation in the College would probably stand a better chance of being heard by the Commission than a smaller country without a Commissioner. Incidentally, competent policy coordination does not necessarily need to come via a smaller College; it can also be achieved with adequate policy procedures that are overseen by the Secretariat-General, which filters and coordinates the relevant priorities (provided that the Secretariat-General functions).
- The Secretariat-General is one part of the Commission where significant changes have taken place. Originally, as the coordinating body of the President, the Secretariat-General occupied a difficult position in the political context of the

32 Mastenbroek et al. 2016.

33 European Commission (2001), *European Governance – a White Paper*. COM(2001)428.

34 Bauer et al 2013; Jordan and Schout 2006.

College with its national biases. Not only did Delors have his own channels within the organisation; working with strong Commissioners – sometimes heavyweights in their own country, such as Martin Bangemann, former minister for Economic Affairs from Germany – was also a challenge. The Secretariat-General has grown, especially under Barroso, in size and tasks, partly because the policy planning cycle has been expanded and its quality assurance and monitoring of integrated work has increased. As far as is visible from the outside, the Secretariat-General under Juncker had to take a step back in favour of the Cabinet of the President (a form of politicisation). This led to doubts about the reliability of the planning and internal control tasks of the Commission. Or as an expert put it: 'If something comes from Selmayr, it does not need to go through the procedures.' The administrative pressure at the top, including Vice-Presidents, Executive Vice-Presidents and Chefs de Cabinet, is probably not an easy place to start for the coordinating role of the Secretariat-General.

- Cabinets are less common in the Dutch administrative structure. Although doubts can be cast on Cabinets because they can serve as a filter between the DGs and the Commissioners, there is no point to a discussion of principle about Cabinets. The functions of a Cabinet in supporting the Commissioners are varied and largely 'horizontal' in relation to the preparation of a broad policy agenda of the College of Commissioners and in maintaining external contacts, including broad policy coordination with one's 'own' country.³⁵ The *Chefs* get together every Monday to prepare the meeting of the College on Wednesday. One could consider refining the composition of the Cabinets, so that they are less coloured by the national background of the Commissioner. One specific measure could be adding a provision to the rules of procedure of Cabinets to the effect that a Chef de Cabinet may not have the same nationality as the Commissioner. The spirit of the above reforms tends towards the professionalisation of the 'European' Commission where a Commissioner and Chef de Cabinet from different countries is to be expected.
- Around the year 2000, agencies were seen as an important instrument to autonomise tasks. However, they have remained rather limited in number and powers.

In essence, the above questions touch on the quality of policy processes, instruments and internal organisation of the College, and confidence in its substance and procedures. This makes the functioning of the Commission a national political matter in part (similar to the European Central Bank (ECB), which is ultimately also a national political matter³⁶). However, it must be considered that deciding on its internal

35 The recent appointment of Diederik Samsom as the Chef de Cabinet of Frans Timmermans seems to deviate from this due to a thematic profile of the Chef de Cabinet having been chosen.

36 The independence of executive and administrative organisations is concerned only within the margins of the study. Dynamic environments can lead to a political clash of margins. At that point the independence – of the Commission President or the ECB as well – is reached.

organisation is at the discretion of the President of the Commission (see Article 17(6) of the Treaty on European Union).

The interinstitutional balance: towards transgovernmentalism?

The interinstitutional balance is about the division of powers among the Member States (the Council) and the other European institutions. Box 3.1 gives a summary of a few shifts of balance. On the one hand, the interinstitutional balance is always in motion: the European Parliament has grown from a 'Mickey Mouse parliament'³⁷ to become a co-legislator, but the tasks of the Commission have expanded as well, and the weight of the President of the Commission has grown. The interinstitutional balance is established in part in the decision-making procedure, with constant changes to 'the' Community method (resulting in the 'usual' legislative procedure). The balance of power has shifted informally as well, such as because the Commission formally has the right of initiative, while it, with its initiatives, meets demands from outside. It can be argued that the interinstitutional balance has shifted towards 'Brussels'. Where the Commission initially did not need to take account of the EP and therefore could focus on the Council, today, such as in the run-up to a new Commission, that is unthinkable. The relationship between the EP and Commission has, with shared institutional interests, grown considerably.

Because of the increasing heterogeneity among Member States, the balance of power has shifted away from the Member States, creating more differences of opinion and increasing coordination costs, and the role of the Commission as a mediator has grown.

In addition, the Commission and the EP have developed an edge – perhaps even a significant one – in policy expertise. It is difficult for Member States to estimate the revenue and expense of new EU policy. A national civil servant explained that while they do have some in-house expertise, the reports of 60 pages or more come from Brussels. This raises the question of what position the Member States want to maintain in the interinstitutional balance.

On the other hand, there are some constants in the interinstitutional balance. Member States generally know quite well which tasks they do and do not want to relinquish. For instance, the EU is still largely based on legislation because financial transfers are difficult to explain. In addition, the transfer of sovereignty in scores of areas, from the organisation of the welfare state to security and border control remains intergovernmental – as it is called.

37 Priestley 2008; Schout 2018.

From intergovernmentalism to transgovernmentalism

In short, tensions have remained between supranational and intergovernmental administration. Nevertheless, the difference between supranational and intergovernmental is outdated. 'Intergovernmental' is often not classically intergovernmental. Because of distrust of the Commission or the unwillingness to give up any further sovereignty, Member States organise tasks in separate structures. The European Central Bank (ECB) is in charge of banking supervision. The European Stability Mechanism (ESM), a separate body in Luxembourg under the supervision of the Member States, is in charge of the emergency fund for the euro. The new European Labour Authority is a partnership among Member States. Separate structures have been created outside the European Commission for defence and foreign policy as well. With its own structures, buildings, decision-making procedures and leadership, this development goes beyond intergovernmentalism. Moreover, the Commission is often still involved, for example as a legislator (the ESM was founded under European law). European cooperation amounts to more than the choice between supranationalism and intergovernmentalism.

The Commission is against the establishment of cooperation outside the Commission and advocates the safeguarding of the unity of European institutions. For instance, in relation to the Economic and Monetary Union (EMU), the Commission warns against 'decisions from the past' that harm the complexity and effectiveness of the EMU and which are 'complex and impenetrable' for citizens.³⁸ The Commission continues – against the wishes of some Member States – to hold on to traditional Community cooperation.

In sensitive areas for the Member States, there is apparently the willingness to institutionalise cooperation, but not via the European Commission. This also raises questions about the integrative leadership style of the Commission (see below). Transgovernmentalism is a new concept. The question is whether the Netherlands wants transgovernmentalism to be a cornerstone of European integration/cooperation, in addition to 'federalism' (in the form of centralisation) and pure intergovernmentalism. It constitutes a rift with the mission of Commission as the protector of European interests or the interests of the smaller Member States.

Has the balance of power shifted towards 'Brussels'? Yes, in some areas (such as the internal market, appointments of top positions); but not in all areas (e.g. EMU, defence, taxes). Box 3.1 does show that the developments in the European institutions have gone more quickly, while the Council and the Member States have been damaged as well. Judging by instinct, it seems that, all things considered, life has been made more difficult for the Member States in the interinstitutional balance (see also Box 4.1 below about the politicisation of the Commission).

38 COM(2017)291 p. 17.

Box 3.1 Risers and fallers in the interinstitutional balance

	↑	↓
Commission	<ul style="list-style-type: none"> - Increase in policy areas and qualified majority decisions - Increase in non-legal policy tasks such as monitoring welfare states via the Semester - Central power of expertise - Increased legitimacy by increase in the importance of EP elections (lead candidates (<i>Spitzenkandidaten</i>) apparently also have a large indirect influence on nomination, with three executive Vice-Presidents from the big political families in addition to the President. - Increased legitimacy because of the Strategic Agenda - Close ties with the EP - Apparently closely tied to the French-German axis - Each period of European integration presents new challenges the Commission must respond to: from economic supervision (euro crisis) to today's search for answers to external uncertainties and sustainable development 	<ul style="list-style-type: none"> - Enlargement of the College through expansion
Council of Ministers	<ul style="list-style-type: none"> - Only Council that has become stronger: ECOFIN 	<ul style="list-style-type: none"> - European Council has become an agenda setter and solver of great political differences - Increased shared position with the EP
European Council	<ul style="list-style-type: none"> - Control over strategic agenda (for what it's worth, given the limited size and many compromises) - Ultimate problem solver 	

	↑	↓
European Parliament:	<ul style="list-style-type: none"> - Expansion of policy areas - Increase in qualified majority decisions - Political influence via <i>Spitzenkandidaten</i> procedure or (such as with Von der Leyen) by negotiating political appointments in the College (balance between Christian Democrats, Social Democrats and Liberals: Von der Leyen/Dombrovskis, Timmermans, Vestager) - Strong internal political organisation, support, planning and, fairly homogeneous, pro-EU. The EP has considerable power of expertise in comparison with the Member States - Close ties with the Commission - Power to delay legislation - Seems to win every battle in the long term (from debate group to co-legislator) 	
Member States (general)	<ul style="list-style-type: none"> - New policy areas outside the Commission (and EP): transgovernmentalism - Long tradition of blocking dossiers containing transfers and transfer of sovereignty - Depending on the period of time: the French-German axis - Member States have lost freedom to set policy because of detailed legislation with highly harmonised standards 	<ul style="list-style-type: none"> - Differences between Member States have grown and intensified - Handicapped by weaknesses in Member States in all stages of the policy process - Depending on the period of time: the French-German axis - Lead candidates (<i>Spitzenkandidaten</i> process) make it impossible for countries from which a lead candidate hails to put forward a Commissioner of their own

4 Assessment framework: In search of balance in leadership

A number of critical cases³⁹ give us points of reference for discussing 'Juncker', although it should be acknowledged that every Commission President has an impossible job⁴⁰. Juncker has proved that he fully supported the EU and was not afraid of sticking out his neck. The background study into the critical cases leads to the hypothesis that Juncker's ambitions ran up against the Council. This conclusion is largely in line with the development of European integration over the past 60 years.⁴¹ Where ambitious proposals concern the relinquishment of actual sovereignty, transfers or institutional discussions, the cooperation of the Council falters. Juncker did, incidentally, seem successful in similarly sensitive areas, such as, from all appearances, the multiannual financial framework, where the Commission made integrative proposals (the golden mean). An assessment of Juncker therefore points in the direction of a discussion on 'leadership style'.

Leadership styles can be grouped together into various characterisations.

One classification draws the following distinction:⁴²

- Visionary leadership (or transformational leadership) is aimed at changing objectives and values. This is not about finding an average outcome between interests or the lowest possible outcome. This concerns the leadership that seeks new objectives on the basis of long-term visions that aim to help actors extract themselves from existing situations. This is about the transformation of values and expectations. The ambition is the objective.

39 The request by the House of Representatives to focus extra attention on the Juncker period raises the question of how – from what perspective or theory – to look back on it? To find an approach, a list was made on the basis of discussions with experts and information in the media of 25 initiatives by the Juncker Commission in the categories of 'ambitious' and 'sensitive' (see Appendix II). The background research can therefore be seen as a move towards a study of critical cases.

40 <https://www.europeansources.info/record/an-impossible-job-the-presidents-of-the-european-commission-1958-2014/>

41 Compare Dinan 2004.

42 Schout and Vanhoonacker 2006.

- Integrative leadership (or group-oriented leadership) revolves round the honest broker who operates on the assumption of existing interests in the group and to create an atmosphere of trust so that the group process runs smoothly. The objective is an outcome; the process is the means.
- Task-oriented leadership (or functional leadership) revolves round fulfilling functions that are needed in the group process: planning meetings, ensuring that analyses are ready, seeing to it that people stick to the agreements, that a technical Presidency is effective, etc.

These leadership styles are complementary. Visionary leadership benefits much from a pleasant atmosphere and a functional – professional – approach. Task-oriented leadership, just like integrative leadership, benefits from a certain degree of ambition so that actors feel like they are doing something useful.

Seen from the perspective of discussions of European leadership, there is a paradox to the Presidency of the Commission as laid down in the Treaty ('engine of integration'). The rotating presidency of the Council is expected to act as an honest broker because, otherwise, the Member States will dig their heels in. On the other hand, the Commission is expected to show visionary leadership, while it needs to get the same Member States on board. It should naturally be considered that the challenges with a great deal of pressure call for a more coercive approach than a situation where time and political expectations play less of a role.

From High Authority to European Commission. From ambition to pragmatic cooperation

The contours of the European Union, and the role of the Commission therein, were impossible to define in advance. A variety of integration and cooperation projects, including the Benelux, ultimately gave birth, after the European Coal and Steel Community (ECSC) in 1952, to the European Economic Community (EEC) and Euratom in 1958. The ambitious French plan of a political union (then: European Defence Community) ran aground on the Netherlands and ultimately the unwillingness of France itself. From the beginning, there were conflicts large and small between the ambitions (political union) of integration versus more pragmatic integration on the basis of cooperation and added economic value. What is important in view of leadership style and ambition is that pragmatism won out and led to the European Community with a strong economic leaning. In other words: overly great ambitions lost. The *language*, however, remained unabatedly ambitious, with terms such as the 'ever closer union' and 'integration'.

Taking nothing away from the importance of peace and stability in the years after the war, strong national interests also played a role. Although less alluring, power factors were also at play behind integration as a peace project. Each country had specific survival reasons for taking part in European integration (Milward 1992; Anderson 2011). The Netherlands did not want to be excluded and did not want Belgium – emerging from the war less battered in any case – to move into a more favourable position between Germany and France. At the same time, the government feared it would be trapped in a protectionist European block, contrary to its international orientation. France sought to safeguard its geopolitical relevance. Italy hoped to join in with the modern world. And Germany sought recognition. Basically, the same discussions about European narrative building are still alive 60 years later. Contrary to what the intervening years seemed to suggest, there was not such a big step from De Gaulle to Macron or from Luns to Rutte in certain areas. From the very beginning, the Commission needed to give and take between interests, traditions, opportunities and fears of missing the boat.

That resistance is still alive and well today: visionary leadership clashes with interests. There is a political explanation for this (countries have different objectives), but resistance to deeper integration (including political integration) has also had a functional basis: the need for deeper integration has apparently not been very convincing. Proponents of deeper European integration have, with some regularity, demonstrated the functional inevitability of deeper integration ('war is coming', 'the end is near'), but the apparent dangers later turned out to be not so grave after all (just like the prospective benefits often turned out to be not as great because of mutual differences and interests).

A common example from the initial years of a thorough approach was Commission President Hallstein's plan to switch to majority decisions for matters such as grain prices. This led to the 'empty chair crisis': the French walked away from the conference table even though they were President of the Council. Examples of over-large ambitions that led to frustrations: Hallstein claimed to be a sort of European prime minister, Delors called Europe a 'federation' and Barroso used the word 'empire'. Although the euro was introduced after the Maastricht Treaty in 1991 (with a detour by setting a date in the distant political future: 1999), it did cause the necessary resistance after that, just like the big bang enlargement of the EU in 2004.

Delors – visionary with the wind in his sails

The early years up to the mid-1960s were successful, with the establishment of the customs union. Momentum was lost, however, in following twenty years. That changed with the Single European Act (1986), which saw a broadening of qualified majority decisions. The EU was therefore ready to take things to a deeper level – supported by

the sentiment that Europe risked falling behind the developments in Asia (then: Japan) and the US.

Delors had the wind in his sails and, with the political support of all Member States, including the personal support of UK Prime Minister Margaret Thatcher, he was able to exploit his talent for activism. Although he initially considered aiming for a social Europe (also an old European ambition with – depending on who you ask – little progress) or monetary integration, he went for feasibility and targeted the concept of the ‘internal market’ with 1992 as the deadline. In these years of success, Germany and France started the similarly successful Schengen project, which would further remove borders between Member States. In addition, in the wake of the huge political success of the internal market, the Maastricht Treaty signalled the start of monetary integration.

Four relevant conclusions can be drawn from these years:

- Big ambitions are possible, provided that the underlying objective is shared.
- Delors overloaded the Commission as an organisation. Regular testing of administrative capacities in relation to pursued ambitions is vital to an organisation.
- There was little consideration for administrative requirements in and among the Member States (networks). A dose of naivety also played a role. With the euro, it was assumed that Member States would converge on their own via e.g. the market mechanism and interest rates.
- The projects commenced during this period had a large – partly unforeseen, partly consciously underestimated – impact. The free movement of people had an effect on internal and external migration flows. The internal market, the liberalisation of inflows of capital and the introduction of the euro contributed to the mutual interweaving that characterised the euro crisis. There was a lack of cold thinking over hot issues at crucial moments. Did the engine of integration make a gaffe here? And were Parliaments unable to fully control the power of the engine?

As a visionary leader, Delors was effective in the internal market but was blind to functional leadership (the trade of any management). As the Guardian of Treaties and supervisory body, the Commission ought to be much more concerned with the practical feasibility of policy and the conditions for its effectiveness. Overly large steps forward were often taken after that, with similar results.

From Santer via Prodi to Barroso: Organisational development and professionalisation

Because of the ups and downs of his predecessor, Commission President Jacques Santer (President from 1995 to 1999) needed to bring peace and reform the organisation. Santer's motto was ‘doing less, but doing better’. Although his Commission resigned over the consequences of the overstrained Commission, Santer did lay the

basis for internal reforms in financial management and staff policy with programmes such as SEM 2000, MAP 2000 and DECODE, which his successor Romano Prodi would implement with the help of Commissioner Neil Kinnock. This period also saw a serious start being made with decentralising tasks in European agencies.

The resignation of Commission Santer was a turning point in the history of the Commission in its relationship with the EP. But the importance of good management ('input legitimacy') came painfully into view as a condition for confidence in EU policy ('output legitimacy'). Kinnock's reform plans were a move towards more bureaucracy – but in a positive sense – by drawing up internal regulations and rules of procedure. Just like under Santer, the focus was on functional leadership: getting the work processes under control.

Commission President José Manuel Barroso (President from 2004 to 2014) continued along the line of professionalisation and innovation – again with the motto of 'less but better'. Barroso made the most of the recent enlargement from 15 to 25 Member States by admitting that managing the Commission was impossible without a certain degree of centralisation of power and organisational streamlining. He strengthened the Secretariat-General by placing the emphasis on 'better regulation' (read: underpinning and planning). The planning of new policy and the quality of the proposals needed to be approved by the SG, which gave the President of the Commission more control over the policy agenda. In addition, he reformed the culture in the organisation by placing a heavy emphasis on integrated work processes, by breaking down the walls between DGs ('fiefdoms') and by pushing back national influences in the organisation, such as by introducing rotation at the top of the Commission, reducing the Cabinets of Commissioners and laying down rules for the number of Cabinet staff from the same country as the Commissioner.

At the same time, Barroso recognised that it was an essential task for the Commission to communicate its policy effectively to the 25 Member States and introduced a State of the Union address, like in the USA. The lack of an activist policy agenda (partly because of the cautious position that Barroso always took in relation to the positions of the Member States) combined with the organisational professionalisation and control over the organisation epitomise the two Barroso Commissions. In spite of the structuring of the organisation, however, Barroso was apparently fond of informal relationships himself (also mentioned: his 'Mediterranean' way of working). Every historiography remains an issue of weighing up balances.

Barroso's leadership style can best be typified as functionalist: the organisation became more professional. It is said that he lacked visionary leadership because there was no consistency to the Commission proposals. Juncker's motto (big on big, small on small) is therefore also a criticism on Barroso. This underscores the importance of thinking

carefully about the political ambition: lack of vision is not good either. But the response of big on big under Juncker was probably not so successful either.

Juncker: back to a political Commission

Jean-Claude Juncker (President from 2014 to 2019) was known for his vision, with much talk of a deepening of European integration at the heart of his Presidency. He also proclaimed himself a leader of a 'very' political Commission and presented his Commission as a 'last chance Commission' that would bring added value to the people of Europe. The Council demanded focus and imposed on him the motto of 'big on big, small on small' mentioned above. His character and European experience, but also his legitimacy as a *Spitzenkandidat* and the existing Strategic Agenda created high expectations. With 'big on big', the Juncker Commission also tried to listen carefully to the concerns and wishes of the Member States. This is also shown by the off-the-record interviews and can be seen in the attention to consultations in the impact assessments.

Under Juncker, the professionalisation that took place under Barroso was cast partly in a different light, or simply got stuck. Various off-the-record interviews openly show that the Commission President and his Chef de Cabinet and later Secretary-General, Martin Selmayr, had a great effect on policy proposals, which interfered with the gatekeeping of the Secretariat-General. The politicisation of the Commission under Juncker (see Box 4.1) can undo years of building on the functional reliability of the Commission.

The political profile of the Commission also led to questions about the care taken with impact assessments and ex-post evaluations. The Netherlands has argued, such as via ministers Timmermans and Kamp, together with other Member States, for decentralising quality assurance (compare also the positioning of the Advisory Assessment Board on Regulatory Burden (ART) in the Netherlands).⁴³ In addition, the European Court of Auditors could be expanded in view of ex-post evaluations.

Juncker adopted a visionary leadership style. This led in the big issues to increased tensions between the Member States (with e.g. Eastern Europe about the rule of law and the environment, and with the northern countries about the EMU). Juncker's ambitions were partly blocked by the Member States. The Member States started to draw a line. Whether justified or not, small Member States felt Juncker was less concerned with them than with France and Germany.

⁴³ Index card: Announcement of programme for healthy and results-orientated legislation (REFIT): state of affairs and outlook, Parliamentary document, 11-09-2014, <https://zoek.officielebekendmakingen.nl/kst-22112-1896.html>. Like minded paper on priorities in the area of better regulation, 1 April 2015.

An initial analysis of the results (Appendix III) shows that Juncker was successful in many areas, such as with 'small on small', but that Juncker clashed with the Member States in the area of visionary proposals. Three meta-themes can be distilled from the Appendix which, again, have led to tensions between the Member States and the Commission. Member States oppose proposals that concern 1) solidarity (sharing expenses and risks, relocation of refugees), 2) deeper integration where sovereignty is at stake (such as taxes, the EMU, asylum and migration, and common foreign and security policy) and 3) institutional reforms or discussions about them (discussions about 'the future of the EU' and about the broadening of qualified majority decisions). This resistance has a long history with similar outcomes. The golden mean sought by Juncker for the multiannual budget seems to have been more successful.

Visionary leadership creates opposition. This is why the rotating presidency was mainly expected to play the role of an honest broker, because no compromises could be reached otherwise. The expectations of leadership are low for the rotating presidency but high for the Commission, while it is ultimately also important for the Commission to reach compromises. The Council itself is to blame for the high ambitions of the Commission: the Strategic Agenda tends towards wonderful prospects that the Council subsequently does not approve once the initiatives have been put on the table (see Box 4.2: Vagueness in the Strategic Agenda).

Box 4.1 Several elements of politicisation under Juncker

- *Spitzenkandidaten* system
- Ambitious, ambiguous Strategic Agenda from the perspective of the Council
- Juncker's political character, including years of involvement in deepening the EMU
- Direction from the Cabinet (in a political sense) rather than via the Secretariat-General
- More reliance on consultations in the impact assessments
- Big-on-big perspective creates a high level of ambition in areas such as the EMU and border control
- Building on a more political manner of supervision

Box 4.2 Vagueness in the Strategic Agenda

The European Council conclusions of 27 June 2014 provided the five priorities of the Strategic Agenda. Commission President Juncker then translated these into his own ten priorities. One of the priorities of the European Council concerns the sensitive EMU, which was quite in the making at the time. This concerns a total of 46 words. These clearly show the compromises between north (resilience, convergence) and south (growth, solidarity). In addition, it contains words that few can quibble over, such as 'stronger', 'transparency' and 'openness'.

'make the Economic and Monetary Union a more solid and resilient factor of stability and growth: with stronger euro area governance and stronger economic policy coordination, convergence and solidarity, while respecting the integrity of the internal market and preserving transparency and openness towards non-euro EU countries.'⁴⁴

44 <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2079%202014%20INIT>.

Box 4.3 An ambition of the Commission: 'executive power'

The degree to which the Commission is a government with ministries is a recurring subject in institutional discussions. This is also evident from the words of several former Commission Presidents and in comparisons with the United States (with e.g. a State of the Union address and an executive).

It is the ambition of the Commission to be the executive power. This can also be seen on the walls of the Commission, such as in German in the Charlemagne building in Brussels: *die Exekutive*. However, the executive power is divided between Member States, EU institutions and, increasingly, also transgovernmental institutions.

The question is also whether the Commission should want to be 'the' executive power. The idea of the Commission as the executive power implies a major shift in the interinstitutional balance with a large role for the EP and a small role for the Member States. It also underscores the sensitivity of the Commission in the trend towards intergovernmentalism.



Photo: Adriaan Schout, January 2018.

5 Trends, problem areas and balances

The European Commission is pivotal in European policy processes, from policy initiation to enforcement and ex-post evaluations of policy. However, this role reaches farther. Because of its central position, the Commission has a significant advantage over most – if not all – Member States in knowledge and expertise. It also has a substantial apparatus of 32,000 civil servants concentrating on EU policy, while national ministries usually handle current EU affairs alongside their national tasks. The Commission is in many aspects also superior to the Member States when it comes to policy processes in the form of integrated impact assessments, ex-post evaluations and planning policy processes. Its central position and superiority create obligations in terms of political control. The question raised by this study is whether the functions and tasks of the Commission are properly embedded to make the procedures work as well, so that quality, transparency and control are guaranteed. Doubt about this leads to the impression that this public organisation uses its information position strategically to define, underpin and evaluate policy objectives.

Several main themes can be identified in the discussion about the development and functioning of the Commission:

- 1) *The Commission is ambitious*, partly owing to the Treaties but also through pressure from Brussels and from the Member States. The Commission, supported by the European Parliament, has high ambitions, and the Member States give legitimacy to its ambitions, such as via all sorts of requests and via the ambiguous Strategic Agenda. However, the Member States tend towards blocking those ambitions when it comes to actual proposals. For sixty years now, great European ambitions have been running aground on the wishes of the Member States (as a collective) to be cautious with solidarity, financial obligations and the transfer of sovereignty.

This raises questions about the balance between the level of ambition of the Commission and support for its ambitions.

- 2) Tied to ambition, the tendency towards the visionary *leadership style* of Commission Presidents only goes so far in the European context, which is characterised by conflicts of interest and weak governments.

Discussion is advisable about the balance between *visionary leadership* (focused on change), *group-oriented leadership* (placing the emphasis on finding compromises)

and *functional* leadership (the professional, transparent and reliable execution of tasks).

- 3) Organisations count. The organisation of the Commission, the qualities of the Member States, the importance of well-functioning networks, the decisions for decentralising tasks, etc. define the input and output legitimacy of the Commission. In addition, it can be seen that *external management* is inadequate in relation to the weaknesses of the Member States and poorly developed networks. Weak Member States lead to *integration by default*: the EU must jump in where Member States fail.

Discussion is advisable about the balance between the *policy task* of the engine of integration and the *management task* that also belongs to the engine of integration in order to guarantee that the policy is realistic in relation to the quality of the public administration in the Member States.

- 4) The organisation of policy processes in the Commission is generally good. The elements are there, but cohesion and direction could use some work. Box 2.2 illustrates the steps in the policy-making process. This shows that there are technical/technocratic policy tasks that demand independence and tasks that concern political considerations.

The debate about *decentralising tasks* has been going on for decades now. Discussion is needed about the possible shedding tasks with a view to things such as reliability and contamination, but also in view of the total size of the Commission as an organisation and the concentration on Brussels as its home ('capital of Europe'). The *balance between inside and outside* may need to be reassessed. The report discusses a number of tasks, but the examples are certainly not exhaustive.

If impact assessment controls and if ex-post evaluations are decentralised (such as by an external impact assessment review agency or by giving the European Court of Auditors more powers and resources in connection with the use of the network of national courts of auditors), confidence in the quality of documentation and ex-post evaluations will probably increase and the doubt hinted at in many of the off-the-record interviews will have less of a basis.

- 5) The focus on policy-making and political choices has diverted attention from underpinning and evaluating policy and *mapping out the effects*. In addition to *pressing effects* of e.g. the elimination of internal borders, expansions and the euro, we see that the free market tends towards *more harmonisation with higher levels of protection* and thus less freedom to set policy. More can be expected of the engine of integration in terms of making the effects more explicit, watching trends and formulating the requirements for public administration. The most unexpected effects of e.g. the EMU or of the lack of clarity in the Lisbon Treaty which led to

the *Spitzenkandidaten* process, with a subsequent revival of the discussion about transnational lists, underscore that more should also be expected of the Member States in thinking about the effects. This can paint a picture of conscious half-way measures that ultimately force further integration.

In addition to conditions for effective policy in terms of the required capacities, it seems that more thought should be given to scenarios around effects.

- 6) The structuring of the College tends towards *administrative pressure* (including Chefs de Cabinet, the number and type of Vice-Presidents and overlapping hierarchies, and a Secretary-General). This raises the question whether there is a growing hierarchy among Commissioners, Vice-President and a core College (President and the 'executive' Vice-Presidents). In addition, the EP recently seems to have gained more influence by colouring in the core College with three executive Vice-Presidents, which will have an effect on the independence of the Commission (the EP need not be seen as the sole representative of 'the' European interest).

The balance at the top needs to be looked at and elucidated.

- 7) Special attention is needed within the College for the President and for the Secretariat-General. A tacit process is under way to make the College 'smaller'. This is happening not by reducing the number of Commissioners but by creating a hierarchy where the President has obviously become less of a *primus inter pares* and there is a tendency towards 'super Commissioners'. In addition to the legal question about the desirability of the trend away from a College of equals, one might also discuss access to decision-making: is that – in practice – still the same for each Commissioner? Another question here is how serious is the problem of the effectiveness of a larger College – and whether a strong Secretariat-General might not solve many coordination problems, including keeping a watch on the priorities.
- 8) One can see that the role of the *Secretariat-General* is a recurring theme. In the administrative pressure at the top, and in relation to effective coordination among Commissioners, attention is also required for the shifting contours of the Secretariat-General. Chefs de Cabinet, Vice-Presidents and executive Vice-Presidents and an inspired President can impair the reliability of the Commission. The Secretariat seems to be the ultimate place where bureaucracy in a positive sense is embedded in terms of agenda management, careful procedures and transparency.

One could consider a model where the President, supported by the Secretariat-General, presides over the entire College as a *primus inter pares*, with one of his tasks being to ensure that the Secretariat-General can oversee the policy processes. This is apart from the fact that certain tasks of the Secretariat could be decentralised.

- 9) The Community method is shifting towards transgovernmentalism in areas where Member States guard against transfers and are concerned about sovereignty (and national accountability). The Commission also has important roles to play in this respect, but less than with the Community method. Transgovernmentalism shows that Member States are moving forward with the ever closer union in sensitive areas as well but that they do not trust the Commission being in control here.

Discussion is needed with the Commission about whether transgovernmentalism can be a lasting cooperation method, and in which policy areas.

- 10) In spite of a certain shift towards transgovernmentalism, the question is still *what will remain the position of the Member States* if the Commission and the EP obtain an even greater advantage in the area of knowledge and expertise. This advantage also contributes to integration by default. If the Member States do not invest enough in their European policy control, the significance of 'Brussels' will grow naturally. In this light, the growing ties between EP and Commission must also be considered, because in recent years the EP has also invested in policy support – such as by writing reports and reviewing Commission assessments. The position of the Member States in the interinstitutional balance is not guaranteed.

It would be interesting to hear how Member States and the Commission view this possible shift in the balance of power as a result of the knowledge needed to take part effectively in European policy processes.

Final considerations

- 1) These points raise the question of whether the balances are right between:
- Ambitions, leadership styles and organisational capacities,
 - Internal management of the Commission and its external management role,
 - Politicisation and the technocratic tasks of underpinning supervision,
 - Presidentialisation and the character of a College where all Commissioners are equal,
 - Supranational and transgovernmental cooperation: integration and cooperation,
 - Harmonisation with as much room as possible for national freedom to set policy,
 - Power, the spread of power and shared power,
 - Information and giving meaning.
- 2) A balance is not a compromise; instead, it suggests 'the best of both' (differentiation and integration).⁴⁵ In short, it's not about finding a happy medium but, rather,

45 See Lawrence and Lorsch 1967.

combining good reasons *and* good political considerations, and good internal management *and* good external management, etc.

- 3) Organisational studies teaches us that large organisations want to control their environment (getting external uncertainties under control).⁴⁶ An organisation with superior information, with possibly more than the average ambition in respect of goals, with good networks and with good external communications, including attempts to narrative building, can tend towards a lack of openness, such as in the form of tunnel vision towards the relevant goals and staying open to alternative developments. The introduction of the euro is one example, just like the recurring reformation debates that take place in Brussels, which are mainly about deepening integration. Wanting to have control over everything seems to belong to this lack of openness. A large organisation can try to create its own realities. This is another reason why discussion about the separation of tasks is advisable.

This may also play a role in the approach to Brexit. Brexit has pushed the Commission to start talking about deepening European integration (on 30 March 2019; a symbolic day to take action after the departure of the unwilling British). This ultimately led to the European summit getting bogged down in Sibiu, Romania, where government leaders once again watered down efforts to deepen integration (the British apparently were not the only ones to obstruct the subject of reforms). However, the Commission has done little to connect the opposition of the British to integration to the discord that can be seen in other countries⁴⁷ and continues in the meantime to go for deepened integration.⁴⁸ Nevertheless, the above analysis shows that not only the British need to come up with proposals for change. The necessary things also need to be discussed in the EU: the degree of harmonisation and the decline in the freedom of setting policy, the shift in the interinstitutional balance, the rise of transgovernmentalism, alternative forms of the ever closer union, the presidentialisation of the Commission, separation of tasks, etc. Whether the course of the Brexit would have been any different if these subjects had been seriously placed on the agenda is something to be discussed another time. But it is a fact that the relationship with the UK after a possible Brexit will leave a lasting impression in areas such as recognition of alternative forms of European cooperation and harmonisation so that a possible reform agenda of the Commission remains relevant in this respect as well.

46 Aldrich 1979.

47 See for example: Speech by Michel Barnier at the College of Europe in Natolin, 'Europe after Brexit', 29 March 2019.

48 Bogaers and Cuyvers 2019.

- 4) Each country watches the nominations for top positions in the European Commission closely and has a certain influence on the appointments. It could be considered to, in cooperation with countries with a like-minded European vision, to not only count the number of civil servants from the Netherlands and similar countries, but also watch the European profile that is nurtured by candidates.
- 5) The Treaties ought to give more clarity, such as on the objectives and the position of the Commission as an engine of integration, or by clarifying that closer ties among the Member States of Europe can also be achieved via transgovernmentalism. Ambiguities, however, will always remain in the function and task descriptions and in the objectives. The choices around the balances therefore call above all for political supervision – also by the national parliaments.

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Annex I: Functions and ambiguities

Function	Brief discussion
<p><u>Setting annual and multiannual agendas.</u></p> <p>The Commission has taken the first step towards annual and multiannual programming.</p>	<p>The growing influence of the EP (among others on the appointment of the Commission President and via the practice that has been introduced of a presentation of the targeted work planning for approval of the President) and the introduction, in 2014, of a Strategic Agenda set by the European Council, has meant that the multiannual agenda was greatly influenced by the EP and Member States. An important politicisation (in comparison with the independence of the Commission President to define the interest of the EU himself) has therefore been given via the planning. Studies show that the Commission's civil servants feel sustained by the renewed legitimacy <i>Spitzenkandidaten</i> procedure and Strategic Agenda has afforded them.⁴⁹</p>
<p><u>Right of initiative.</u> In the legislative process, the Commission should be seen as a neutral actor that serves the European interest. The Commission does not have the power to legislate in the area of Common Foreign and Security Policy (CFSP).</p>	<p>The Netherlands supported the right of initiative of the Commission for a long time because the Commission was seen as the protector of EU interests and therefore formed a certain shield against the influence of the large countries.</p> <p>In practice, the Commission emphasises that only a small part of the proposals are its own initiatives because requests often come from the Council, European Council (such as in the form of Conclusions), European Parliament, rotating presidency and other parties. In this respect, the Commission operates as a mediator between the different interests and also mobilises parties to support bills (there can be a conflict between the roles of mediator and independent initiator, see Nugent 2015).</p>

49 Research briefing 2: 'The "political Commission" and the "new ways of working". The views of European Commission staff', H. Kassim (2019). <https://www.uea.ac.uk/political-social-international-studies/research/the-juncker-commission/briefings>.

Function	Brief discussion
The Commission serves as an <u>engine of integration</u> . The Commission promotes the general interest of the Union, taking appropriate initiatives to that end.	The function of an engine of integration may clash in practice with the roles that it plays in the legislative process as mediator between, and mobiliser of, the interests. The words of the Treaty therefore open the door for visionary leadership. The general interest of the EU is difficult to define and, moreover, the 'engine' and 'integration' indicate a level of ambition that need not correspond everywhere with the general interest as experienced in the Member States.
<u>Budget management</u> . The Commission proposes the annual and multiannual budgets and implements the budget and manages the programmes.	Lessons from the past stimulate the Commission to find a happy medium between increases, decreases, established interests and innovations.
<u>Supervision</u> . In conjunction with the control of the Court of Justice of the European Union, the Commission supervises application of the law of the Union.	The Commission is dependent on the Member States and their capacities to ensure transposition and primary supervision. The Commission and the Court are faced with capacity problems for the proper monitoring of the Member States and initiating procedures. This combination opens the way to many problem areas in implementation, monitoring and enforcement. In addition, a hard approach fosters distrust between the Commission and Member States, while they must have a relationship of trust in scores of other tasks. It is also the question whether a hard approach serves the 'European' interests, given the political opposition and erosion of support among the population.
<u>External representative</u> . The Commission is responsible for the external representation of the Union, except where common foreign and security policy are concerned and in the other cases set out in the Treaties.	Complications can arise from the relationship with other actors such as the role of the full-time President of the Council, rotating Presidency and the emancipated action of closely involved Member States.
<u>Manager</u> . Under certain conditions laid down in the Treaties, the Commission carries out coordinating, executive and management tasks.	The question is whether sufficient consideration has been given to the administrative capacities in the Commission, the Member States and the networks in between.

Competences of the European Union (tasks)

The EU has only those competences that have been conferred on the basis of the Treaties (principle of conferral). Under this principle, the Union may act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States. The catalogue of competences introduced by

the Lisbon Treaty in Articles 2-6 of the Treaty on the Functioning of the European Union means that the Union has exclusive, shared or supporting competences, as further elaborated in separate parts of the Treaty.

Exclusive competences (Article 3 of the Treaty on the Functioning of the European Union (TFEU): areas where only the EU may legislate and adopt legally binding acts. Member States may only act if the EU confers on them the power to implement this legislation. The Union has exclusive competence in the following areas:

- customs union; see also Article 32 of the Treaty where the Commission endeavours 'to avoid serious disturbances in the economies of Member States.'
- establishing the competition rules necessary for the functioning of the internal market; see also Articles 101 and 102 of the Treaty.
- monetary policy for the Member States whose currency is the euro;
- conservation of marine biological resources under the common fisheries policy;
- common commercial policy;
- the conclusion of international agreements under certain conditions.

Shared competences (Article 4 of the TFEU): both the EU and the Member States may legislate and adopt legally binding acts. The Member States may, however, only exercise their competence in so far as the EU has not exercised its competence or has decided not to do so. Shared competence between the EU and the Member States applies in the following principal areas:

- internal market; see also Article 26(3): 'The Council, on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.'
- social policy, for the aspects defined in the Treaty;
- economic, social and territorial cohesion (regional policy);
- agriculture and fisheries, excluding the conservation of marine biological resources; see also Article 43 of the Treaty.
- environment;
- consumer protection;
- transport;
- trans-European networks;
- energy;
- area of freedom, security and justice;
- common safety concerns in public health matters, for the aspects defined in the Treaty;
- research, technological development and space;
- development cooperation and humanitarian aid.

Supporting competences (Article 6 of the TFEU): the Union may only carry out actions to support, coordinate or supplement the actions of the Member States. Legally binding acts of the Union are only permitted if they do not require the harmonisation of Member

States' laws or regulations. Supporting competences apply to policy in the following areas:

- protection and improvement of human health;
- industry;
- culture;
- tourism;
- education, vocational training, youth and sport;
- civil protection;
- administrative cooperation.

Special competences

The EU can take measures to ensure that the Member States coordinate their economic policy, social policy and employment policy at European level.

The common foreign and security policy of the EU is characterised by specific institutional features, such as the limited participation of the European Commission and the European Parliament in the decision-making process and the exclusion of legislative activities. This policy is laid down and conducted by the European Council (consisting of the heads of state and government leaders of the Member States) and by the Council of the European Union (consisting of a representative of each Member State at ministerial level). The President of the European Council and the EU High Representative for foreign and security policy represent the EU in matters of general foreign and security policy.

Exercise of competences

The exercise of EU competences is subject to two fundamental principles that are laid down in Article 5 of the Treaty on European Union:

- proportionality: the content and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties;
- Subsidiarity: in areas that do not fall within its exclusive competence, the Union may act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level.

Annex II: Juncker Commission – Empirical results of success, partial successes and failures

Successes

The Juncker Commission enjoyed some success in tabling ambitious projects and finding the political will for adoption among the Member States. Success can be ascribed, e.g., to the Juncker Commission's efforts at cutting down on unnecessary regulation ("small on small"), creating a legislative framework for the Digital Single Market, and EFSI.

The Juncker Commission's mantra of "big on big" was complemented with the adage "small on small." The concept of "small on small" entailed leaving policy areas where the Commission concluded that the EU could not deliver significant added value largely up to the Member States. Overall, the Commission was remarkably successful in reducing the number of proposals it tabled as compared to its recent predecessors.⁵⁰

In legislative terms, the Commission's Digital Single Market legislative framework can also be described as a success, with 28 out of 30 initiatives "politically agreed or finalised" according to the Commission, among them ambitious initiatives such as the controversial Copyright Directive (adopted against the votes of Italy, Finland, Luxembourg, the Netherlands, Poland, and Sweden), regulation of roaming charges, geo-blocking, Wifi4EU, and the General Data Protection Regulation. Proposals yet to be adopted concern "e-Privacy" and the "European Cybersecurity Network," both of which are currently being considered in the Council.⁵¹ Although a number of the adopted proposals, the GDPR included, have undeniably made a tangible impact on the Digital Single Market, their success comes with some qualifications. For instance, the GDPR has come under criticism for largely failing to change the way technology giants do business

50 "Legal Acts – Statistics," EUR-lex, accessed August 22, 2019, <https://eur-lex.europa.eu/statistics/2013/legislative-acts-statistics.html>; Agata Gostyńska-Jakubowska, "Juncker's Three Steps to Improve the Standing of the Commission in the EU," London: Centre for European Reform, 2015, accessed August 22, 2019, <https://www.cer.eu/insights/junckers-three-steps-improve-commissions-standing-eu>.

51 European Commission, "A Digital Single Market for the benefit of all Europeans," Brussels: European Commission, 2019, accessed August 1, 2019, https://ec.europa.eu/commission/sites/beta-political/files/euco-sibiu-a_digital_single_market.pdf.

with data. The heads of Member States' data protection agencies have characterized the past year as a "transition year," marked by relatively high tolerance, which they argue is now changing.⁵² Substantial fines have since been issued against British Airways and Marriott International. Regardless of the eventual impact of the Digital Single Market legislation, the Juncker Commission advanced its ambitions by getting it adopted.

Finally, EFSI was deemed ambitious and can be regarded as successful. EFSI succeeded in establishing an EU budgetary guarantee that was intended to attract € 315 billion in strategic investments across Europe by mid-2018. EFSI was later extended ("EFSI 2.0") with the goal of reaching € 500 billion in investments by 2020. However, the estimates of the amount of investment that EFSI can generate may well be overstated.⁵³

Partial successes

Beyond these success stories, the Commission advanced some initiatives that were partially successful. These included the European Pillar of Social Rights, Energy Union, the EBCG, EISF, climate change policy, and the proposals for the 2021-2027 MFF.

In his 2014 political guidelines, Juncker promised that he would work towards a "social Triple A-Rating" for the EU,⁵⁴ an ambition that eventually made strident gains in the form of the European Pillar of Social Rights. According to the Commission, as of August 2019, 24 out of the Commission's 26 initiatives in this field had been "agreed upon", including ambitious and controversial proposals such as the European Labour Authority (which depends on Member State cooperation and lacks enforcement powers) and revision of the Posted Workers Directive,⁵⁵ which triggered objections from 11 Member States

52 Nicholas Vinocur, "On GDPR anniversary, French privacy watchdog says penalties are looming," *Politico*, May 25, 2019, <https://www.politico.eu/article/winter-is-coming-says-french-privacy-watchdog/>.

53 European Court of Auditors, "European Fund for Strategic Investment: Action needed to make EFSI a full success," Brussels: European Court of Auditors, 2019, accessed August 1, 2019, https://www.eca.europa.eu/Lists/ECADocuments/SR19_03/SR_EFSI_EN.pdf.

54 Jean-Claude Juncker, "A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change – Political Guidelines for the next European Commission," Strasbourg: European Commission, 2014, accessed August 1, 2019, https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en.pdf.

55 The initiatives that the Commission counts include not only legislative proposals, but also, for instance, legislative packages (e.g., "Clean energy for all Europeans") and the social component of EFSI. See: European Commission, "Social Priorities under the Juncker Commission," Brussels: European Commission, 2019, accessed August 1, 2019, https://ec.europa.eu/commission/sites/beta-political/files/social-priorities_juncker_commission_en.pdf.

parliaments but was nonetheless adopted.⁵⁶ However, the Commission came up against vehement Member State opposition to two key initiatives, one a proposal for revising social security coordination, the other a communication calling for extending QMV in social policy. Revision of social security coordination fell well short of the qualified majority required for adoption, with Austria, Belgium, the Czech Republic, Denmark, Germany, Luxembourg, the Netherlands, and Sweden opposed (with abstentions from Malta, Hungary, and Poland). Member States had different reasons for their opposition; for instance, Germany feared having to provide social security to a large number of French workers who reside in France but commute to work in Germany, while the Netherlands objected to the length of the period during which a worker could “export” social security to another country.⁵⁷ Member State opposition to moving to QMV in social policy areas still governed by unanimity was built on similar misgivings. Overall, the European Pillar of Social Rights has been quite successful, but the Commission faltered when it came to reforming decision-making and advancing social security coordination. Though there was not one coherent bloc of Member States opposed to these initiatives, it is notable that opposition was more likely to come from central European and northern Member States.

In April 2019, the Commission, as represented by Energy Union Vice President Maroš Šefčovič and Climate Commissioner Arias Cañete, announced that the EU’s Energy Union had become a “reality”. The statement referred to the adoption of key legislative proposals, citing among others a new Emissions Trading System Directive, the “Clean Energy for all Europeans” and “Low-Emission Mobility Strategy” legislative packages, arguing that this had put the EU on a path to deliver on its 2030 emissions objective and achieve greater energy security.⁵⁸ While a majority of the 45 tabled Energy Union legislative proposals have been adopted (35 proposals, or 77 %), 10 proposals of the “Europe on the move and clean mobility package” are still awaiting adoption. The mobility package (sometimes dubbed “Macron law”) is opposed especially by peripheral Member States, like Bulgaria, who argue that the package’s rules would

56 Sofia Fernandes, “Posted Workers: How to Ensure a Fair Mobility,” Paris: Jacques Delors Institute, 2017, accessed August 1, 2019, <http://www.institutdelors.eu/wp-content/uploads/2018/01/postedworkers-tribune-fernandes-oct17.pdf?pdf=ok>.

57 David M. Herszenhorn, “EU countries reject proposal on social security coordination,” *Politico*, March 29, 2019, <https://www.politico.eu/article/eu-countries-reject-proposal-on-social-security-coordination/>. See also:

Wouter Koolmees, “Motie herziening coördinatieverordening sociale zekerheid (EU verordening 883/2004),” Den Haag: Ministerie van Sociale Zaken en Werkgelegenheid, 2019, accessed August 1, 2019, <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/03/25/kamerbrief-motie-herziening-coördinatieverordening-sociale-zekerheid>.

58 European Commission, “Fourth report on the State of the Energy Union,” Brussels: European Commission, 2019, accessed August 1, 2019, https://ec.europa.eu/commission/sites/beta-political/files/fourth-report-state-of-energy-union-april2019_en_0.pdf.

disproportionally hurt their logistics businesses. For instance, the package entails rules that would require truck drivers to return home more frequently, which poses a problem for businesses located in peripheral Member States.⁵⁹ Moreover, it is generally questionable how the Energy Union translates into real gains in delivering “secure, sustainable, competitive and affordable energy”. Serious doubts have been cast on the claim that Energy Union has become a “reality”—not least because Commission officials had previously explained that “you cannot say at some point in the future, this is the date the Energy Union will be established [...]. It is a process.” Furthermore, the latest report on the state of the Energy Union abandoned key indicators that the Commission had previously used to assess progress. Meanwhile, available data on energy dependence, electricity interconnection, greenhouse gas emission and other variables indicates that there has been little progress made since 2014.⁶⁰ The question of added value notwithstanding, the legislative framework is largely in place, rendering the Energy Union a partial success.

In his 2015 State of the Union speech, Commission president Juncker called for developing Frontex into a “fully operational” EBCG.⁶¹ Though the proposal is well on its way to adoption and the Council agreed to a staff of 10,000 by 2027, the EBCG will not be “fully operational” in the way originally intended by the Commission. Most importantly, the proposal was altered to the effect that now the Council authorizes deployment of the EBCG, not the Commission. Furthermore, the EBCG will depend on the cooperation of the Member State EBCG agents are deployed to.⁶² Overall, questions remain about the nature and scope of the EBCG’s tasks, or, in the words of one informed interviewee: “What are these 10,000 people going to do?”. Especially southern and eastern Member States with directly exposed external borders were opposed to the EBCG proposal.

59 Gergana Stancheva, “Bulgarian truck drivers to protest in Brussels against mobility package,” *EURACTIV*, January 9, 2019, <https://www.euractiv.com/section/transport/news/bulgarian-truck-drivers-to-protest-in-brussels-against-mobility-package/>.

60 Peter Teffer, “EU’s claim Energy Union now a ‘reality’ not based on facts,” *EUObserver*, April 11, 2019, <https://euobserver.com/energy/144633>. The fact that multiple Member States have failed to fully comply with their responsibility to submit National Energy and Climate Plans (NECPs) to the Commission is another strong indicator that the ambitions of the Energy Union are not shared by all Member States and that the legislative framework has yet to produce durable results. See: Sam Morgan, “Seven EU nations miss climate and energy plan deadline,” *EURACTIV*, January 11, 2019, <https://www.euractiv.com/section/climate-strategy-2050/news/seven-eu-nations-miss-climate-and-energy-plan-deadline/>.

61 Jean-Claude Juncker, “State of the Union 2015,” Strasbourg: European Commission, 2015, accessed August 1, 2019, https://ec.europa.eu/commission/sites/beta-political/files/state_of_the_union_2015_en.pdf.

62 Angeliki Dimitriadi, “The European border guard: New in name only,” *European Council on Foreign Relations*, June 2, 2016, accessed August 1, 2019, https://www.ecfr.eu/article/commentary_the_european_border_guard_new_in_name_only_7035.

Meanwhile, negotiations over the EISF were eclipsed by the debate about the Eurozone budget, now tellingly renamed the Budgetary Instrument for Convergence and Competitiveness (BICC), set to execute only a function for strengthening convergence and competitiveness, instead of stabilisation in times of crisis.⁶³ The notion of stabilisation, common to the EISF and the early Eurozone budget proposals, championed by France, quickly attracted hard opposition from fiscally conservative Member States, most notably the New Hanseatic League and Germany. These Member States fought against the stabilisation function, as they deemed the mechanism to be an encouragement for fiscally irresponsible behaviour for which richer and more conservative Member States would ultimately pay the bill. Consequently, EISF was parked and the Eurozone budget whittled down in scope to a budgetary tool with a mandate only for fostering convergence and competitiveness.⁶⁴ Nevertheless, the BICC—though it falls well short of the ambition behind the EISF and early Eurozone budget proposals—marks a step towards deepening integration in EMU, rendering the efforts partially successful.

The Juncker Commission pursued its climate change policy with mixed results.⁶⁵ At the beginning of his term, Juncker explicitly tied his climate change policy to Energy Union by making “a resilient Energy Union with a forward-looking climate change policy” one of his political priorities. As discussed above, the Energy Union has been relatively successful legislatively, even while its benefits are not yet fully evident and the implementation of policy remains incomplete. Though the Commission associates efforts to improve sustainability through circular economy with its “New boost for jobs, growth and investment”-priority, it is worth mentioning in the context of climate change policy that the Commission has been quite successful in this regard.⁶⁶ The Paris Agreement, too, was adopted by the EU—and ratified by the Member States. However, commitment to emissions reduction varies among Member States and the Commission. The Juncker Commission, along with a number of north-western Member States, has been pushing

63 Francesco Guarascio, “EU to drop stabilisation as use for euro budget, keep convergence, competitiveness: draft,” *Reuters*, December 12, 2018, <https://www.reuters.com/article/us-eurozone-future/eu-to-drop-stabilization-as-use-for-euro-budget-keep-convergence-competitiveness-draft-idUSKBN1OB1TP>.

64 Mehreen Khan, “Dutch step up pressure over Macron’s eurozone budget,” *Financial Times*, April 8, 2019, <https://www.ft.com/content/8fa3569c-58b4-11e9-9dde-7aedca0a081a>.

65 It is important to note that climate change policy permeates much of the Commission’s work, including agricultural policy, transportation policy, trade negotiations, and devising the MFF, among others. Within the scope of this policy brief an assessment of all these activities is not possible. Instead, the focus lies on climate change policy as pursued in the context of the Energy Union, as well as the Commission’s efforts to advance ambitious emissions reduction goals.

66 European Commission, “Report from the commission to the European Parliament, the Council, the European economic and social committee and the committee of the regions on the implementation of the Circular Economy Action Plan,” Brussels: European Commission, 2019, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1551871195772&uri=CELEX:52019DC0190>.

for higher ambitions in line with the Paris Agreement climate objectives. Other Member States have pushed back. This struggle is perhaps best exemplified by the European Council's failure to agree on the question of climate neutrality by 2050, an ambitious goal that had been advanced by the Juncker Commission in its "A Clean Planet for All" communication.⁶⁷ Though 24 Member States have endorsed the goal, a group of four central and eastern European Member States opposed the target at a European Council meeting in Brussels in June.⁶⁸ Taking into account the fledgling Energy Union, successes in circular economy, and the Commission's failure to bring the Council on board with its ambitious and long-term emissions reduction goals, its climate change policy can be regarded only as a partial success.

Much opposition to the Commission's 2021-2027 MFF proposals has been predicated on the ambitious size of the budget, along with other concerns, for example over Common Agricultural Policy (CAP) reform and a proposal to tie budget transfers to Member States' upholding of the rule of law.⁶⁹ As the UK, an important net-contributor to the EU budget, is presumably leaving the Union, the EU is going to suffer a significant setback in contributions. The Juncker Commission, however, has tabled proposals that would keep the EU's financial commitments at roughly the pre-Brexit level,⁷⁰ theoretically forcing the EU to find other sources of funding to bridge the gap, including soliciting higher contributions from the remaining 27 Member States. The Netherlands, among others, disagrees with this approach, decrying the "unfair distribution of costs" and arguing that a smaller Union should also mean a smaller budget and that reforms are required rather than fresh money. The Commission's compromise offer to compensate for 50 % of the "Brexit gap" in spending cuts did not go far enough to appease the critics of the budget proposals.⁷¹ As a result, the MFF proposals have been parked, and will likely not be adopted until shortly before the December 2020 deadline—or even

67 European Commission, "A Clean Planet for All," Brussels: European Commission, 2018, accessed August 1, 2019, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0773&from=EN>.

68 Rochelle Toplensky, "EU 2050 climate target blocked by eastern nations," *Financial Times*, June 21, 2019, <https://www.ft.com/content/881a50de-936e-11e9-aea1-2b1d33ac3271>.

69 Lili Bayer, Emmet Livingstone and Jacopo Barigazzi, "5 big EU budget headaches," *Politico*, April 19, 2019, <https://www.politico.eu/article/5-big-eu-budget-multiannual-financial-framework-summit-headaches/>.

70 European Commission, "EU budget: Commission proposes a modern budget for a Union that protects, empowers and defends," European Commission, May 2, 2018, https://europa.eu/rapid/press-release_IP-18-3570_en.htm.

71 For the Commission's proposed solution to the Brexit gap, see: Noah Gordon, "The EU budget after Brexit: Reform not revolution," Brussels: Centre for European Reform, 2018, accessed August 1, 2019, https://www.cer.eu/sites/default/files/prbrief_mff_gordon_24.4.18.pdf. For the Dutch position, see: Mark Rutte, "Statement Prime Minister Rutte about the European Commission's proposal for the Multiannual Financial Framework," Den Haag: Government of the Netherlands, 2019, accessed August 1, 2019, <https://www.government.nl/latest/news/2018/05/02/statement-prime-minister-rutte-about-the-proposal-by-the-european-commission-for-the-eu-budget>.

later. While it is not unusual for budget negotiations to be lengthy, the Commission had originally intended for its proposals to be adopted by the end of 2018, and before the EU elections at the latest.⁷² Though this ambition has been thwarted, it is far too early to judge the 2021-2027 MFF proposals as either complete failure or success.

Thus, in a number of cases, the Juncker Commission made headway with ambitious proposals, albeit without fully achieving its ambitious aims. Remarkably, some of these advances were made in policy areas where Member States have traditionally been—and still are—hesitant to surrender sovereignty, namely EMU, migration and social policy.

Failures

Finally, there are the numerous Commission projects that may be described as failures. By and large, these include most of the Commission's high-profile efforts at deepening EMU, giving the EU a greater role in taxation, reforming European migration policy, and changing the way in which the EU makes foreign policy.

EMU

During the Juncker Commission's term, prominent battles were fought over some of the Juncker Commission's proposals concerning EMU. In 2015, the EU's "Five Presidents Report" asserted that it was "inevitable" that Member States would share more sovereignty in this area.⁷³ Later in its term, the European Commission presented a number of initiatives aimed at deepening EMU (overall similar in substance to EMU proposals pushed adamantly by President Emmanuel Macron). Among others, proposals for the EMF and an EU minister for economy and finance, EDIS, and SBBS were put forward by the Commission.

Concern about sovereignty arose especially in relation to the Commission's proposal for integrating the ESM into EU law by creating the EMF. The EMF would no longer be administered in a purely intergovernmental fashion, with some decisions taken by reinforced QMV. Additionally, the Commission envisaged a role for a Commission Vice

72 Eulalia Rubio, "Negotiating the Next Multi-Annual Financial Framework in an Electoral Year: Which Consequences," Paris: Jacques Delors Institute, 2018, accessed August 1, 2019, [E:institutdelors.eu/wp-content/uploads/2018/11/1811-Negotiating-the-next-MFF-in-an-electoral-year-Eulalia-Rubio.pdf](https://institutdelors.eu/wp-content/uploads/2018/11/1811-Negotiating-the-next-MFF-in-an-electoral-year-Eulalia-Rubio.pdf).

73 Jean-Claude Juncker, "Completing the Europe's Economic and Monetary Union," Brussels: European Commission, 2015, accessed August 1, 2019, https://ec.europa.eu/commission/sites/beta-political/files/5-presidents-report_en.pdf.

President to act as chairperson of the EMF.⁷⁴ A group of Member States were reluctant to give up decision-making power in this way, with resistance led by the fiscally conservative New Hanseatic League. To the contrary, the group (reinforced by Slovakia and the Czech Republic) called for the ESM to be given monitoring competence of the financial situation of Eurozone countries, which currently lies with the Commission, in an effort to strengthen enforcement of fiscal rules.⁷⁵ So far, the Hanseatic League has been successful in blocking the transfer of Member State sovereignty over the ESM to the Commission.

Member States aiming at balanced budgets, including Germany and the New Hanseatic League, also opposed the Commission's proposal for EDIS. Germany is opposed to EDIS as long as European banks still hold bad loans that make them more liable to fail. Adding to German fears is the fact that banks often hold a large amount of national government bonds. In the event of a government's insolvency, public debt default fallout affecting banks' ability to pay out deposits could thus be transferred to the European level via the EDIS.⁷⁶ Therefore, EDIS suffers from opposition based on the perception that it is a mechanism that rewards risk-taking and burdens fiscally responsible actors, which critical Member States view as not proportionate.

A similar fate befell the proposal to create SBBS, which was meant to alleviate (German) fears that Eurobonds—the idea of Eurozone countries jointly issuing bonds, championed by Jean-Claude Juncker for almost a decade, both in his capacity as Eurogroup chef and Commission president—would lead to risk mutualisation. In contrast to Eurobonds, which would entail a degree of debt harmonization, SBBS were intended to create securities backed by Member States' pooled sovereign debt, supposedly eliminating debt and

74 Jean-Claude Juncker, "State of the Union 2017," Luxembourg: Publications Office of the European Union, 2017, accessed August 1, 2019, https://ec.europa.eu/commission/sites/beta-political/files/state-union-2017-brochure_en.pdf. See also: European Commission, "Proposal for a Council Regulation on the establishment of the European Monetary Fund," Brussels: European Commission, 2017, accessed August 1, 2019, https://eur-lex.europa.eu/resource.html?uri=cellar:050797ec-db5b-11e7-a506-01aa75ed71a1.0002.02/DOC_1&format=PDF.

75 Jim Brunson and Mehreen Khan, "Hawkish European capitals lobby to beef up eurozone bailout fund," *Financial Times*, November 2, 2018, <https://www.ft.com/content/2975a1ca-ddc3-11e8-9f04-38d397e6661c>.

76 Ruth Berschens and Jan Hildebrand, "Austria's compromise on European deposit insurance irritates Berlin," *Handelsblatt*, September 13, 2018, <https://www.handelsblatt.com/today/finance/nein-danke-austrias-compromise-on-european-deposit-insurance-irritates-berlin/23583320.html?ticket=ST-171344-OCdk2PeBTISjmDU7khxe-ap2>.

risk mutualisation.⁷⁷ However, German critics viewed SBBS as “Eurobonds though the backdoor,” and there has so far been little progress on the file.⁷⁸

Overall, it appears that any type of debt or risk mutualisation/harmonization and economic transfer is regarded as untenable by fiscally conservative Member States, who argue that such measures would put an unfair burden on fiscally responsible Member States. The same group of Member States, most notably Germany and the New Hanseatic League, is most concerned about losing sovereignty as a result of deepening EMU. Disagreement regarding EMU proposals has also been among the clearest indicators of the weakening of the “French-German axis.” While German Chancellor Angela Merkel has had to contend with internal divisions and declining popularity at home, which left her unwilling and unable to pursue integration in EMU, French President Emmanuel Macron has continued to push an ambitious agenda, putting strain on the alliance.

Taxation

Concerns voiced in response to the Juncker Commission’s suggestion to move to QMV in matters of taxation were emblematic for Member State objections to the Commission’s taxation ambitions. The Commission, in its communication calling for QMV in taxation, pre-emptively acknowledged the concerns over sovereignty that the proposal would spark.⁷⁹ The foreshadowing proved accurate: In response to the plan, Irish Finance Minister Paschal Donohoe stated that “[t]axation is a sovereign Member State competence and decisions at Council on tax matters require unanimity. Ireland does not support any change being made on how tax issues are agreed at EU level.” This stance is shared by a substantial number of other Member States, overwhelmingly peripheral and small (and Nordic), including those in the New Hanseatic League (of which Ireland is also a part), Malta, Hungary, and Cyprus.⁸⁰

77 Gregory Claeys, “Are SBBS really the safe asset the euro area is looking for,” Bruegel, May 28, 2018, <https://bruegel.org/2018/05/are-sbbs-really-the-safe-asset-the-euro-area-is-looking-for/>.

78 Francesco Guarascio, “EU proposes new sovereign bond-backed securities, faces criticism,” *Reuters*, May 24, 2018, <https://www.reuters.com/article/us-eurozone-sovereign-sbbs/eu-proposes-new-sovereign-bond-backed-securities-faces-criticism-idUSKCN1I1G2>.

79 European Commission, “Communication from the Commission to the European Parliament, the European Council and the Council: Towards more efficient and democratic decision making in EU tax policy,” Strasbourg: European Commission, 2019, accessed August 1, 2019, https://ec.europa.eu/taxation_customs/sites/taxation/files/15_01_2019_communication_towards_a_more_efficient_democratic_decision_making_eu_tax_policy_en.pdf.

80 Joe Brennan, “Ireland rejects Brussels plan to kill national vetoes on tax,” *The Irish Times*, January 25, 2019, <https://www.irishtimes.com/business/economy/ireland-rejects-brussels-plan-to-kill-national-vetoes-on-tax-1.3759027>. See also: Bjarke Smith-Meyer, “Brussels’ bid to kill tax veto faces uphill battle,” *Politico*, January 13, 2019, <https://www.politico.eu/article/brussels-bid-to-kill-tax-veto-faces-uphill-battle/>.

Similar objections had been made by Member States in opposition to Commission proposals to create a C(C)CTB, a Digital Tax, and the FTT—in fact, the proposition to move to QMV in matters of taxation was made in response to the failure of these proposals, as was made explicitly clear in Commission President Juncker’s 2017 State of the European Union speech.⁸¹

The Commission’s rationale behind advancing proposals for C(C)CTB⁸² was based to a good extent on the argument that C(C)CTB would curb tax evasion. However, Irish critics have argued that C(C)CTB is neither specifically designed nor especially effective at combatting this practice, rendering it inappropriate for the stated purpose (as well as disregarding subsidiarity and tax sovereignty, according to seven Member State parliaments).⁸³ Meanwhile, the rationale behind the Commission’s Digital Tax proposal was to levy taxes on multinational companies that conduct their business in a way that makes it difficult for governments to tax profits where they are generated. The proposal foundered, encountering resistance from Denmark, Ireland, and Sweden—and even Germany, which sponsored a watered-down version of the proposal together with France—amid concerns over its scope (and potential US retaliation).⁸⁴ The FTT, a project of enhanced cooperation, was blocked by participating Member States, first by Belgium and Slovakia and later Spain, over concerns about the instrument’s effects on pension funds, its potential role in funding the Eurozone budget, and revenue distribution.⁸⁵

81 Jean-Claude Juncker, “State of the Union 2017”.

82 C(C)CTB encompasses two related concepts: firstly, CCTB stands for Common Corporate Tax Base, which would quite literally provide a common way for EU Member States to calculate corporate tax base—though tax rates would remain the responsibility of the Member States. Secondly, CCCTB stands for the Common Consolidated Corporate Tax Base, which means that—since there would be a uniform tax base across the EU—companies that operate across borders would only have to file a single tax return, with tax revenues being distributed across Member States according to an apportionment formula. See: European Commission, “Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB),” Strasbourg: European Commission, 2016, accessed August 1, 2019, https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_683_en.pdf. Also: European Commission, “Proposal for a Council Directive on a Common Corporate Tax Base,” Strasbourg: European Commission, 2016, accessed August 1, 2019, https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_685_en.pdf.

83 Esther de Lange, Bryan Hayes and Gunnar Hoekmark, “The great EU corporate tax lie,” *EUObserver*, February 27, 2018, <https://euobserver.com/opinion/141092>. See also: Alain Lamassoure, “Report on the proposal for a Council directive on a Common Consolidated Corporate Tax Base (CCCTB),” European Parliament, March 1, 2018, http://www.europarl.europa.eu/doceo/document/A-8-2018-0051_EN.pdf.

84 Jorge Valero, “The EU’s digital tax is dead, long live the OECD’s plans,” *EURACTIV*, March 8, 2019, <https://www.euractiv.com/section/economy-jobs/news/the-eus-digital-tax-is-dead-long-live-the-OECDs-plans/>.

85 Cécile Barbière, “Belgium told to get off the fence, stop blocking FTT,” *EURACTIV*, March 22, 2017, <https://www.euractiv.com/section/economy-jobs/news/belgium-told-to-get-off-the-fence-stop-blocking-ftt/>. See also: Jorge Valero, “Spain obstructs agreement on ‘Tobin tax’,” *EURACTIV*, July 25, 2019, <https://www.euractiv.com/section/economy-jobs/news/spain-obstructs-agreement-on-tobin-tax/>.

So far, none of the taxation proposals have made much headway—at least not at EU level. There is not one distinct group of Member States that were opposed to taxation proposals, with concerns over sovereignty arising in Member States across the Union. However, some individual Member States, most notably France, have championed deepening European integration in tax matters. In the face of the stalemate at EU level, Member States such as France and Spain have taken up work on national versions of the Digital Tax and FTT. There are also ongoing discussions about the taxation of digital companies at the OECD level.

Migration policy

In 2015, the Commission devised two refugee relocation schemes that were meant to relieve those Member States that saw the greatest numbers of refugee arrivals (primarily Italy and Greece). The second refugee relocation scheme was adopted by the Council, using the “nuclear option” against the votes of the Czech Republic, Slovakia, Hungary, and Romania. After adoption, these opponents of the Commission’s migration policy, along with Poland, undermined the scheme by largely rejecting their responsibilities to take in migrants, thereby rendering the system dysfunctional.⁸⁶ They based their opposition mostly on the argument that mandatory relocation violated their sovereignty, as it curtailed their national sovereign power to decide over their borders and who could legally reside in their countries. Among these Member States, this view led not only to non-compliance with the EU directive, but more generally to the attitude that the Commission should revert back to its role as an apolitical Guardian of the Treaties, instead of continuing to act as the explicitly political body it had become (most notably under Juncker).⁸⁷ Slovakia, taking the refugee relocation scheme to court at the ECJ, also argued that the measure was not proportionate, as it was not appropriate for accomplishing the policy objective of relocating thousands of migrants. Though the ECJ dismissed the challenge (along with the Hungarian challenge), arguing that the Commission could not have foreseen the failure of the relocation scheme⁸⁸—which was caused in good measure by the con-compliance

86 Jacopo Barigazzi, “Brussels to end mandatory refugee relocation (for now),” *Politico*, September 15, 2017, <https://www.politico.eu/article/brussels-to-end-mandatory-refugee-relocation-for-now/>.

87 Aneta Zachová, Edit Zgut, Karolína Zbytniewska, Michał Strzałkowski and Zuzana Gabrizova, “Visegrád nations united against mandatory relocation quotas,” *EURACTIV*, July 23, 2018, <https://www.euractiv.com/section/justice-home-affairs/news/visegrad-nations-united-against-mandatory-relocation-quotas/>. See also: Viktor Orbán, “Will Europe belong to Europeans,” *Visegradpost*, July 22, 2017, <https://visegradpost.com/en/2017/07/24/full-speech-of-v-orban-will-europe-belong-to-europeans/>.

88 Court of Justice of the European Union, ‘The Court dismisses the actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers,’ ECJ, 6 September 2017, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-09/cp170091en.pdf>.

of its legal challengers—the outcome of the suit does not change the fact that the Commission's scheme did in fact fail due to Member State opposition.

The Commission also tabled proposals to institute a permanent relocation scheme and a revision of the Dublin rules,⁸⁹ which were similarly rejected by anti-migration governments on the grounds of sovereignty and reinforced the position of opposition against the Commission (and against other Member States who were in favour of reforming asylum policy) taken up by these Member States.

Overall, the Commission's efforts at reforming EU migration and asylum policy have illustrated the deep division in attitudes towards migration among Member States. Opposition to reform emanates mostly from peripheral Member States to the South and East, along with other Member States that have been governed by anti-immigration governments, notably Austria, Denmark, and the UK.

Common Foreign and Security Policy

Commission ambitions in regard to CFSP have been charged with controversial implications for national sovereignty. Commission President Jean-Claude Juncker notoriously teased the notion of establishing an EU army at a time when British public opinion about the EU was alarmingly polarized.⁹⁰ As public discourse about the UK's place in the EU was characterised by fears about the loss of national sovereignty to a centralized, supranational bureaucracy, the ambition to establish an EU army, voiced by the top Brussels bureaucrat, played directly into the cards of the Eurosceptic camp. The issue was not developed further by the Commission and thereby never properly put to the test, though opposition to the idea has been discernible in Austria, Denmark,

89 European Commission, 'Annex to the regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application international protection lodged in one of the Member States by a third country national or a stateless person', Brussels: European Commission, 2015, accessed 1 August 2019, [http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2015/0450/COM_COM\(2015\)0450\(ANN\)_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2015/0450/COM_COM(2015)0450(ANN)_EN.pdf). European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)', Brussels: European Commission, 2016, accessed 1 August 2019, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-270-EN-F1-1.PDF>.

90 Jean-Claude Juncker, 'In the very long run, we will need a European army. Because we have to be credible when it comes to foreign policy #wahlarena #withJuncker,' Twitter, 20 May 2014, <https://twitter.com/junckereu/status/468847798725918720?lang=de>.

Finland, Ireland, Malta, Poland, Portugal, Sweden, the Netherlands and the UK among others.

The suggestion to move to QMV in matters of CFSP through the activation of a passerelle clause suffered a similar fate. The ambition got a more elaborate treatment, having been published as a Commission communication laying out the argument after all Member States had affirmed their desire for a “stronger Europe on the global scene” and France and Germany had suggested moving to majority voting on CFSP.⁹¹ The result, however, was uneasiness about the Commission’s overreach into an area of national sovereignty proliferating especially among Eurosceptic and comparatively smaller Member States, as they were concerned that QMV in CFSP would simply enable larger Member States to invalidate their foreign policy interests and decisions.⁹² In this environment, it appears highly unlikely that the Council will agree to apply QMV in the Union’s CFSP.

Institutional Reform

The Juncker Commission also missed the mark in promoting debate about the future of the EU. In March of 2017, preceding the European Council’s Rome summit later that month, the Juncker Commission published its “White Paper on the future of Europe.” The White Paper, which detailed five scenarios for the future of the European Union, was meant to foster debate about the future trajectory of the EU post-Brexit referendum.⁹³ The Commission went on to publish several discussion papers on more concrete questions, such as the deepening of EMU or developing the social dimension of Europe. While these efforts to foster debate contributed to the formulation of concrete policy proposals, as in the policies proposed as part of the European Pillar of Social Rights or the Eurozone budget, debate about the underlying questions of European integration

91 EU Member States, European Council, European Parliament and European Commission, ‘The Rome Declaration,’ Brussels: European Council, 2017, accessed 1 August 2019, <https://www.consilium.europa.eu/en/press/press-releases/2017/03/25/rome-declaration/>. Government of the French Republic and German Federal Government, ‘Meseberg Declaration: Renewing Europe’s promise of security and prosperity,’ Berlin: Presse- und Informationsamt der Bundesregierung, 2018, accessed 1 August 2019, <https://archiv.bundesregierung.de/archiv-de/meta/startseite/meseberg-declaration-1140806>. European Commission, ‘Communication from the Commission to the European Council, the European Parliament and the Council – A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy,’ Brussels: European Commission, 2018, accessed 1 August 2019, https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-efficient-decision-making-cfsp-communication-647_en.pdf.

92 Leonard Schuette, ‘Should the EU make foreign policy decisions by majority voting,’ Centre for European Reform, 2019, accessed 1 August 2019, https://www.cer.eu/sites/default/files/pbrief_qmv_15.5.19.pdf.

93 European Commission, ‘White Paper on the Future of Europe: Reflections and scenarios for the EU27 by 2025,’ Brussels: European Commission, 2017, accessed 1 August 2019, https://ec.europa.eu/commission/sites/beta-political/files/white_paper_on_the_future_of_europe_en.pdf.

and the EU's purpose did not properly get off the ground. This was perhaps most noticeable in the European Council declaration following the Sibiu summit in May 2019. Though the summit was intended to mark the culmination of two years of debate and consultation on the future of Europe, the declaration was arguably largely devoid of any meaningful indication of the future trajectory of the Union.⁹⁴

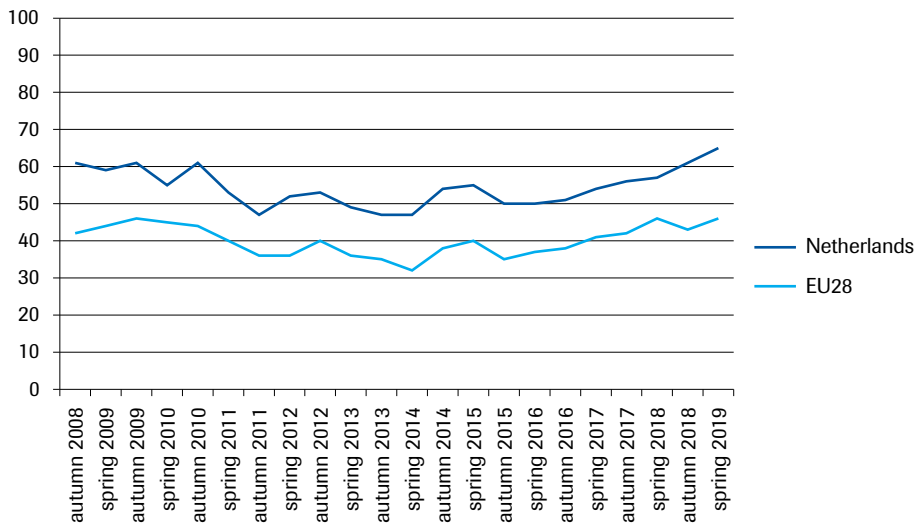
Discontinuation of Seasonal Time Change

Another proposal that attracted substantial attention was the Commission's plan to abolish seasonal time change in the EU. The proposal met with resistance regarding the timing of the discontinuation of time change in 2019, and though it appeared set to be adopted with the date of discontinuation pushed back to 2021,⁹⁵ a source close to the negotiations claims that there is a lack of agreement between Member States and that discontinuation will likely not be adopted.

94 European Council, 'The Sibiu Declaration,' Brussels: European Council, 2019, accessed 19 August 2019, <https://www.consilium.europa.eu/en/press/press-releases/2019/05/09/the-sibiu-declaration/>.

95 Joshua Posaner, 'EU stops clock on Commission's time change plan,' *Politico*, 29 October 2018, <https://www.politico.eu/article/transport-ministers-countries-say-no-to-juncker-commission-daylight-saving-clock-change-plan/>.

Annex III: Trust in the European Commission



Source: Eurobarometers autumn 2008 – spring 2019, accessed on: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/index#p=1&instruments=STANDARD>

Annex IV: House of Representatives request letter

1. Introduction

The standing committee on European Affairs has, in the framework of its annual planning for strengthening the knowledge position for 2019 (see Appendix 4), decided to carry out a study on the tasks and functions of the European Commission.

2. Reason for the request

Changing institutional relationships, a 'political' European Commission

This coming autumn will see the commencement of a new European Commission. One of the central institutions of the European Union, the Commission has the task, in accordance with the EU Treaty, to promote the general interest of the Union and take appropriate initiatives to this end. In this respect, it fulfils important functions such as initiating bills and policy and the execution of EU legislation. In addition, it has coordinating, enforcement, management and budgetary tasks and plays a role in the external representation of the Union.

Given the great changes that the European Union is going through, the question is how these extensive and varied tasks are performed in practice and whether the Commission is fit for the job. On the one hand, the Commission has in recent decades worked on the professionalisation of the performance of its tasks, such as by improving impact assessments and the more recent initiative towards better legislation. On the other hand, the political character of the European Commission is perceived to be growing: the current President calls his Commission a 'political Commission' and has, for example, altered the relationships within the College of Commissioners. The President of the European Commission is assuming a public role.

There also seems to be increasingly closer consultation with the European Parliament. There is also more and more contact with the national parliaments. The Commission has adopted a clear stance in the debate since 2017 about the future of the EU. At the same time, the European Council has in recent years been playing an increasingly important role in the European field of influence. The result of all this is that the institutional relationships are changing. That can affect, and has affected, the character of the Commission.

3. Subject and objective of the study

The study is aimed at obtaining a better picture of the way in which the European Commission performs the tasks and functions conferred on it in the EU Treaty.

The following questions and elaboration serve for this purpose:

1. What developments have the tasks and functions of the European Commission gone through in recent years?
 - Give a brief sketch of the development of the tasks of the European Commission since the 1950s.
 - Map out which tasks and functions the European Commission has had since the Lisbon Treaty (2009) and what the main developments in practice have been since then. Of particular interest in this respect are the developments under the current European Commission (2014-2019). The focus should be placed on the question of whether, and if so, where a more politicised Commission emerges in the performance of tasks and how this relates to the task description in the treaties. The developments in respect of the enforcement tasks may be left aside. Following the Mulder motion (Parliamentary document 35078, no 4), the government has already been examining the organisation and reorganisation of the enforcement tasks of the European Commission.
 - Show which review criteria are available for assessing the European Commission's performance of tasks.
2. What problem areas are there in the existing combination of tasks of the European Commission and what alternatives – seen in this connection – are imaginable?
 - Identify what the main problem areas are in the existing combination of tasks of the European Commission, taking into account the way in which these are performed and partly in the context of the changing relationships with other EU institutions and bodies. In addition, ascertain how a politicised European Commission relates to the European Council and the Council of the EU.
 - Sketch several alternative scenarios or models for the organisation and reorganisation of the tasks of the European Commission to resolve these problem areas, while also working out how these should be divided and whether responsibility for certain tasks or functions can be placed elsewhere. How these scenarios relate to the Commission's own vision for the future (White Paper on the Future of Europe) may also be examined.
 - These scenarios or models should be based on the tasks as laid down in the current EU treaties (in view of the coming Commission), while multiple alternatives can also be sketched alongside or within them that would require a treaty amendment (in view of the long-term development of the Commission).

The objective of the study is to contribute to further contemplation of this subject within and outside the House of Representatives. No conclusions will be drawn in the report

about the advisability – in a political sense, where applicable – of different scenarios or models.