EUROPEAN POLICY ANALYSIS

Juncker's Political Commission: Did it Work?

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Summary

The 'political Commission' may be the defining idea of the Juncker Presidency. But did it work? This paper is devoted to analysing how the notion of a political Commission has framed the organization and policy-making of the Juncker Commission. The idea of the political Commission was to allow the Commission to streamline its agenda and focus on a narrower number of proposals. In the words of the 2018 State of the Union address: to be 'bigger on the big things and smaller on the small things'.

In reality, external constraints, and in particular the divergent preferences and electoral cycles of national governments, have frustrated this promise. The Commission's confinement to a relatively narrow set of regulatory (rather than distributive) tools limits its ability to be politically responsive to the main challenges the Union currently faces. At the same time, the political Commission undermines some elements of the Commission's regulatory legitimacy – for example, its promise to be a neutral arbiter in the enforcement of competition, internal market and rule of law norms.

While the political Commission continues to be a normatively attractive idea, it has fitted poorly with the institutional and political constraints surrounding the Juncker Presidency. This carries implications for the next Commission and the fate of the Spitzenkandidaten process.

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1 Introduction

The idea of a political European Commission may be the defining idea of the Juncker Presidency. It was the idea that gave Mr. Juncker the Presidency in the first place. His candidacy followed several months of campaigning as the Spitzenkandidat of the European People's Party. Upon assuming office, Mr. Juncker justified and promoted his term as Commission President in political terms. He wanted, as he stated in his 2015 'State of the Union' to 'lead a political Commission. A *very* political Commission' (European Commission 2014).

> "The idea of a political European Commission may be the defining idea of the Juncker presidency."

One can debate whether the political Commission is a good idea at a conceptual level (Goldoni 2016; Van Rossem 2016). One can also, however, debate it at a more micro-level: how did the nature of *this* Commission as 'political' affect the Commission's structure, policies and output? Did the political Commission 'work' in the sense of meeting some of the objectives Juncker, and others who have promoted the idea of a more political European Commission, set out for it? These questions constitute the overriding goals of this paper.

To meet these goals, the paper will analyse the effects of the political Commission on three aspects of its functioning: agenda-setting (section 4), working methods (section 5) and the legislative process (section 6). To do so, it will draw on publicly available statistical data on the implementation of the Commission's ten 'flagship' projects.

2 The Political Commission – Why might we want it?

Before doing so, a prior question must first be addressed: why might a 'political' Commission be attractive in the first place? It might be for three main reasons. The first reason is functional. In simple terms, the nature of the EU's tasks has changed. While the EU might once have been characterized as a 'regulatory state' (Majone 1997) that attempts to produce policy outcomes mutually beneficial across different regions, generations and classes (and that stays out of the most politically divisive areas), this seems a poor description of the range

of policy activities the modern Commission must engage in. A Commission that polices national budgets – or that seeks to develop a common asylum system – must inevitably take distributive decisions. For such decisions, there is no single neutral answer as to which policy mix is 'best' but only answers that will find favor depending on one's own political views (Dawson 2016). Functionally therefore, the political Commission might be seen as 'alternativlos': the EU is increasingly engaging in policy fields where it cannot merely 'regulate' but has to 'pick sides' on politically salient issues.

A second reason is epistemic, or knowledge-based. The notion of the Commission as a neutral regulator also implies the grounding of Commission decisions in expertise, and an ability to meet long-term goals that national governments could not achieve on their own. Our present era, however, is also an era of increasing contestation of the notion that public policy can be grounded in a single set of verifiable expert knowledge (Bartl 2018). Even in 'older' areas of EU activity, such as establishing rules for food safety, the level of risk acceptable for new products (e.g. GMOs) to be entered into the EU market is highly contested between and within EU states. If regulation cannot be based on expertise, it must be based on something else: the decisions of political officials, who are accountable to the public for what they do. A political Commission is thus an alternative way of grounding the knowledge base through which the Commission acts.

A final reason for the political Commission is democratic. A key theme of political science research of the last decade has been 'politicization' (Hutter, Grande & Kriesi 2016). The EU is thus no longer a 'parallel' project to national democracy but increasingly contested *within* domestic politics. An increasingly contested EU may require greater sensitization of its policy-making to the preferences of citizens. By tying the composition of the Commission more closely to a European electoral process, the political Commission allows the Commission to anchor its policy-making in policies that find majority support among EU citizens. In doing so, it also provides a mechanism of increasing the democratic responsiveness of EU policy-making.

One of the key tests of a democratic system is the ability of voters to 'throw the rascals out', i.e. to judge the record of their officials, and if found wanting, to remove them. As Joseph Weiler has remarked, this is a key test that Europe has often

failed (Weiler 1995). The political Commission re-opens this possibility, i.e. of establishing a clearer link between the decisions of voters and Commission policy-making. This may be the central aspect of the idea's attractiveness: the political Commission (and its greater links to European parliamentary politics) provides one step by which the EU might transition from a technocratic to a more democratic project (Habermas 2015).

> "[...] one step by which the EU might transition from a technocratic to a more democratic project."

3 Operationalising the Political Commission

How did the Juncker Commission convert these abstract ideas into a different way of conducting its day to day work? We might distinguish here between three different sets of changes.

- The first change concerns agenda setting. This of course is the Commission's main prerogative under the Treaties, flowing from its right of legislative initiative. It is also, however, a prerogative that has often been frustrated by the Commission's unwieldy institutional design. Given failed Treaty efforts to reduce the Commission's size, Juncker, like his predecessors, faced a Commission that was 28 strong and separated into different Directorates-General (DGs). The danger was of a segmented and competitive form of agenda-setting in which each Commissioner defended their turf and focused primarily on advancing the pet projects of their lead DG (Peterson 2017: 351). This problem could easily stand in the way of an attempt to focus the Commission on a clear political agenda.

Juncker therefore began his Commission with a clear signalling that his Commission would be different. This was to be a Commission 'doing more on the big things and less on the small things'. It pledged, through its 'Better Regulation' agenda, to focus as much on the removal and consolidation of existing proposals, as on the establishment of new ones (European Commission 2016). The 'big things' were to be implemented through 'political guidelines', set-out by Juncker in the summer of 2014 (European Commission 2014). Looking back,

this is a rather ambitious (if not very detailed) document. At its heart were ten flagship projects (see fact box below): around half of which concerned 'deepening' or altering existing projects (in EMU, the internal market, the Energy Union, Justice and Home Affairs (JHA) and international development); and half of which concerned newer policy challenges (e.g. the 'digital' single market, establishing joint asylum and border policies, and establishing a free trade agreement with the US). Linking to the discussion on the rationale of a political Commission above, the idea of this document was to create a 5-year policy agenda, for which the Commission would be politically accountable (and the implementation of which would be verified year by year).

- The second related set of changes were intra-institutional, i.e. changes in how the Commission should work internally. In the history of the EU, 'widening' has often been accompanied by efficiency maximizing efforts. For example, the 2004 enlargement was preceded by Treaty changes to increase QMV (qualified majority voting), and hence make voting easier. Similarly, the Commission's unwieldy size was tackled by Juncker through the establishment of a more hierarchical Commission, with both a 'First' Vice-President (VP), Frans Timmermans, coordinating the

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The ten flagship projects

Boosting investment and creating jobs

Digital single market: bringing down barriers to unlock online opportunities

Making energy more secure, affordable and sustainable

A deeper and fairer internal market

A deeper and fairer economic and monetary union (EMU)

A balanced and progressive trade policy to harness globalisation

Justice and fundamental rights

Towards a European agenda on migration

Strengthening the global role of Europe

Making the EU more transparent and democratically accountable

Commission's political work, and a series of five other Vice-Presidents, overseeing groupings of policy portfolios.

This organizational change was meant to overcome two main problems: firstly, to allow the prioritization of the most important policy proposals (and thereby overcome the problems of coordination and segmentation discussed above) and secondly, to ensure supervision of Commissioners whose policy preferences might deviate from the Commission's common agenda. As an example of the latter, France insisted on the allocation of the important Economic and Financial Affairs (ECFIN) portfolio to its Commissioner, Pierre Moscovici, who was then responsible for assessing draft national budgets. The VP structure, however, subjected his decisions to the supervision of Valdis Dombrovski, a fiscal hawk, as the responsible VP for the Eurozone (Peterson 2016: 360). Through such methods, the VP structure also provided the Commission with greater political balance.

• A third and final set of changes were inter-institutional, i.e. changes in the relation to the other EU institutions. The increasing politicization of the EU more generally also implies a more contested legislative process, in which it may be more difficult to turn Commission proposals into enacted law. To anticipate this danger, the Juncker Commission moved towards more comprehensive political programming, establishing detailed annual work programmes, and agreeing with the Council and Parliament annual joint declarations on which proposals should be forwarded and prioritized within the legislative process (European Commission 2016: 5). In this sense, the 'political Commission' was also accompanied by attempts to establish a relationship to the legislative institutions more reminiscent of a traditional parliamentary system of government (in which the executive can be relatively sure both of broad legislative support for its programme and of space in the legislative agenda for the most significant bills). These three sets of changes thus laid the institutional ground-work for the Commission's political agenda to advance.

4 Can the Commission still set the Political Agenda?

If these are three of the main ingredients of Juncker's political Commission, how did they

function from the perspective of 2019? Let us start first with agenda-setting, arguably the most crucial item. While Juncker's 10 priorities were meant to restore his Commission's agenda-setting powers, today's Commission faces endless negotiation and scrutiny in advancing its policy agenda. This relates to the story of 'politicization' discussed above: the era where the Commission could engage in elaborate policy experiments, confident that national publics would mostly ignore the catastrophes and be thankful for the successes is long gone. It has made way for an age where much of the EU's activities take place in the public glare. National politics has entered EU politics, and with it, national-led institutions (in particular the European Council) have increasingly sought to constrain the Commission's action (Puetter 2014).

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This is unsurprising given the increasingly salient and distributive fields in which the EU now acts. The salience of policies on spending, migration and the boundaries of the welfare state increases the level of contestability of EU policies, encouraging a greater number of actors to pay attention to, and seek a say in, Commission policies. This applies in particular to national governments, whose ability to advance the policies upon which they were elected may depend on developments at the European level. This is the great irony of the political Commission – it has taken on the freedom to select, prioritise and steer its agenda at precisely the moment where the Member States must limit its ability to do so.

The Juncker Commission quickly learnt this lesson. When highly salient political questions are at play, a Commission that leads from the front – or that over-reaches its Member States – is liable to be humiliated. An important example is the area of refugee re-settlement, where the functional drive to coordinate policy in a borderless area was quickly limited by the high salience of migration (particularly from outside of Europe) as a domestic polit-

ical issue. As a result, the Commission's ambitious proposal to re-settle refugees from Greece and Italy in other Member States was heavily resisted by Central and Eastern European (CEE) states, and when agreed, weakly implemented (Costello & Guild 2018).

This Commission, like its predecessor, has often therefore had to cede or share agenda-setting power with the European Council. The infamous 'Turkey deal' (which traded Turkish access to visa-liberalisation for stricter Turkish control of irregular migration to Europe) thus took the form of an inter-governmental agreement, as did numerous other bilateral deals on migration with third states (such as Libya). Similarly, while one of Juncker's priorities promised a 'fairer' EMU, real 'fairness' would require steering larger and more costly programmes and therefore could hardly be implemented by the Commission (see e.g. the resulting dominance of the Eurogroup in the 3rd Greek bail-out, or the difficulties in agreeing a deposit insurance scheme, that would involve risk-sharing between EU states). While we have a Commission that promised to do more on big things and less on small things, the power to act on 'big things' often remains out of the Commission's hands.

This can be assessed in a more quantitative manner. If one traces the number of proposals tabled and adopted across the Juncker Commission's 10 priority areas (see fact box to the right), we can observe high levels of variation in success between these policy fields (European Parliament 2018a). More 'regulatory areas', i.e. those predominantly about rule-making, carry relatively high rates of adoption (see e.g. Priority Area 4, a deeper and fairer Internal Market where 48% of proposals have been adopted by Summer 2018 or Area 2, Digital Single Market, at 46%). By contrast, we see lower success rates in areas that concern investment, spending and re-distribution (e.g. in Priority Area 1, Jobs, Growth and Investment, only 28% of envisaged proposals have been adopted) or in areas where responsibility is shared with the Member States or requires negotiations with third states (e.g. in Priority Area 6, Trade Policy, where only 10% of envisaged proposals have been adopted).

The danger is that 'new' or distributive projects require capacities that far outstrip the EU's existing institutional structure. To take the issue of migration and asylum, while the 2014 guidelines included language on border security, its main

focus was on harmonising asylum procedures and establishing new policies on legal migration (European Commission 2014: 10). This approach – essentially tinkering with national rules – was well within the EU's traditional toolkit. This has to be contrasted with the scale of policy challenges in this field faced almost continuously since 2014. Facing such a challenge – the entry of millions of individuals into the Union and the diverse needs they bring – requires more than the EU's regular recipe of creating common standards. Such a task requires extensive state capacity in fields like integration and border control that quickly overwhelmed the EU's administration and agencies (Genschel & Jacthenfuchs 2018).

By contrast, in areas discussed in the 2014 guide-lines where the EU's existing competences are clearer, progress has been far more rapid. Examples include digitalization (such as the enormous General Data Protection Regulation), energy (where the emissions trading system was reformed) or the JHA (where the EU has finally adopted a European Public Prosecutors Office as an enhanced cooperation measure). We have a Commission whose ability to set the policy agenda to face new challenges varies enormously across policy fields.

In this sense, many of the changes instituted by the Juncker Presidency in more contested areas of policy have been changes to tone and institutional

Proposals adopted across the Juncker Commission's 10 priority areas*

Jobs, growth and investment: 28 %

Digital single market: 46 %

Energy union and climate: 37 %

Internal market: 48 %

Deeper and fairer EMU: 48 %

Trade policy: 10 %

Justice and fundamental rights: 42 %

Migration: 37 %

Global actor: 65 %

Democratic change: 46%

* By Summer 2018.

direction rather than grand legislative plans. A case in point is one of the 'flagship' projects of a vaguer and more cross-cutting character – the attempt, discussed above, to establish a 'fairer' EMU. As part of this, the Commission promised to conduct social impact assessments (IA) on conditionality plans for bail-out states, and to change the direction of the European Semester, allowing for more fiscally and socially balanced recommendations. In the former case, the main result was an impact assessment on the third Greek bail-out, where the Commission argued that extensive cuts in social provision would provide stable fiscal conditions in the long-term and therefore would have socially beneficial effects (European Commission 2015). In the latter case, there is some evidence that the Juncker Presidency has modestly altered the direction of EU fiscal policy, both providing more flexibility to the Member States and improving the scope and number of 'socially oriented' country-specific recommendations (ETUI 2018; Zeitlin & Vanhercke 2015).

If the Juncker Presidency has wielded power, it has thus often wielded in the opposite way than promised. It is indeed on the 'small things' – i.e. everyday interaction and negotiation with national governments – that the political Commission's influence and impact may be more keenly felt.

5 Intra-Institutional Change – Reconciling Political and Regulatory Functions

Even if the political Commission could not always set the policy agenda, one might still expect more efficient policy-making as a result of changes in institutional practice. This refers to the problem of segmentation discussed above, i.e. of competing policy priorities between Commissioners and Directorates-General (DGs), and the attempts to overcome this through a more hierarchical internal structure. There is certainly evidence that changes to the organization of the Commission have led to a significant narrowing and prioritization as regards the quantity of legislative proposals. While the second Barroso Commission (according to Eur-Lex) averaged just over 100 legislative proposals adopted per year, the period from 2015 to 2018 carries so far an average of just over 60 adopted acts per year (Eur-Lex 2019). This has been accompanied, particularly in the early period of the Juncker Commission, with a spike in the number of proposals

withdrawn from legislative consideration. Internal change does seem therefore to have focused and narrowed the Commission's work.

What about the problem of segmentation? The difficulty here concerns coordination between different Commission activities. It is worth, however, pausing to consider the advantages of segmentation for a more 'political' Commission. One criticism of the Commission's politicization might be that a more partisan Commission will find it more difficult to conduct tasks seen by the Member States as 'regulatory' or requiring the neutral application of agreed rules. Examples might be the implementation of deficit and spending rules under the Stability and Growth Pact (SGP) or enforcing rule of law and fundamental rights standards. If the Commission as a whole becomes more politicized, the autonomy of particular DGs and Commissioners might be seen as an advantage in the sense that it may be desirable to shield certain Commission functions from overt politicization.

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There is some evidence of this risk – the risk of de-segmentation (or of removing clear boundaries between different DGs and tasks) – coming to pass. The rule of law crisis has presented a particularly difficult case. This crisis represents another example of the changing relation between national and EU politics discussed in section 4, i.e. the increasing salience of Europe within domestic politics (and the increasing importance of domestic conflicts to the integrity of the EU as a whole). Here, the Commission was called upon to impartially police and apply rule of law values against a government (Hungary) sitting within the political family from which the Commission's President has been drawn. The larger rule of law mechanism was also overseen not by a 'normal' Commissioner but by the First Vice-President.

This has presented danger on both sides: those who see the mechanism as needless feet-dragging while facts are ruthlessly changed 'on the ground' can pillory the process as a betrayal of the EU's values in service of avoiding political embarrassment within the centre-right (Keleman & Pech 2019). Conversely, those (national) politicians who see the

mechanism as too intrusive can paint intervention as 'politicised' in the sense of representing a partisan agenda against a sovereign national government (Politico 2016). This presents a clear danger of politicization – even if it presents some legitimacy gains, it also presents losses, i.e. to the appearance of the Commission as a neutral 'guardian of the Treaties' (Kochenov 2018).

> "The politicization of the Commission's role has made it much easier for opponents of EU policies to cast the Commission as a partisan actor."

The same critique might apply vis-à-vis economic governance. The application of the rules of the SGP seems ever more a 'management' exercise, subject to political limits and negotiation, than a 'rules-based' assessment in the Schäuble tradition (Chalmers 2013). See for example the early 2019 showdown between the Commission and Italy over the latter government's planned budget, which effectively resulted in a 'splitting of the difference' between the starting positions of both parties. Again, the Commission's discretionary approach creates easy attack from both sides: from fiscal hawks who see it as bending to political pressure (Handelsblatt 2018) and to national sovereigntists who see the Commission interfering too deeply into sovereign issues that can only be legitimately determined through national electoral politics (Arruza 2017). The politicization of the Commission's role has made it much easier for opponents of EU policies to cast the Commission as a partisan actor. By choosing to be 'political', the Commission has associated itself with politics at a time when that profession has its lowest ever level of public esteem.

6 Inter-Institutional Change: The Juncker Commission and the Legislative Process

Finally, what were the effects of inter-institutional changes? The practice of inter-institutional programming has continued throughout the Juncker Presidency, aided by the presence of a strong pro-European majority within the European Parliament (EP). Coordination with the Council has proven to be a more difficult task. As discussed

in other political science literature, national elections tend to have a significant impact on the Council's agenda, with the election campaigns of major governments driving reluctance on the part of the Council to agree major agenda items (Kleine & Minaudier 2016). The Juncker Presidency has had little luck in this regard: coinciding (in its first 3 years) with major elections in every large Member States (in Germany, France, Spain, Poland and the UK, with Italy following one year later).

It is perhaps therefore not a surprising consequence that greater programming between the EU institutions has not necessarily lead to faster adoption of proposals. From July 2014 to December 2017, the average length of legislative process was 17 months at 1st reading and 40 months at 2nd reading (European Parliament 2018b). In the previous parliamentary term, it was 17 months at 1st reading and 33 months at 2nd reading (measured at the time of the adoption of a Council position (European Parliament 2014)). In this sense, we have a European Commission that is running faster (i.e. engaging in greater procedural streamlining and cooperation with the other EU institutions) just to stay in the same position as regards the speed at which policy is converted into law. The tumult of national politics and the resulting 'constraining dissensus' between and within Member States inevitably creates greater conflict within the EU institutions, making the legislative process more cumbersome (Hooghe & Marks 2009).

In this sense, while the Juncker Commission has generally lived up to its promises (tabling 483 of the 542 proposals envisaged in its work programme), it has had difficulty converting them into law (with only 40% of total proposals having been passed by the end of 2018 (European Parliament 2018a)). This seems part of the broader difficulty this paper has advanced: however much the Commission might want to shape a distinctive European political agenda, the ability to deliver and execute that agenda remains with other actors. These actors may have quite different political priorities or simply prefer inaction to decisive EU leadership.

7 Conclusion: The Future of the Political Commission

What then is the future of the Commission post-Juncker? Perhaps the Juncker Presidency did not turn out so differently from what we expected. We

expected a President Juncker attune to the weapons of soft power, competent in negotiating, and favouring the slow build-up of national consensus over free-wheeling or impulsive leadership. That is exactly what we got. What we did not get was the more optimistic rendering of the political Commission – a policy innovator, stepping out into new terrain and wresting control of integration from the Member States. Such a Commission may be near impossible in the early 21st Century, where power in the EU is significantly dispersed.

It would be tempting, given the above, to give up on the idea. If the political Commission yielded a Commission more adept at day to day management than big ideas, often driven by the agendas of the largest Member States, and lacking the tools to meet some of Europe's largest problems, what was the point in the exercise at all? This may be part of the explanation for the luke-warm reception among national leaders, of continuing the Spitzenkandidaten experiment following the June elections (Politico 2018). This is epitomized by the attitude of Emmanuel Macron – if such a Europhile leader cannot be drawn to the idea, who can?

It may be too early, however, to abandon the political Commission. The truth, to use a term already used in this paper, is that the political Commission is alternativlos. Those opposed to the idea must answer a simple question: what is the objective, regulatory, de-politicised set of policies the EU must advance for which the Commission can be a neutral arbiter? The irony of the last decade, and the Juncker Presidency, is that it is the era where previously consensus-based areas of policy, with near unanimous national support, have become the most contested set of questions of all. Free movement (during the debate over Brexit), the need for a common currency (in the Greek and Euro crises), 'basic' rule of law standards (in Hungary and Poland), and free trade (in an era where this is attacked from both left and right) are all examples of issue areas that would have aroused far less debate one decade ago. We live in an age where things thought to be un-political, or part of a base-line societal consensus, are no longer so. As pointed out by others, this extends to the EU Treaties themselves, and the very idea of free trans-national movement and cooperation (Grimm 2017).

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This requires a Commission that conducts two tasks. Firstly, it must be able to set out a clear and distinct policy agenda. Secondly, particularly importantly given the loss of agenda-setting powers to the Member States, it must be able to engage in the other kind of politics, i.e. the strategic ability to negotiate and compromise with national governments, and to find the right leverage and timing to drive its agenda forward. Mr. Juncker may not have been able to articulate this idea of a political Commission, but the demand for such a Commission is likely to outlive his Presidency.

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