The ‘Political’ Role(s) of the European Commission

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Abstract

The extent to which the European Commission can still exercise a ‘political’ role in the EU is very much up for debate. Some recent academic analyses of the Commission take it for granted that its political roles are in decline. Other perspectives note that the current President of the Commission, Jean-Claude Juncker, was appointed in 2014 by a much more politicised process than had been used previously and that his College has since sought to present itself as being guided by a political mission and as offering political leadership to the EU.

In this paper, we aim to show that in the debate about the political roles of the Commission, ‘political’ has too often been poorly defined and operationalised. We seek in the paper to offer a more refined and specified framework for measuring the Commission’s political roles by: a) setting out four common types of ‘political’ behaviour; b) examining the manifestation of these kinds of political behaviour in four traditional functions of the Commission in the EU. The framework suggests that, even amongst the Commission’s many ‘managerial’ tasks, opportunities arise for the exercise of political drive and leadership.
Introduction

Few issues in EU Studies have been debated as much as the role of the European Commission in shaping policy outcomes (Becker et al., 2016; Nugent & Rhinard, 2015; Pollack, 2003) and the Commission’s ability to act in a ‘political’ fashion (Coombes, 1970; Radaelli, 1999; Smith, 2004). The two debates are integrally linked, since the Commission’s ability to engage effectively in the latter has the potential to influence its strength in the former.

Of late, however, debate has intensified over the specific question of the Commission’s political role. Much has been made, for instance, of the Commission President’s call for a more ‘political’ and less technocratic Commission, arguably in the drive to regain power in the steering process of European integration (Peterson, 2017). Other recent events raising the question of the Commission’s political role have included: the use in 2014 of the highly-politicised Spitzenkandidat process for the appointment of the Commission President, which resulted in the candidate of the main centre-right group in the European Parliament (EP), Jean-Claude Juncker, becoming President after the 2014 EP elections (de Marcilly, 2014); the subsequent reorganisation of the internal structuring of the College of Commissioners, which has given the College not only a more hierarchical structure but also a more ‘government-like’ appearance (Wille, 2013); the obvious ‘presidentialisation’ in the operation of the College under Junker, with him clearly setting a political lead and providing overall political direction; and the constant emphasis by Juncker that his College has a political drive that rests on a political mandate.

Predictably, opinions remain polarized on the question. On the one hand, some argue that the Commission’s political role has been, in various ways, highly compromised of late (Bickerton, Hodson, & Puettter, 2014; Ponzano, Hermann, & Corona, 2012; Schön-Quinlivan, 2011). On the other hand, some observers, both in practitioner and academic circles, cite the
The politicisation of the College noted in the previous paragraph and argue the Commission has become more political than ever (de Marcilly, 2014; Wille, 2013).

We argue here that the debate on the political role of the European Commission lacks precision. Without a clear definition and operationalization, the notion of ‘political’ varies widely and evidence is gathered selectively. A specification of terms, to allow for engaged debate, is critical at a time when the Commission’s role in an increasingly questioned European project is under review. The effort to make the Commission more political, at least by the Juncker Commission, strives to connect more fundamentally to public sentiments and democratic values in a way not traditionally seen in the history of the EU. As such, questions of the ‘political’ role of the Commission are as important, if not more important, as the specific question of whether the Commission’s influence over outcomes is rising or waning at the moment.

As such, this paper hopes to make two contributions. First, we offer a framework for interpreting what ‘political’ means in the context of studying the roles undertaken by the Commission, drawing on past literature on the Commission and reinvigorating a call for greater precision launched more than a decade ago (Radaelli, 1999; Smith, 2004). We identify four theoretical and practical usages of the term ‘political’, each of which has a significant and different, political dimension: ideologically political, policy political, institutionally political, and administratively political. Second, as a means to test the plausibility of the framework, we offer empirical evidence regarding how those different kinds of political behaviour manifest themselves in traditional Commission functions, namely: agenda-setting, initiation, process facilitation and implementation. Unlike other studies (see, for example: Dinan, 2016; Peterson,

1 An interesting, related debate concerns whether the political role of the Commission is injurious to a more technocratic role desired by many member states (Bickerton et al., 2014; Metz, 2015). Space limitations prevent us from taking up that discussion here.
we focus not so much on the composition and operation of the Commission, though they are referred to where relevant, but rather on how key Commission responsibilities, actions and behaviours are not only inherently highly political both in nature and execution but have actually become increasingly so. Even when undertaking seemingly ‘non-political’ duties, such as implementation, opportunities still arise for the Commission to act in various highly political ways.

Applying ‘Political’ to Commission Responsibilities, Actions and Behaviour

In suggesting that the Commission exercises roles that are, at least partly, political, much naturally depends on how one defines ‘political’ in the context of Commission responsibilities, actions and behaviour. The debate extends as far back as Pisani, who in 1956 interpreted two central drivers of the Commission’s predecessor, the High Authority: a ‘mission oriented’ one, dedicated to and organised around the pursuit of a central ‘political’ goal (assumed to be European integration) and an administratively oriented one, dedicated to management functions (Pisani, 1956). Coombes picked up the discussion again in the 1970s, arguing that the Commission’s two driving roles may be at odds within one another (Coombes, 1970). For him, ‘politics’ was about a ‘political leadership’ role, in turn constituted by two central tasks: an initiative function, which involved ‘inventing and “selling” means of extending the scope and level of integration’ and a normative function, defined as ‘legitimizing measures by its uniquely European character and defining the common interest’ (ibid: 297). For these authors, the increase in the Commission’s management roles was overwhelming its capacity to provide political leadership (Schön-Quinlivan, 2011 for an excellent overview).

More recently, scholars have nuanced their conceptions of ‘political’ to include policy leadership, which includes the entrepreneurial qualities of the Commission that allow it to convey its preferences into policy outcomes. The Commission’s right to initiate legislation is
given pride of place in such studies, as are its rights to shepherd proposals through the policy process, to negotiate with multiple actors with diverging preferences, and to control the policy initiation process. These approaches emphasize the ability of an actor – in any polity – to act as a ‘policy entrepreneur’, to exploit ‘political opportunity structures’, to ‘strategically frame’ policy solutions, or to engage in ‘venue-shifting’ (Maltby, 2013; Schön-Quinlivan and Scipioni, 2016). The Commission’s ‘political’ role is less related to EU-building and sovereignty-sharing and more related to policy entrepreneurship and goal achievement in policy outcomes. Empirical evidence gathered for these kinds of studies tend to focus on specific policy issues, critical decision-making moments, and implementation processes in which the Commission can play an active part in shaping policy outcomes.

Finally, the literature on the Commission offers interpretations of ‘political’ from a normative-democratic theory perspective, including the extent to which activities respond to the aggregate wishes of the public. Radaelli (1999), for instance, categorises three kinds of political activity conducted by the Commission. One is political competition, normally associated in Western democracies with elections and political parties but including rivalries between government institutions representing different forms of public interest (courts, legislatures, executives, etc). For the Commission this would include inter-institutional rivalry. Another is political ‘publicness’, interpreted by Radaelli (and later by Smith 2004) as engagement directly with the European public as a way to respond to societal sentiment and wishes. A third element of ‘political’ is the exercise of value judgements in the carrying out of specific policy goals or programme management. Earlier work emphasised that seemingly technocratic, management-type activities contained profoundly political choices, defined as the choice between different kinds of ideologies regarding the direction of society.

There is thus a wide range of understandings in research on the Commission, and in the wider literature, of what ‘political’ is meant to connote. Different studies apply different usages
of political to varying empirical situations. Nevertheless, four main usages of what is ‘political’ can be discerned from this literature, allowing us to outline four different kinds of political behaviours.

1) **Ideologically Political (usage 1).** This kind of political role is akin to acting with a view towards a broad common purpose, of which advancing European integration is the most obvious instance in the case of the Commission. In traditional nation-states, ideological action is derived from competitive elections and the imposition of a party platform, a statement of common purpose corresponding to a particular vision of how society should develop. In the EU, this dimension historically played out indirectly, but more recently it has been recognized – and even publicized – that party-political ideologies play a strong role in shaping what the Commission does (consider the centre-right majorities of the College, or the *Spitzenkandidat* procedure). More broadly, the Commission is said to act increasingly with a view towards the European public in the kinds of activities it undertakes, how it communicates, and what kinds of broader sentiments it responds to (Hartlapp, Metz, & Rauh, 2014).

2) **Policy Political (usage 2).** In this usage, ‘politics’ manifest itself in terms of the pursuit of specific policy outcomes in line with Commission’s own priorities. In focus here is the Commission’s advancement of certain policy values (e.g. its centre-right based market policies, or its belief in the importance of the Precautionary Principle) against those advancing other, often conflicting views. Related activities of the Commission in this category involve efforts to build coalitions, to marshal selective evidence, and to preserve positions within policy negotiations. Of course, policy goals are often steeped in ideological positions and the two kinds of politics overlap. However, ‘policy politics’ is narrower in that it speaks less to broad societal interests and integrationist outcomes and more to particular policy questions.
3) **Institutionally Political (usage 3)**. This kind of political role corresponds to ‘fighting one’s corner’ within institutional and bureaucratic systems. It concerns one’s position within the institutional landscape in any political system. In debates over the Commission’s role in the EU system, this version of ‘political’ is the one most often used since it relates to the Commission’s position vis-à-vis other EU institutions (with much of the literature suggesting the Commission has been ‘losing out’). Activities within this category reflect the kinds of ‘bureaucratic politics’ so familiar to EU studies scholars, such as: manipulating legal procedures to one’s advantage, preserving jurisdictional control, expanding budgets, and advancing institutional capacities (Peters, 2001).

4) **Administratively Political (usage 4)**. Much of ‘politics’ takes place below the surface of high level – and relatively public – policy and legislative decision-making processes. It involves the application of existing law through administrative edicts, the management of ongoing policy programs, and activities related to similar kinds of executive tasks (Nugent & Rhinard, 2015, chapter 11). Here, political behaviour manifests itself in clawing back lost policy ground, advancing organizational self-interest, and make new sets of decisions under changing circumstances (as in foreign aid or agriculture subsidies, for example).

Making a clear distinction between these different kinds of political behaviours is difficult in practice, and perhaps only possible analytically. Our goal is to clarify the terms used in broader discussions and encourage scholars to debate ‘apples with apples’.

To illustrate the various ways in which the Commission is ‘political’, and to answer the question of whether the Commission is becoming less so of late, we now turn to an empirical discussion. To avoid falling into the trap of selection bias, or what Galtung once famously described as ‘the traditional quotation/illustration methodology’ (in Lijphart, 1975), we do not
present empirics in the same categories as listed above. Instead, we discuss the way ‘politics’ becomes manifest in four traditional activities carried out by the Commission: setting the broad agenda, initiating policies, facilitating processes, and implementation.

**Setting the Broad Agenda**

The agenda-setting activity performed by the Commission involves identifying broad EU system objectives and persuading people to support them. It necessitates defining the common interest, crafting long-term goals of integration and cooperation, and mobilizing arguments and actors in support of a political vision of the future (see Lindberg and Scheingold, 1970). It is based largely on the Commission’s treaty-based competences to ‘promote the general interest of the Union and take appropriate initiatives to that end’ (Article 17(1) TEU). This role of the Commission role is typically portrayed as being in decline, with other actors – notably the European Council – seen as having eclipsed the Commission’s steering role. However, it is worth examining the extent to which this is accurate, and to assess the Commission’s capacity to act ‘politically’ in this kind of activity.

From the start of the Juncker Commission, it was clear that broad-level agenda-setting would be reemphasized. As said by Martin Selmayr, Juncker’s highly influential *chef de cabinet*, being ‘political’ for the Juncker Commission means ‘being up to the political challenge of this time … focusing on those issues that matter … that overcome crisis … this Commission will be remembered for whether it … returns Europe back to growth … from chaos to order … we have to focus our energy on the existential matters being up to the political challenges of this time…..and to focussing on the issues that matter’ (Selmayr, 2016). Selmayr thus made explicit a view that the Commission had the right (the need, even) to appeal outside of Brussels to the larger population and public sentiment. In a similar vein, supporters of the
procedure for selecting the Commission President have hoped that the process will, as indeed it seems to be doing, re-energize this leadership role of the Commission, not least since it ostensibly channels societal and ideological preferences and legitimises more traditional kinds of political leadership by the Commission.

Beyond these major shifts in emphasis and procedure, several other aspects of broad agenda-setting in recent years deserve mention. First, the Commission’s treaty powers in respect of shaping the ongoing debate on the future of European integration remain strong. Most notably, Article 17(1) TEU states: ‘the Commission shall promote the general interest of the Union and take appropriate initiatives to that end’. This treaty article, which is deliberately phrased in a very vague manner, permits the Commission to move on a broad front if it so wishes – by, for example, issuing position or discussion papers which are designed to set or shape the agenda. If the ideas expressed in such papers are then endorsed by other institutions, especially by the European Council and/or the Council, or if they lead to requests for the Commission to develop its thinking further, perhaps in the form of a Green or White Paper, they can then become a source of legitimacy and a framework in which more specific proposals are advanced. Such, for example, is the case with the White Paper on the Future of Europe that was issued in March 2017 (Commission, 2017a) and the subsequent reflection papers on policy areas that were issued within its framework (Commission, 2017 b-f).

Second, in so far at the EU currently has an overall set of priorities, they are those set out by Jean-Claude Juncker at the time he assumed the Commission Presidency in 2014. Included in the ten identified priorities were: boosting jobs, growth and investment; creating a connected digital single market; making EMU deeper and fairer; developing a new policy on migration; and making the EU a stronger global actor (Commission, 2014). Significantly in terms of the ‘politicisation’ of the Commission:
• Initially, there were only five priorities, but they were gradually expanded to ten after Juncker, conscious that to be confirmed in office he and his incoming College needed as broad support as possible in the EP (especially given the increased strength of ‘anti-system parties) participated in extensive exchanges and discussions with ‘the mainstream’ EP groups on what they were looking for.

• The priorities were thus fixed very much in a political context and in a predominantly top-down manner (by Juncker as part of his selection campaign).

• The priorities and actions on them are kept under constant political review, both in the Commission itself and in other EU institutional forums (see, for example, European Parliament, 2017).

• The priorities reflect the broadly ‘centrist’/centre-right majority in the main EU institutions and, as such, are both ideologically based and based also on what commands support amongst decision-makers.

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

An example of Juncker using the Presidency to provide strongly politically-based and policy-driven leadership is the way in which he was, and made sure he and the Commission were seen to be, the main driving force behind the 2015 *Five Presidents’ Report* on the future of EMU, which set out plans for the building of a fiscal union in the eurozone (Juncker, 2015). (The preceding Four Presidents’ Report of 2012 had been headed by the European Council President, Herman van Rompuy.) Another example is the way in which Juncker took advantage of a window of opportunity – created by the economic and financial crises – to considerably alter the Commission’s capacity for financial investment when he persuaded EU decision-makers that there was an urgent need to generate a momentum behind increased investment. To this end, he proposed, even before assuming office, the creation of a new investment fund capable of generating some €300 billion of ‘new money’. Soon after the new College assumed office in November 2014, a Commission Communication was issued detailing the nature and purpose of the fund (Commission, 2014), which was now called the European Fund for Strategic Investments (EFSI). The target figure was set at €315 billion and the fund was designed primarily for investing in infrastructure projects related to transport, energy, information technology, and trading. The investment plan was approved in principle by the European Council at its December 2014 meeting.

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

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

In sum, the Commission’s broad-scale agenda-setting practices reveal several opportunities to exercise a ‘political’ role: pursuing a pro-integration agenda, increasingly by appealing directly to the European public and linking leadership selection to party-political platforms (usage 1); exercising an influence over specific policy outcomes (usage 2); preserving the Commission’s role in inter-institutional leadership processes, including the emphasis on the Political Guidelines as a driving agenda (usage 3); and the creation of initiatives within the Commission’s own executive remit to advance its overall priorities a la the EFSI, mentioned above, and its implementation (usage 4).
Policy Initiation

The Commission’s policy initiation activities involve the strategic formulation of, and the mobilisation of support behind, specific new policy initiatives, especially legislative initiatives. The role is underpinned by various treaty provisions. The most important of these provisions is Article 17: 2 (TEU) – which states that ‘Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise’. Since the treaties do provide otherwise only in a very few AFSJ areas, the Commission enjoys an almost exclusive right to propose and draft legislation. Furthermore, after it has issued legislative proposals the Commission is given by the TFEU a considerable control over them as they make their way through legislative processes – notably by making proposals difficult to amend without the Commission’s agreement. The lack of precision of the TFEU in many respects has provided further opportunities for the Commission to take policy action and to advance proposals where it has felt it to be necessary and appropriate to do so. For example, it has taken advantage of Article 352 – the so-called ‘flexibility’ clause, whose remit was expanded by the Lisbon Treaty to include any of the objectives set out in the treaties and not simply, as formerly, single market objectives – to make in-roads into the sensitive area of tax harmonisation amongst member states (Commission, 2015a; but cf. Wasserfallen, 2014).

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

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

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

In short, the Commission’s policy initiation activities involve at least three of the usages of ‘political’ that were noted above, with many of its policy and legislative proposals: likely to
focus on major and pressing policy issues, and to prioritise issues where the Commission can attempt to funnel societal preferences – as with the heavy marketing surrounding recent initiatives to cut mobile phone charges (usage 1); being of a character that advances the Commission’s specific policy goals (usage 2); strengthening the Commission’s institutional position at least as a side-effect (as with the, now being partly established, banking union and capital markets union (usage 3).

**Process Facilitation**

The Commission provides an important function in facilitating EU policy- and decision-making processes (Nugent & Rhinard, 2015, chapter 10), and in so doing, can exercise several different kinds of political roles. Some observers claim that the rise of new institutional actors over the years has undermined the Commission’s procedural facilitation powers but, in fact, by contributing to further fragmentation of the EU’s institutional landscape, the rise of new institutional actors has not been to the complete detriment of the Commission. One reason for this relates to the long-standing dispersal of leadership in the EU. As Ellinas and Suleiman (2012: 9) have noted about the operating independence of appointed officials in all types of democratic systems, ‘the more fragmented a political system is, the larger the scope for bureaucratic autonomy’.

In that respect, political aspects of the Commission’s role can be seen as follows. Focusing here just on legislative processes, the Council and the EP share the formal power to adopt most legislation and have the greatest claims to democratic legitimacy. However, they are both constrained in what they can do, which provides considerable opportunities for the Commission to advance legislative proceedings in its preferred directions. The Council is constrained by, amongst other factors, its internal divisions, its very nature as rolling series of negotiations between national governments, and, for all formations of the Council other than
the Foreign Ministers, its rotating presidency. When considering Commission legislative proposals, Council meetings (at all levels) tend to be more reactive than proactive. They are not usually self-starting forums in which national representatives identify and agree on principles designed to provide a reference framework for immediate or future legislative action. Similarly, the EP too is constrained, in its case by the size and heterogeneity of its membership and also by the restricted nature of its powers which, as with legislatures everywhere, favour it too being a reactive rather than a proactive body. The Parliament is certainly improving its capacities for leadership (as the growing use of ‘own initiatives’ suggests) but it still lags behind the Commission in respect of its institutional powers of agenda-setting.

The Commission thus occupies an important procedural position in respect of the making of legislation. It does so by virtue of its initiating, amending, and withdrawing powers, its detailed understanding of the nature and policy implications of legislative proposals, and its advance understanding – which comes from extensive formal and informal deliberations – of what measures are likely to be acceptable to the Council and the EP. However, it cannot drive proposals through against the wishes of the Council or the EP: as was clearly shown in the mid-2000s when the contents of its much-vaunted Services Directive and REACH Regulation were emasculated. Similarly, it cannot, or at least does not usually, attempt to stop proposals whose contents have been agreed by the Council and EP – at any point from first reading to conciliation stage. But, when it is firmly resolved that a legislative measure is necessary but is being unwisely held up by the Council and/or the EP, the Commission can display considerable institutional adaptation and tenacity – as, for example, was the case with the so-called ‘Blue Card Directive’ (covering the conditions and residence of third country nationals entering the EU for economic reasons), which was initially proposed in 2001 but not finally adopted (admittedly after being considerably watered down by the Council) until 2009 (Paris, 2017).
In short, the Commission’s process facilitation tasks remain important in today’s EU, and allow it exercise a strong ‘policy political’ role as legislation makes its way through the legislative pipeline (usage 2) and to preserve, for the most part, its position in the inter-institutional arenas (usage 3).

**Implementation**

The Commission’s policy implementation responsibilities might appear to be a ‘hard case’ (methodologically speaking) in the search for ‘political’ components of Commission activities. Moreover, these responsibilities are sometimes ignored in scholarly research on the Commission’s influence in the EU system. But, in a number of respects, it is in the implementation activities associated with the Commission’s executive tasks where political behaviours become the most evident and are often the most forceful.

One respect concerns the Commission’s strong position, both legally and as a result of its subject expertise, in the process of secondary rule-making in the EU. Most EU law consists of secondary rule-making and is issued in the name of the Commission. Of the approximately 2,000-2,500 legal instruments issued by the EU each year, over 70 per cent take the form of Commission rules or, in legal terminology, ‘non-legislative legal acts’, which consist of regulations and decisions plus a handful of directives.

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

Another respect in which a political component is present in Commission policy implementation responsibilities relates to the powerful decision-making responsibilities of the Commission as a direct implementer of laws. Most of these responsibilities are not much politically loaded but in two very important policy areas – macroeconomic and competition – they decidedly are so.

_In the macroeconomic policy area_ the Commission’s responsibilities and powers to oversee and attempt to guide the fiscal performances of eurozone member states grew during the financial and economic crisis. Whilst some commentators have noted the intergovernmental nature of many of the arrangements put in place to help stabilise the eurozone (see, for instance, Puettter, 2012), most have indicated that far from this being to the detriment of the Commission its institutional position has actually been strengthened in a policy area – economic governance – where it previously had a only limited role (see, for example: Bauer and Becker, 2014; Savage and Verdun, 2016). Of the four aspects of the eurozone crisis response examined by Bauer and Becker – financial stability support, economic policy surveillance, coordination of national policies and supervision of the financial sector – all have seen the Commission wielding significantly increased influence. Bauer and Becker go so far as to note that as the EU and international responses to debt-ridden eurozone members took shape, they were based on a decision-making model prominently featuring the Commission which was given powers to: assess the systemic risk posed to and by a country; conduct needs assessments; check for
compliance with other internal market rules; and make proposals to the Council (which, in practice, are normally accepted – as in July 2016 when the Commission recommended to the Council not to apply financial penalties to Spain and Portugal for being in breach of Stability and Growth Pact rules). It is true that the EU’s main funding scheme to help save indebted countries – the European Stability Mechanism (ESM) since 2012 – has been moved outside of the EU’s decision-making and legal frameworks, with the ESM being governed by a new legal organisation registered in Luxemburg. But, as Bauer and Becker point out, the Commission-centred model of decision-making still features in that it continues to make assessments, to issue recommendations to decision-takers, to negotiate with stricken states, and to monitor compliance, even though some of these activities are now undertaken in conjunction with the ECB and the IMF.

In the competition policy area Council authorisation of proposed Commission actions is not normally legally required, though it may be sought to give ‘political cover’. Making use of treaty and legislative provisions, favourable Court judgements, and the increasingly liberal economic climate, the Commission, and especially the Juncker Commission, has increasingly acted as something of an institutional entrepreneur to exercise its powers in five main subfields of competition policy: prohibiting agreements between firms that limit competition; prohibiting abuse of a dominant position by one or more large firms; prohibiting industrial mergers that may give one firm a dominant position; requiring the liberalization of public utilities and infrastructure industries; and prohibiting most forms of state aid from a member state to a firm or category of firms. The first three of these subfields target private companies while the latter two focus on the actions of member state governments. In all cases, the accumulation of principles and powers related to these subfields places the Commission in a powerful position – arguably the most powerful of any EU policy field (Cini and McGowan, 2009: 1). They allow it to intervene and discipline governments and companies, and to do so in high-profile ways –
as with, regarding interventionist actions against companies, the imposition of a record fine of €3 billion on truck makers in July 2016 following a five year investigation by the Commission that revealed a 14 year old cartel to fix prices and pass on the cost of compliance with stricter EU emissions controls. (Significantly in terms of the Commission’s room for manoeuvre in the competition policy area, one of the truck makers – MAN – was not fined as the company had revealed the existence of the cartel).

When the Commission initiates actions that touch on the policy preferences and interests of member state governments – such as disallowing state aid or withholding regional funding because of breaches of competition rules – its actions are, almost by definition, intensely political. Indeed, state aid is in some respects the most politically sensitive subfield of competition policy. One reason for this is that the Commission must target – and often prohibit the actions of – member state governments directly, including, for instance, efforts to assist firms or industries that provide much-needed jobs. Such a case was launched in June 2014, when the Commission initiated actions against the Irish, Dutch and Luxembourg governments for offering market-distorting tax breaks for three major firms: Apple, Starbucks and Fiat, respectively. As part of this, in October 2015 Fiat and Starbucks were each required to pay back between €20 million and €30 million to the Luxembourg and Netherlands tax authorities for receiving tax breaks that amounted to state aid.

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

Thus, we see a considerable amount of ‘political’ activity as the Commission
undertakes its implementation tasks, including the introduction of sometimes important new
rules in secondary rule-making procedures (usage 2), the preservation of its powers over such
acts in revisions that have been over the years to ‘comitology’ procedures (usage 3), the actual
shaping of outcomes related to the making of non-legislative acts (usage 4), and the taking of
highly charged ‘political’ decisions in areas where it has been given direct implementation
responsibilities. (usage 4).

Conclusions

This paper stemmed from a dissatisfaction with the fact that for all the recent attention given to
the supposedly more political nature of the Commission, little focus has been given to the
precise nature of what ‘political’ means. Imprecision hampers our ability to understand whether
and how the Commission has become more or less political of late, and how that might affect
the ‘decline of the Commission’ debate that has become much heard in EU studies. Our study
applied four analytically separate definitions of the term political to four important traditional
tasks carried out by the European Commission, to investigate where and how the Commission
continues to act politically. Initial findings are presented in Table 1.
Table 1. The Commission’s Political Activities in the Exercise of Traditional Tasks

<table>
<thead>
<tr>
<th></th>
<th>Agenda Setting</th>
<th>Policy Initiation</th>
<th>Process Facilitation</th>
<th>Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ideologically Political</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Policy Political</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Institutionally Political</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Administratively Political</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

Drawing on four ways in which the word ‘political’ can be used in normative democratic theory – and how it has been used when applied to the Commission – we have sought to provide a more systematic analysis of how the Commission acts and behaves in a political manner. We have taken as a ’given’ that the composition and structure of the Commission has become, especially since Juncker became President in 2014, more politicised and have focused rather on the nature of four of the Commission’s most important roles and how it undertakes them. We showed that in each of the four roles the Commission is charged to act, and does so act, in a highly political way.

References


